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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21.10.2009  
COM(2009) 554 final

2009/0165 (COD)

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**

**(Recast)**

{SEC(2009) 1376}

{SEC(2009) 1377}

## EXPLANATORY MEMORANDUM

### 1. Context of the Proposal

#### 1.1. Grounds for and objectives of the proposal

This proposal is a recasting of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status<sup>1</sup> (hereafter – the Asylum Procedures Directive).

Contributions received by stakeholders in response to the Green Paper consultation<sup>2</sup> have pointed to the proliferation of disparate procedural arrangements at national level and deficiencies regarding the level of procedural guarantees for asylum applicants which mainly result from the fact that the Directive currently allows Member States a wide margin of discretion. Consequently, the Directive lacks the potential to back up adequately the Qualification Directive<sup>3</sup> and ensure a rigorous examination of applications for international protection in line with international and Community obligations of Member States regarding the principle of *non-refoulement*.

As announced in the Policy Plan on Asylum<sup>4</sup>, this proposal is part of initiatives which aim to ensure a higher degree of harmonisation and better standards of international protection across the Union. The envisaged measures are expected to improve **the coherence between EU asylum instruments, simplify, streamline and consolidate procedural arrangements** across the Union and lead **to more robust determinations at first instance, thus preventing abuse and improving efficiency of the asylum process**.

This proposal is linked with the Commission's proposal for a regulation establishing a European Asylum Support Office<sup>5</sup>, which *inter alia* aims to provide practical assistance to Member States with a view to enhancing the quality of asylum decision making.

As concerns the financial and administrative burdens arising from the envisaged measures for those Member States which are faced with specific and disproportionate pressures on their asylum systems, due in particular to their geographical or demographic situation, the resources of the European Refugee Fund will be mobilised to provide adequate support to these Member States and to ensure that the burden will be shared more fairly between all Member States. In addition, the European Asylum Support Office will coordinate and support common action to assist Member States faced with particular pressures, and, more generally, help Member States identify the most cost-efficient ways to implement the envisaged measures through the pooling of good practice and the structured exchange of high-level expertise.

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<sup>1</sup> OJ L 326, 13.12.2005, p. 13.

<sup>2</sup> Green Paper on the future of the Common European Asylum System - COM(2007) 301.

<sup>3</sup> Council Directive 2004/83/EC on minimum standards for the qualification and status of third-country nationals and stateless persons as refugees or as persons who otherwise need international protection (OJ L 304, 30.9.2004, p. 12).

<sup>4</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions on the 'Policy Plan on Asylum an Integrated Approach to Protection Across the EU' of 17 June 2008 - COM(2008) 360.

<sup>5</sup> Proposal for a Regulation of the European Parliament and of the Council establishing a European Asylum Support Office - COM(2009) 66.

## 1.2. General context

Work on the creation of a Common European Asylum System (CEAS) started immediately after the entry into force of the Treaty of Amsterdam in May 1999, on the basis of the principles approved by the Tampere European Council. During the first phase of the CEAS (1999-2005), the goal was to harmonise Member States' legal frameworks on the basis of minimum standards. The Asylum Procedures Directive was the last of the five pieces of EU asylum legislation. It aims to establish minimum standards on procedures in Member States for granting and withdrawing refugee status.

This proposal responds to the call of the Hague Programme to submit proposals for the second-phase instruments to the Council and the European Parliament with a view to their adoption before the end of 2010. It aims to address the deficiencies in procedures for granting and withdrawing international protection and to ensure higher and more harmonised standards of protection, thus progressing towards a common asylum procedure and a uniform status, as set out in the Tampere conclusions and reiterated in the Hague Programme.

Detailed analysis of the problems identified in relation to this directive and concerning the preparation carried out for its adoption, the identification and assessment of policy options and the identification and assessment of the preferred policy option are included in the Impact Assessment, annexed to this proposal.

## 1.3. Consistency with other policies and objectives of the Union

This proposal is fully in line with the Tampere European Council Conclusions of 1999 and the Hague Programme of 2004 in relation to the establishment of the CEAS. It also responds to the call of the European Pact on Immigration and Asylum, adopted by the European Council on 17 October 2008<sup>6</sup>, to present proposals for establishing, in 2012 at the latest, a single asylum procedure comprising common guarantees.

## 2. Consultation of Interested Parties

At present, the Commission has at its disposal a large amount of information regarding the implementation of the Directive, including extensive information on the deficiencies concerning the terms of the Directive and the manner in which it is applied in practice.

- In June 2007, the Commission presented a **Green Paper** which aimed to identify possible options for shaping the second phase of the CEAS. The response to the public consultation included **89 contributions from a wide range of stakeholders**. The issues raised and the suggestions put forward during the consultation have provided the basis for the Policy Plan that lists the measures that the Commission intends to propose in order to complete the second phase of the CEAS, including the proposal to amend the Asylum Procedures Directive. The Commission has **conducted a careful analysis of the transposition measures**, notified by Member States.
- The implementation of the Directive and possible ways to address the current gaps in the Community framework on asylum procedures were discussed in **6 experts' meetings** organised by the Commission between February 2008 and January 2009. These consultations involved **Government experts** (4 experts' meetings held on 25.02.2008,

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<sup>6</sup> European Pact on Immigration and Asylum, Council document 13440/08

29.09.2008, 25.11.2008 and 12.01.2009), NGOs (08.01.2009), UNHCR and **legal practitioners providing legal advice to asylum applicants in national procedures** (17.03.2008), and focused on the key elements of the Directive. These consultations provided the Commission with valuable information regarding the areas to be addressed in the present proposal. Parties consulted expressed a general consensus to achieving further harmonisation of procedural arrangements and providing applicants for international protection with adequate guarantees thus ensuring an efficient and fair examination of their claims, in line with the Qualification Directive. Some Member States however underlined the need to retain a certain degree of flexibility regarding the organisation of asylum procedures and to maintain procedural arrangements aimed at preventing abuse, whereas others expressed a preference to address deficiencies of the present framework via practical cooperation measures rather than via a legislative intervention.

