

**Observations by the United Nations High Commissioner for Refugees
(UNHCR) Regional Representation for Northern Europe on the
draft Decree of the Estonian Minister of the Interior from 29 March 2016
establishing the procedure for carrying out interviews with applicants for
international protection**

I. Introduction

1. The UNHCR Regional Representation for Northern Europe (“UNHCR”) is grateful to the Estonian Ministry of the Interior for sharing a copy of the draft Decree of the Minister of the Interior establishing the procedure for carrying out interviews with applicants for international protection (*Siseministri määrus Rahvusvahelise kaitse taotlejaga vestluse läbiviimise kord, 29.03.2016*, hereinafter – the Decree).
2. UNHCR understands that the Ministry of the Interior has elaborated the present draft Decree pursuant to Article 18 (4¹) of the Act on Granting International Protection to Aliens (“AGIPA”), which will come into force on 1 May 2016. According to the Explanatory Note, the adoption of the Decree is related to the implementation of Articles 14-17 of the recast Asylum Procedures Directive,¹ which, *inter alia*, lays on Member States the obligation to ensure that applicants for international protection have the opportunity of a personal interview.
3. UNHCR has a direct interest in law proposals in the field of asylum as the agency entrusted by the United Nations General Assembly with the mandate to provide international protection to refugees and, together with governments, seek permanent solutions to the problem of refugees.² According to its Statute, UNHCR fulfils its mandate *inter alia* by “[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto[.]”³ UNHCR’s supervisory responsibility is reiterated in Article 35 of the 1951 Convention and in Article II of the 1967 Protocol relating to the Status of Refugees (hereafter collectively referred to as the 1951 Convention).⁴ UNHCR’s supervisory responsibility is exercised in part by the issuance of interpretative guidelines on the meaning of provisions and terms contained in the 1951 Convention,⁵ as well as by providing comments on legislative and policy proposals impacting on the protection and durable solutions for refugees.
4. UNHCR welcomes the initiative of the Ministry of the Interior to harmonize the Estonian procedure for interviewing applicants for international protection with the recast APD standards. UNHCR would like to convey the following observations and recommendations on the content of the proposed Decree.

¹ European Union: Council of the European Union, *Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) (recast Asylum Procedures Directive or recast APD)*, 29 June 2013, L 180/60, available at: <http://www.refworld.org/docid/51d29b224.html>.

² UN General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, A/RES/428(V), available at: <http://www.refworld.org/docid/3ae6b3628.htm>.

³ *Ibid.*, para. 8(a).

⁴ According to Article 35 (1) of the 1951 Convention, UNHCR has the “duty of supervising the application of the provisions of the 1951 Convention”.

⁵ UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011, HCR/1P/4/ENG/REV. 3, available at: <http://www.refworld.org/docid/4f33c8d92.html>.

II. Observations

5. UNHCR notes that the last sentence in paragraph 1 of the Decree explicitly clarifies that the Decree is not supposed to regulate the process of carrying out the admissibility interview, as prescribed by Article 21 of the AGIPA⁶. Therefore, the proposed Decree will encompass all interviews on the substance of an application for international protection, which will be conducted either in the accelerated or regular procedure in Estonia.
6. UNHCR further notes that according to section 1 of paragraph 1 of the Decree, personal interviews are to be conducted by the Estonian Police and Border Guard Board ("PBGB"). UNHCR understands that currently interviewing of applicants for international protection is carried out by both border guard officials of the PBGB Territorial Prefectures as well as by officials of the Aliens Division of the PBGB Migration Bureau of the Intelligence Management and Investigation Department.
7. In UNHCR's view, personal interviews with applicants for international protection should always be conducted by a single determining authority, which has to be responsible for all stages of the procedure, including, for instance, the admissibility interview.⁷ In line with UNHCR's research project on the application of key provisions of the APD in selected Member States,⁸ UNHCR does not consider that the role of single determining authority should be performed by the police, border officials or other law enforcement authorities. Police authorities in general are not trained, equipped or resourced to conduct the personal interview and examine applications for international protection. Placing police in this role may undermine the perception of confidentiality and impartiality which is crucial for creating the conditions conducive to the complete disclosure of facts by applicants during the personal interview.
8. In this context, UNHCR wishes to recall that an interviewing (as well as decision-making) competence of border guard officials of the PBGB Territorial Prefectures has been thoroughly addressed by UNHCR in its recent comments on the Law Proposal amending the AGIPA.⁹ In line with the UNHCR's Executive Committee Conclusion No. 8 (XXXVIII) of 1977,¹⁰ UNHCR would like to reiterate that the responsibility for interviewing applicants for international protection both at the admissibility stage as well as in accelerated or regular procedure, within the country or at its borders, should be performed only by the central determining authority, that is in the case of Estonia, the Aliens Division of the PBGB Migration Bureau of the Intelligence Management and Investigation Department.
9. Using this opportunity UNHCR would like to remind that Article 14 of the recast APD also sets out the general principle that it is the responsibility of the central determining authority to conduct the personal interview. While Article 34 (2) of the recast APD

⁶ Here and after UNHCR will refer to the version of the AGIPA which will come into force on 1 May 2016.

⁷ UN High Commissioner for Refugees (UNHCR), *UNHCR comments on the European Commission's proposal for a Directive of the European Parliament and of the Council on minimum standards on procedures in Member States for granting and withdrawing international protection (COM(2009)554, 21 October 2009)*, August 2010, page 21, available at: <http://www.refworld.org/docid/4c63ebd32.html>.

⁸ UNHCR, *Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice - Key Findings and Recommendations*, March 2010, at: <http://www.unhcr.org/refworld/docid/4bab55752.html>.

⁹ UN High Commissioner for Refugees (UNHCR), *Additional Observations by the United Nations High Commissioner for Refugees Regional Representation for Northern Europe on the revised draft Law Proposal of 15 June 2015 amending the Act on Granting International Protection to Aliens and other related laws*, August 2015, paras 51-55, and 14-16. Available at: <http://www.unhcr-northerneurope.org/where-we-work/estonia/estonia/documents-reports/>.

¹⁰ UNHCR, *Determination of Refugee Status*, 12 October 1977, No. 8 (XXVIII) - 1977, available at: <http://www.unhcr.org/refworld/docid/3ae68c6e4.html>.

allows for another authority to conduct the personal interview on the admissibility of the application for international protection, UNHCR would like to reiterate its previous comments on the fact that, due to the impact of the certification of a claim as inadmissible, only the determining authority, which has the necessary knowledge of the grounds for international protection, experience and access to updated country of origin information, should carry out the admissibility interview.¹¹ In Estonia, the only authority which is prepared and staffed with competent personnel to fulfill such tasks of the central determining authority is the Aliens Division of the PBGB Migration Bureau of the Intelligence Management and Investigation Department.

Recommendation: UNHCR recommends amending section 1 of paragraph 1 of the Decree to ensure that all interviews on the substance of applications for international protection are carried out by employees of the determining authority, namely the Aliens Division of the PBGB Migration Bureau of the Intelligence Management and Investigation Department.

UNHCR Regional Representation for Northern Europe
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¹¹ UN High Commissioner for Refugees (UNHCR), *UNHCR comments on the European Commission's Amended Proposal for a Directive of the European Parliament and of the Council on common procedures for granting and withdrawing international protection status (Recast) COM (2011) 319 final*, January 2012, p. 13, available at: <http://www.refworld.org/docid/4f3281762.html>.