- **An external study** was conducted on behalf of the Commission, analysing the existing evidence and results of consultations.
- Further data was collected in response to **several detailed questionnaires** addressed by the Commission to all Member States and to civil society stakeholders.
- Important information on the implementation of the directive was also found in **reports on the projects co-funded by European Refugee Fund** and in the report on asylum procedures in the IGC participating states (**the Blue Book**).

On the basis of the Green Paper contributions and consultations with Government and Civil Society experts, academic commentaries, MS' replies to the questionnaires and the analysis of the transposition measures carried out by the Commission, two main problems have been identified. Namely, the minimum standards are (a) insufficient and (b) vague, thus lacking the potential to ensure fair and efficient examinations. Taking into consideration the serious gaps pointed out by many commentators and stakeholders, the Commission decided to propose the procedural guarantees and notions which are instrumental in ensuring reliable determinations in line with the Qualification Directive. This *inter alia* includes guarantees aimed at giving an applicant a realistic opportunity to substantiate his/her request for international protection, special guarantees for vulnerable applicants and arrangements on quality decision making. These standards are vital with a view to preventing abuse and preserving integrity of asylum systems. In this respect, the Commission's proposal also takes into account the concerns expressed by Member States regarding repeated and manifestly unfounded applications. In sum, this proposal aims to lay down the necessary conditions for making asylum procedures in the Community accessible, efficient, fair and context sensitive.

### **3. Legal Elements of the Proposal**

#### **3.1. Summary of the proposed action**

The main objective of this proposal is to ensure higher and more coherent standards on procedures for granting and withdrawing international protection that would guarantee an adequate examination of the protection needs of third country nationals or stateless persons in line with international and Community obligations of Member States.

The proposal aims at improving both the efficiency and the quality of decision making by **“frontloading” services, advice and expertise and encouraging MS to deliver, within a**

**reasonable time, robust determinations at first instance.** The improved efficiency and quality of the asylum process should (a) enable MS to quicker distinguish between asylum seekers and other migrants in mixed arrivals, thus **optimising labour and administrative resources needed to establish and complete applicable procedures** (return, asylum, humanitarian status, extradition etc.); (b) allow the asylum authorities to take robust decisions, based on complete and properly established factual circumstances of the claim, **improve the defendability of negative decisions** and reduce risk of their annulment by appeal bodies; (c) enable the asylum personnel to **better identify cases of unfounded and abusive applications, including those based on false identity or nationality**; (d) **reduce MS' reception costs and support their efforts to remove failed asylum seekers from the territory** since quality determinations will be delivered quicker and more cases will result in a final decision already in the first instance. Genuine refugees and persons in need of subsidiary protection would enjoy quicker access to entitlements set out in the Qualification Directive.

The proposal further aims at **simplifying and consolidating procedural notions and devices** and **improving coherence** between asylum instruments. This should *inter alia* limit the phenomenon of secondary movements of asylum seekers amongst Member States, to the degree that such movements are generated from divergent procedural arrangements.

In this respect the proposal addresses the following issues:

#### *1. Consistency between different asylum instruments*

With a view to facilitating **consistent application of the asylum *acquis* and simplifying applicable arrangements**, the proposal provides for a single procedure, thus making it clear that applications should be considered in the light of both forms of international protection set out in the Qualification Directive. It further specifies the rules applicable in the single procedure, such as a mandatory sequence of an examination of the protection needs in relation to refugee status and subsidiary protection status, and extends the present rules on the withdrawal of refugee status to cases of the withdrawal of subsidiary protection. These modifications reflect a long standing objective of the Commission policy on asylum<sup>7</sup> and aim at ensuring consistency with the Qualification Directive. Moreover, with a view to clarifying the scope of the directive *ratione materiae*, the proposal makes it clear that the procedural principles and guarantees set out in the Asylum Procedures Directive apply to applicants who are the subject to procedures pursuant to the Dublin Regulation<sup>8</sup> in the second Member States, and underlines that the notion of implicit withdrawal of applications should not be an obstacle for applicants to re-access asylum procedures in the responsible Member State.

#### *2. Access to procedures*

The proposal provides for a number of guarantees aimed at enhancing access to asylum procedures. First, it explicitly includes territorial waters in the scope of the Directive and specifies the obligations of border guards, police and personnel of detention facilities. It also

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<sup>7</sup> See Communication from the Commission to the Council and the European Parliament "A More Efficient Common European Asylum System: The Single Procedure as the Next Step" - COM(2004) 503, 15.7.2004.

<sup>8</sup> Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ L 50, 25.2.2003, p. 1).

provides for a time limit for completing formalities related to the lodging of an application and introduces guarantees aimed at enabling de facto asylum seekers to articulate their request for protection when they are present at the border crossing points or pre-removal detention facilities. These include access to information on procedures to be followed in order to apply for international protection, access to organisations providing legal advice and counselling to asylum seekers, and arrangements aimed at ensuring the communication between the competent authorities and the person concerned.

### *3. Procedural guarantees in procedures at first instance*

The proposal aims to increase the overall level of fairness in asylum procedures, thus leading to **more consistent application** of agreed procedural principles and guarantees. The proposed amendments are, to a large extent, informed by evolving case law of the European Court of Justice regarding the general principles of Community Law, such as the right to defence, the principle of equality of arms, and the right to effective judicial protection. The jurisprudence of the European Court of Human Rights was another key source of inspiration for developing further procedural safeguards for asylum applicants. In this respect, the proposal essentially aims to provide an applicant with an adequate and realistic opportunity to support his/her claim for international protection, and to ensure a meaningful assessment of the protection needs of the applicant by the competent authorities. In view of the above, the proposed amendments:

(a) reduce exceptions to the procedural principles and guarantees set out in the present Directive. In particular, the proposal deletes the possibility to omit a personal interview in accelerated procedures;

(b) provide for additional guarantees, such as the right to free legal assistance for applicants for international protection in procedures at first instance;

(c) introduce special guarantees for vulnerable asylum applicants. These *inter alia* include rules dealing with medico-legal reports, exemption of certain categories of applicants from accelerated or border procedures and procedural arrangements aimed at establishing the elements of the application in cases involving gender and/or age based persecution.

The envisaged measures would *inter alia* contribute to **preventing abuse of procedures** by improving applicants' awareness of applicable requirements leading *inter alia* to better compliance with procedural obligations. They would also support efforts of asylum authorities to take defensible and robust decisions, based on complete and properly established factual circumstances of the claim.

### *4. Procedural notions and devices*

With a view to achieving the objective of a common asylum procedure, the proposal aims at consolidating the key procedural notions and devices and defining better their functional role in asylum procedures. This primarily concerns the inadmissibility grounds, including the safe third country notion, accelerated procedures and manifestly unfounded applications, the notion of subsequent applications, and the safe country of origin concept. The directive's **notions and devices should become more consistent and simplified**, while providing asylum authorities with necessary procedural tools to prevent / respond to abuse and process quickly clearly unfounded or less complex applications.

With respect to the inadmissibility decisions, the proposal makes it clear that the applicant concerned should be able to make his/her views with regard to the application of the inadmissibility grounds known to the authorities before a decision to consider an application inadmissible has been taken. The proposal further deletes the European safe third country notion and incorporates the grounds of subsidiary protection in the list of material requirements for the application of the safe third country notion.

The proposal also revises the present arrangements for accelerated procedures providing for a limited and exhaustive list of grounds for an accelerated examination of manifestly unfounded applications and underlines that the determining authority should be given sufficient time to carry out a rigorous examination of an application in such cases. At the same time, the proposal preserves and further develops the Directive's provisions safeguarding the integrity of procedures, in particular as concerns the processing of abusive or fraudulent claims. In this respect, the amendments introduce an obligation for applicants to cooperate with the competent authorities in establishing their identity and other elements of the application. This provision should operate in conjunction with the current standards which allow MS to consider applications, based on false information or documents with respect to applicant's identity or nationality, as manifestly unfounded and to accelerate their examination.

The envisaged measures on quality decision making, including arrangements on personal interviews, expert advice and training, should further enhance the preparedness of the asylum personnel to identify timely fraudulent or abusive cases. These measures are further strengthened by underlining the principle of a single determining authority. The latter amendment accommodates institutional arrangements of the majority of MS and is indispensable with a view to ensuring the availability of institutional expertise and delivering robust determinations, based on complete and accurately established factual circumstances. This would also contribute to consolidating the asylum process and improving the quality of first instance examinations, thus discouraging abuse of procedures.

It is also proposed to streamline the asylum process by introducing time limits for procedures at first instance. The envisaged general 6 month time limit accommodates legislative amendments and/or practices of the majority of Member States, consulted in the process of preparing the amendments<sup>9</sup>. It is instrumental in improving the efficiency of examinations, reducing reception costs, facilitating removal of failed asylum seekers and ensuring quicker access to protection for genuine refugees and persons in need of subsidiary protection. The amendments also provide for the possibility of extending the time limit for 6 more months in individual cases. In order to give MS sufficient time to adapt and re-organise their national procedures in line with the proposed time limits, the proposal provides for the postponement of the transposition deadline with regard to these amendments for 3 years.

Furthermore, the proposal aims to reconsider certain elements of the safe country of origin concept by deleting the notion of a minimum common list of safe countries of origin and consolidating the common objective criteria for the national designation of third countries as safe countries of origin. The proposed amendments should lead to more consistent application of the safe country of origin notion, based on common material requirements, regular reviews of the situation in countries designated as safe and procedural guarantees equally applied in all MS opted for this device. The European safe third country concept is also re-visited to the extent that the common list is no longer foreseen. In order to reduce the root causes of repeated applications, the proposal makes it clear that the applicant and the determining

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<sup>9</sup> For more detailed information on national legislation and practices, see the Impact Assessment, annexed to this proposal.



authority should take all necessary efforts to establish and assess the elements of the initial application in line with the cooperative requirement set out in Article 4(1) of the Qualification Directive. The proposal further consolidates the Directive's provisions dealing with subsequent applications with a view to enabling Member States to subject a subsequent application to an admissibility test in line with the *res judicata* principle and to derogate from the right to remain in the territory in cases of multiple subsequent applications thus preventing abuse of asylum procedures.

### *5. Access to effective remedy*

The proposal facilitates access to effective remedy for asylum applicants in line with Community and international obligations of Member States. In this respect, the proposal is largely informed by ongoing developments in respective case law of the ECJ and the ECtHR. Firstly, the proposal provides for a full and *ex nunc* review of first instance decisions by a court or tribunal and specifies that the notion of effective remedy requires a review of both facts and points of law. Furthermore, the proposal aims at bringing the appeal proceedings pursuant to the Directive in line with the "equality of arms" principle and, subject to limited exceptions, provides for automatic suspensive effect of appeals against first instance decisions on applications for international protection.

## **3.2. Legal Basis**

This proposal amends Directive 2005/85/EC and uses the same legal base as that act, namely point (1)(d) of the first paragraph of Article 63 of the EC Treaty. The amendments dealing with procedural standards relating to subsidiary protection status are based on point (2)(a) of the first paragraph of Article 63 of the EC Treaty.

Article 1 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, states that Ireland and the UK may 'opt in' to measures establishing a Common European Asylum System. In accordance with Article 3 of this Protocol, the United Kingdom and Ireland had given notice of their wish to take part in the adoption and application of the current Directive. However, the position of these Member States with regard to the current directive does not affect their possible participation with regard to the new directive.

In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not bound by the directive nor is subject to its application.

## **3.3. Subsidiarity Principle**

Title IV of the EC Treaty ('TEC') on visas, asylum, immigration and other policies related to free movement of persons confers certain powers on these matters to the European Community. These powers must be exercised in accordance with Article 5 TEC, i.e. if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can, therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.

The current legal base for Community action is established in Article 63(1) TEC. This provision states that the Council is to adopt "measures on asylum, in accordance with the Geneva Convention relating to the Status of Refugees of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and other relevant treaties" in areas such as minimum standards on procedures in Member States for granting or withdrawing refugee

status and minimum standards for giving protection to persons who otherwise need international protection.

Due to the transnational nature of the problems related to asylum and refugee protection, the EU is well placed to propose solutions in the framework of the CEAS, in particular with regard to issues concerning procedures for granting and withdrawing international protection. Although an important level of harmonization was reached by the adoption of the directive in 2005, further EU action is necessary in order to attain higher and more harmonised standards on asylum procedures and to take further steps towards a common asylum procedure, the long term goal identified in Tampere. These standards are also considered indispensable with a view to ensuring that asylum seekers who are the subject to the Dublin procedures have their applications examined under equivalent conditions in different Member States.

### **3.4. Proportionality Principle**

The impact assessment on the amendment of the Asylum Procedures Directive assessed each option with regard to the problems identified so as to represent an ideal proportion between practical value and efforts needed and concluded that opting for EU action does not go beyond what is necessary to achieve the objective of solving those problems.

### **3.5. Impact on fundamental rights**

This proposal was subject to an in-depth scrutiny with a view to ensuring that its provisions are fully compatible with:

- fundamental rights flowing from general principles of Community law, which, themselves, are the result of constitutional traditions common to the Member States and the ECHR, as enshrined, moreover, in the EU Charter, and
- obligations stemming from international law, in particular from the Geneva Convention, the European Convention on Human Rights, and from the UN Convention on the Rights of the Child.

Ensuring higher standards on asylum procedures as well as their consistent application across the EU will have an overall positive impact for asylum seekers from a fundamental rights point of view. In particular, the proposal will reduce room for administrative error in asylum procedures thus ensuring better respect for the principle of *non-refoulement* and improving access to protection and justice. It will also enhance gender equality and promote the best interests of the child principle in national asylum procedures.

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↓ 2005/85/EC  
⇒ new

2009/0165 (COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT  
AND OF THE COUNCIL**

**on minimum standards on procedures in Member States for granting and withdrawing  
refugee status ⇒ international protection ⇐**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular point (1) (d) ⇒ and point (2) (a) ⇐ of the first paragraph of Article 63 thereof,

Having regard to the proposal from the Commission<sup>10</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>11</sup>,

Having regard to the opinion of the Committee of the Regions<sup>12</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>13</sup>,

Whereas:

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↓ new

- (1) A number of substantive changes are to be made to Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures for granting and withdrawing refugee status<sup>14</sup>. In the interests of clarity, that Directive should be recast.

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<sup>10</sup> OJ C [...], [...], p. [...].

<sup>11</sup> OJ C [...], [...], p. [...].

<sup>12</sup> OJ C [...], [...], p. [...].

<sup>13</sup> OJ C [...], [...], p. [...].

<sup>14</sup> OJ L 326, 13.12.2005, p. 13.

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↓ 2005/85/EC recital 1

- (2) A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of establishing progressively an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Community.

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↓ 2005/85/EC recital 2

- (3) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention of 28 July 1951 relating to the status of refugees, as amended by the New York Protocol of 31 January 1967 (Geneva Convention), thus affirming the principle of non-refoulement and ensuring that nobody is sent back to persecution.

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↓ 2005/85/EC recital 3

- (4) The Tampere Conclusions provide that a Common European Asylum System should include, in the short term, common standards for fair and efficient asylum procedures in the Member States and, in the longer term, Community rules leading to a common asylum procedure in the European Community.

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↓ 2005/85/EC recital 4 (adapted)

- (5) ~~The~~  Directive 2005/85/EC  ~~minimum standards laid down in this Directive on procedures in Member States for granting or withdrawing refugee status are therefore~~  was  a first measure on asylum procedures.

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↓ new

- (6) The first phase in the creation of a Common European Asylum System has now been achieved. The European Council of 4 November 2004 adopted the Hague Programme, which sets the objectives to be implemented in the area of freedom, security and justice in the period 2005-2010. In this respect the Hague Programme invited the European Commission to conclude the evaluation of the first phase legal instruments and to submit the second-phase instruments and measures to the Council and the European Parliament, with a view to their adoption before 2010. In accordance with the Hague programme, the objective to be pursued for the creation of the Common European Asylum System is the establishment of a common asylum procedure and a uniform status valid throughout the Union.

- (7) In the European Pact on Immigration and Asylum, adopted on 16 October 2008, the European Council noted that considerable disparities remain between one Member State and another concerning the grant of protection and called for new initiatives, including a proposal for establishing a single asylum procedure comprising common guarantees, to complete the establishment of a Common European Asylum System, provided for in the Hague Programme.
- (8) The resources of the European Refugee Fund and of the European Asylum Support Office should be mobilised to provide adequate support to the Member States' efforts relating to the implementation of the standards set in the second phase of the Common European Asylum System, in particular to those Member States which are faced with specific and disproportionate pressures on their asylum systems, due in particular to their geographical or demographic situation.
- (9) In order to ensure a comprehensive and efficient evaluation of the international protection needs of applicants within the meaning of Directive [.../.../EC] [on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted (the Qualification Directive)] the Community framework on procedures for granting international protection should be based on the concept of a single asylum procedure.

↓ 2005/85/EC recital 5  
⇒ new

- (10) The main objective of this Directive is to ⇒ develop further minimum standards for procedures in Member States for granting and withdrawing international protection with a view to establishing a common asylum procedure in the Community ⇐ ~~introduce a minimum framework in the Community on procedures for granting and withdrawing refugee status.~~

↓ 2005/85/EC recital 6  
⇒ new

- (11) The approximation of rules on the procedures for granting and withdrawing ⇒ international protection ⇐ ~~refugee status~~ should help to limit the secondary movements of applicants for ~~asylum~~ ⇒ international protection ⇐ between Member States, where such movement would be caused by differences in legal frameworks ⇒ , and create equivalent conditions for the application of Directive [.../.../EC] [the Qualification Directive] in Member States ⇐.

↓ 2005/85/EC recital 7  
⇒ new

- (12) It is in the very nature of minimum standards that Member States should have the power to introduce or maintain more favourable provisions for third country nationals

or stateless persons who ask for international protection from a Member State, where such a request is understood to be on the grounds that the person concerned is  $\Rightarrow$  in need of international protection  $\Leftarrow$  ~~a refugee~~ within the meaning of  $\Rightarrow$  Directive [..././EC] [the Qualification Directive]  $\Leftarrow$  ~~Article 1(A) of the Geneva Convention~~.

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$\Downarrow$  2005/85/EC recital 8  
 $\Rightarrow$  new

- (13) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.  $\Rightarrow$  In particular this Directive seeks to promote the application of Articles 1, 18, 19, 21, 24 and 47 of the Charter and has to be implemented accordingly.  $\Leftarrow$
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$\Downarrow$  2005/85/EC recital 9  
 $\Rightarrow$  new

- (14) With respect to the treatment of persons falling within the scope of this Directive, Member States are bound by obligations under instruments of international law to which they are party ~~and which prohibit discrimination~~.
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$\Downarrow$  2005/85/EC recital 10  
 $\Rightarrow$  new

- (15) It is essential that decisions on all applications for ~~asylum~~  $\Rightarrow$  international protection  $\Leftarrow$  be taken on the basis of the facts and, in the first instance, by authorities whose personnel has the appropriate knowledge or receives the necessary training in the field of asylum and refugee matters.
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$\Downarrow$  2005/85/EC recital 11  
 $\Rightarrow$  new

- (16) It is in the interest of both Member States and applicants for  $\Rightarrow$  international protection  $\Leftarrow$  ~~asylum~~ to decide as soon as possible on applications for ~~asylum~~.  $\Rightarrow$  international protection, without prejudice to an adequate and complete examination  $\Leftarrow$ . ~~The organisation of the processing of applications for asylum should be left to the discretion of Member States, so that they may, in accordance with their national needs, prioritise or accelerate the processing of any application, taking into account the standards in this Directive.~~

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↓ 2005/85/EC recital 12  
⇒ new

- (17) The notion of public order may ⇒ *inter alia* ⇐ cover a conviction for committing a serious crime.
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↓ 2005/85/EC recital 13  
⇒ new

- (18) In the interests of a correct recognition of those persons in need of protection as refugees within the meaning of Article 1 of the Geneva Convention ⇒ or as persons eligible for subsidiary protection ⇐, every applicant should ~~be subject to certain exceptions,~~ have an effective access to procedures, the opportunity to cooperate and properly communicate with the competent authorities so as to present the relevant facts of his/her case and sufficient procedural guarantees to pursue his/her case throughout all stages of the procedure. Moreover, the procedure in which an application for ~~asylum~~ ⇒ international protection ⇐ is examined should normally provide an applicant at least with the right to stay pending a decision by the determining authority, access to the services of an interpreter for submitting his/her case if interviewed by the authorities, the opportunity to communicate with a representative of the United Nations High Commissioner for Refugees (UNHCR) ⇒ and with organizations providing advice or counselling to applicants for international protection ⇐ ~~or with any organisation working on its behalf,~~ the right to appropriate notification of a decision, a motivation of that decision in fact and in law, the opportunity to consult a legal adviser or other counsellor, and the right to be informed of his/her legal position at decisive moments in the course of the procedure, in a language he/she can reasonably be supposed to understand ⇒ and, in the case of a negative decision, the right to an effective remedy before a court or tribunal ⇐.
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↓ 2005/85/EC recital 14

~~In addition, specific procedural guarantees for unaccompanied minors should be laid down on account of their vulnerability. In this context, the best interests of the child should be a primary consideration of Member States.~~

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↓ new

- (19) With a view to ensuring an effective access to the examination procedure, officials who first come into contact with persons seeking international protection, in particular those carrying out surveillance of land or maritime borders or conducting border checks, should receive instructions and necessary training on how to recognise and deal with requests for international protection. They should be able to provide third country nationals or stateless persons who are present in the territory, including at the border, in the territorial waters or in the transit zones of the Member States, and wish

to request international protection, with all relevant information as to where and how applications for international protection may be lodged. Where those persons are present in the territorial waters of a Member State, they should be disembarked in land and have their applications examined in accordance with this Directive.

- (20) In addition, special procedural guarantees for vulnerable applicants, such as minors, unaccompanied minors, persons who have been subjected to torture, rape or other serious acts of violence or disabled persons, should be laid down in order to create the conditions necessary for their effective access to procedures and presenting the elements needed to substantiate the application for international protection.
- (21) National measures dealing with identification and documentation of symptoms and signs of torture or other serious acts of physical or mental violence, including acts of sexual violence, in procedures covered by this directive should *inter alia* be based on the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).
- (22) With a view to ensuring substantive equality between female and male applicants, examination procedures should be gender sensitive. In particular, personal interviews should be organised in a way which makes it possible for both female and male applicants to speak about their past experiences in cases involving gender based persecution. The complexity of gender related claims should be properly taken into account in procedures based on the safe third country concept, the safe country of origin concept or the notion of subsequent applications.
- (23) The "best interests of the child" should be a primary consideration of Member States when implementing this Directive, in line with the 1989 United Nations Convention on the Rights of the Child.
- (24) Procedures for examining international protection needs should be organised in a way that makes it possible for the competent authorities to conduct a rigorous examination of applications for international protection.

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↓ 2005/85/EC recital 15  
⇒ new

- (25) Where an applicant makes a subsequent application without presenting new evidence or arguments, it would be disproportionate to oblige Member States to carry out a new full examination procedure. In these cases, Member States should ⇒ be able to dismiss an application as inadmissible in accordance with the *res judicata principle* ⇐ ~~have a choice of procedure involving exceptions to the guarantees normally enjoyed by the applicant.~~

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↓ 2005/85/EC recital 16  
⇒ new

- (26) Many ~~asylum~~ applications ⇒ for international protection ⇐ are made at the border or in a transit zone of a Member State prior to a decision on the entry of the applicant.



Member States should be able to ⇒ provide for admissibility and/or substantive examination procedures which make it possible to decide on applications made at the border or in transit zones at those locations ⇐ ~~keep existing procedures adapted to the specific situation of these applicants at the border. Common rules should be defined on possible exceptions made in these circumstances to the guarantees normally enjoyed by applicants. Border procedures should mainly apply to those applicants who do not meet the conditions for entry into the territory of the Member States.~~

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↓ 2005/85/EC recital 17

⇒ new

- (27) A key consideration for the well-foundedness of an ~~asylum~~ application ⇒ for international protection ⇐ is the safety of the applicant in his/her country of origin. Where a third country can be regarded as a safe country of origin, Member States should be able to designate it as safe and presume its safety for a particular applicant, unless he/she presents ~~serious~~ counter-indications.
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↓ 2005/85/EC recital 18

- (28) Given the level of harmonisation achieved on the qualification of third country nationals and stateless persons as refugees, common criteria for designating third countries as safe countries of origin should be established.
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↓ 2005/85/EC recital 19

~~Where the Council has satisfied itself that those criteria are met in relation to a particular country of origin, and has consequently included it in the minimum common list of safe countries of origin to be adopted pursuant to this Directive, Member States should be obliged to consider applications of persons with the nationality of that country, or of stateless persons formerly habitually resident in that country, on the basis of the rebuttable presumption of the safety of that country. In the light of the political importance of the designation of safe countries of origin, in particular in view of the implications of an assessment of the human rights situation in a country of origin and its implications for the policies of the European Union in the field of external relations, the Council should take any decisions on the establishment or amendment of the list, after consultation of the European Parliament.~~

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↓ 2005/85/EC recital 20 (adapted)

~~It results from the status of Bulgaria and Romania as candidate countries for accession to the European Union and the progress made by these countries towards membership that they should be regarded as constituting safe countries of origin for the purposes of this Directive until the date of their accession to the European Union.~~

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↓ 2005/85/EC recital 21  
⇒ new

- (29) The designation of a third country as a safe country of origin for the purposes of this Directive cannot establish an absolute guarantee of safety for nationals of that country. By its very nature, the assessment underlying the designation can only take into account the general civil, legal and political circumstances in that country and whether actors of persecution, torture or inhuman or degrading treatment or punishment are subject to sanction in practice when found liable in the country concerned. For this reason, it is important that, where an applicant shows that there are **serious** ⇒ **valid** ⇐ reasons to consider the country not to be safe in his/her particular circumstances, the designation of the country as safe can no longer be considered relevant for him/her.

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↓ 2005/85/EC recital 22 (adapted)  
⇒ new

- (30) Member States should examine all applications on the substance, i.e. assess whether the applicant in question qualifies ~~as a refugee~~ ☒ for international protection ☒ in accordance with ~~Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted<sup>15</sup>~~, Directive [...]/EC [the Qualification Directive] except where the present Directive provides otherwise, in particular where it can be reasonably assumed that another country would do the examination or provide sufficient protection. In particular, Member States should not be obliged to assess the substance of an **asylum** application ⇒ for international protection ⇐ where a first country of asylum has granted the applicant refugee status or otherwise sufficient protection and the applicant will be readmitted to this country.

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↓ 2005/85/EC recital 23  
⇒ new

- (31) Member States should also not be obliged to assess the substance of an **asylum** application ⇒ for international protection ⇐ where the applicant, due to a ⇒ **sufficient** ⇐ connection to a third country as defined by national law, can reasonably be expected to seek protection in that third country ⇒, and there are **grounds for considering that the applicant will be admitted or re-admitted to that country** ⇐. Member States should only proceed on this basis where this particular applicant would be safe in the third country concerned. In order to avoid secondary movements of applicants, common principles for the consideration or designation by Member States of third countries as safe should be established.

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<sup>15</sup> ~~OJL 304, 13.9.2004, p. 12~~

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↓ 2005/85/EC recital 24  
⇒ new

- (32) Furthermore, with respect to certain European third countries, which observe particularly high human rights and refugee protection standards, Member States should be allowed to not carry out, or not to carry out full examination of asylum applications regarding applicants who enter their territory from such European third countries. ~~Given the potential consequences for the applicant of a restricted or omitted examination, this application of the safe third country concept should be restricted to cases involving third countries with respect to which the Council has satisfied itself that the high standards for the safety of the third country concerned, as set out in this Directive, are fulfilled. The Council should take decisions in this matter after consultation of the European Parliament.~~

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↓ 2005/85/EC recital 25

~~It follows from the nature of the common standards concerning both safe third country concepts as set out in this Directive, that the practical effect of the concepts depends on whether the third country in question permits the applicant in question to enter its territory.~~

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↓ 2005/85/EC recital 26  
⇒ new

- (33) With respect to the withdrawal of refugee ⇒ or subsidiary protection ⇐ status, Member States should ensure that persons benefiting from ⇒ international protection ⇐ ~~refugee status~~ are duly informed of a possible reconsideration of their status and have the opportunity to submit their point of view before the authorities can take a motivated decision to withdraw their status. ~~However, dispensing with these guarantees should be allowed where the reasons for the cessation of the refugee status is not related to a change of the conditions on which the recognition was based.~~

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↓ 2005/85/EC recital 27  
⇒ new

- (34) It reflects a basic principle of Community law that the decisions taken on an application for asylum ⇒ international protection ⇐ and on the withdrawal of refugee ⇒ or subsidiary protection ⇐ status are subject to an effective remedy before a court or tribunal ~~within the meaning of Article 234 of the Treaty. The effectiveness of the remedy, also with regard to the examination of the relevant facts, depends on the administrative and judicial system of each Member State seen as a whole.~~

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↓ 2005/85/EC recital 28

- (35) In accordance with Article 64 of the Treaty, this Directive does not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.

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↓ 2005/85/EC recital 29 (adapted)  
⇒ new

- (36) This Directive does not deal with procedures ~~governed by Council Regulation (EC) No 343/2003 of 18 February 2003~~ ~~Regulation (EC) No [.../...]~~ [establishing the criteria and mechanisms for determining the Member State responsible for examining an ~~asylum~~ application ~~for international protection~~ lodged in one of the Member States by a third-country national ~~or a stateless person~~ <sup>16</sup> (The Dublin Regulation)].

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↓ new

- (37) Applicants with regard to whom Regulation EC No [.../...] [the Dublin Regulation] applies should enjoy access to the basic principles and guarantees set out in this Directive and to the special guarantees pursuant to Regulation EC No [.../...] [the Dublin Regulation].

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↓ 2005/85/EC recital 30

- (38) The implementation of this Directive should be evaluated at regular intervals ~~not exceeding two years~~.

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↓ 2005/85/EC recital 31  
⇒ new

- (39) Since the objective of this Directive, namely to establish minimum standards on procedures in Member States for granting and withdrawing ~~refugee status~~ ~~⇒ international protection~~ cannot be sufficiently attained by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve this objective.

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<sup>16</sup> ~~OJL 50, 25.2.2003, p. 1.~~

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↓ 2005/85/EC recital 32 (adapted)

~~In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom has notified, by letter of 24 January 2001, its wish to take part in the adoption and application of this Directive.~~

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↓ 2005/85/EC recital 33 (adapted)

~~In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Ireland has notified, by letter of 14 February 2001, its wish to take part in the adoption and application of this Directive.~~

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↓ 2005/85/EC recital 34

(40) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark does not take part in the adoption of this Directive and is not bound by it or subject to its application.

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↓ new

(41) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with the earlier Directive. The obligation to transpose the provisions which are unchanged arises under the earlier Directive.

(42) This Directive should be without prejudice to the obligations of the Member States relating to the time-limit for transposition into national law of the Directive set out in Annex III, Part B.

HAVE ADOPTED THIS DIRECTIVE:

*CHAPTER I*

*GENERAL PROVISIONS*

*Article 1*

**Purpose**

The purpose of this Directive is to establish minimum standards on procedures in Member States for granting and withdrawing ⇒ international protection by virtue of Directive .../.../EC [the Qualification Directive] ⇐ refugee status.

*Article 2*

**Definitions**

For the purposes of this Directive:

(a) "Geneva Convention" means the Convention of 28 July 1951 relating to the status of refugees, as amended by the New York Protocol of 31 January 1967;

~~(b) "application" or "application for asylum" means an application made by a third country national or stateless person which can be understood as a request for international protection from a Member State under the Geneva Convention. Any application for international protection is presumed to be an application for asylum, unless the person concerned explicitly requests another kind of protection, that can be applied for separately;~~

(b) "application" or "application for international protection" means a request made by a third country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status, and who does not explicitly request another kind of protection outside the scope of Directive [.../.../EC] [the Qualification Directive], that can be applied for separately;

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↓ 2005/85/EC  
⇒ new

- (c) "applicant" or "applicant for ~~international protection~~ ~~asylum~~" means a third country national or stateless person who has made an application for ~~asylum~~ ~~international protection~~ in respect of which a final decision has not yet been taken;

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↓ new

- (d) "applicant with special needs" means an applicant who due to age, gender, disability, mental health problems or consequences of torture, rape or other serious forms of psychological, physical or sexual violence is in need of special guarantees in order to benefit from the rights and comply with the obligations in accordance with this Directive;

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↓ 2005/85/EC (adapted)  
⇒ new

- ~~(d)~~(e) "final decision" means a decision on whether the third country national or stateless person be granted refugee ~~or subsidiary protection~~ status by virtue of ~~Directive 2004/83/EC~~ Directive [...]/.../EC [the Qualification Directive] and which is no longer subject to a remedy within the framework of Chapter V of this Directive irrespective of whether such remedy has the effect of allowing applicants to remain in the Member States concerned pending its outcome, ~~subject to Annex III to this Directive;~~

- ~~(e)~~(f) "determining authority" means any quasi-judicial or administrative body in a Member State responsible for examining applications for ~~asylum~~ ~~international protection~~ and competent to take decisions at first instance in such cases, subject to Annex I;

- ~~(f)~~(g) "refugee" means a third country national or a stateless person who fulfils the requirements of Article ~~4 of the Geneva Convention as set out in 2 (d) of Directive 2004/83/EC~~ Directive [...]/.../EC [the Qualification Directive];

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↓ new

- (h) "person eligible for subsidiary protection" means a third country national or a stateless person who fulfils the requirements of Article 2 (f) of Directive [...]/.../EC [the Qualification Directive];

- (i) "international protection status" means the recognition by a Member State of a third country national or a stateless person as a refugee or a person eligible for subsidiary protection;

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↓ 2005/85/EC (adapted)

~~(e)~~(j) "refugee status" means the recognition by a Member State of a third country national or ~~(x)~~ a ~~(x)~~ stateless person as a refugee;

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↓ new

(k) "subsidiary protection status" means the recognition by a Member State of a third country national or a stateless person as a person eligible for subsidiary protection;

(l) "minor" means a third country national or a stateless person below the age of 18 years;

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↓ 2005/85/EC (adapted)

⇒ new

~~(h)~~(m) "unaccompanied minor" means ~~a person below the age of 18 who arrives in the territory of the Member States unaccompanied by an adult responsible for him/her whether by law or by custom, and for as long as he/she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he/she has entered the territory of the Member States;~~ ⇒ a minor as defined in Article 2 (1) of Directive [...]/.../EC [the Qualification Directive]; ⇐

~~(i)~~(n) "representative" means ~~a person acting on behalf of an organisation representing an unaccompanied minor as legal guardian, a person acting on behalf of a national organisation which is responsible for the care and well-being of minors or any other appropriate representation appointed to ensure his/her best interests;~~ ⇒ person appointed by the competent authorities to act as a legal guardian in order to assist and represent an unaccompanied minor with a view to ensuring the child's best interests and exercising legal capacity for the minor where necessary; ⇐

~~(j)~~(o) "withdrawal of ~~refugee~~ ⇒ international protection ⇐ status" means the decision by a competent authority to revoke, end or refuse to renew ~~the~~ refugee ⇒ or subsidiary protection ⇐ status of a person in accordance with ~~Directive 2004/83/EC~~ Directive [...]/.../EC [the Qualification Directive] ;

~~(k)~~(p) "remain in the Member State" means to remain in the territory, including at the border or in transit zones, of the Member State in which the application for ~~asylum~~ ⇒ international protection ⇐ has been made or is being examined.



## Article 3

### Scope

1. This Directive shall apply to all applications for ~~asylum~~ ⇒ international protection ⇐ made in the territory, including at the border ⇒, in the territorial waters ⇐ or in the transit zones of the Member States, and to the withdrawal of ~~refugee status~~ ⇒ international protection status ⇐.
  2. This Directive shall not apply in cases of requests for diplomatic or territorial asylum submitted to representations of Member States.
  - ~~3. Where Member States employ or introduce a procedure in which asylum applications are examined both as applications on the basis of the Geneva Convention and as applications for other kinds of international protection given under the circumstances defined by Article 15 of Directive 2004/83/EC, they shall apply this Directive throughout their procedure.~~
  43. ~~Moreover,~~ Member States may decide to apply this Directive in procedures for deciding on applications for any kind of international protection ⇒ falling outside the scope of Directive [.../.../EC] [the Qualification Directive] ⇐.
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↓ 2005/85/EC  
⇒ new

## Article 4

### Responsible authorities

1. Member States shall designate for all procedures a determining authority which will be responsible for an appropriate examination of the applications in accordance with this Directive, ~~in particular Articles 8(2) and 9.~~ ⇒ Member States shall ensure that this authority has sufficient numbers of competent and specialized personnel at its disposal for carrying out its tasks within the prescribed time limits. To that end, Member States shall provide for initial and follow up training programmes for the personnel examining applications and taking decisions on international protection. ⇐
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↓ new

2. The training referred to in paragraph 1 shall include, in particular:
  - (a) substantive and procedural rules on international protection and Human Rights set out in relevant international and Community instruments, including the principles of *non-refoulement* and non-discrimination;
  - (b) gender, trauma and age awareness;

- (c) use of country of origin information;
- (d) interview technics, including cross-culture communication;
- (e) identification and documentation of signs and symptoms of torture;
- (f) evidence assessment, including the principle of the benefit of the doubt;
- (g) case law issues relevant to the examination of applications for international protection.

↓ 2005/85/EC

~~In accordance with Article 4(4) of Regulation (EC) No 343/2003, applications for asylum made in a Member State to the authorities of another Member State carrying out immigration controls there shall be dealt with by the Member State in whose territory the application is made.~~

↓ 2005/85/EC (adapted)  
⇒ new

23. However, Member States may provide that another authority is responsible for the purposes of ~~the~~ ⇒ processing cases pursuant to Regulation (EC) No .../... [the Dublin Regulation]. ⇐

~~(a) processing cases in which it is considered to transfer the applicant to another State according to the rules establishing criteria and mechanisms for determining which State is responsible for considering an application for asylum, until the transfer takes place or the requested State has refused to take charge of or take back the applicant;~~

~~(b) taking a decision on the application in the light of national security provisions, provided the determining authority is consulted prior to this decision as to whether the applicant qualifies as a refugee by virtue of Directive 2004/83/EC;~~

~~(c) conducting a preliminary examination pursuant to Article 32, provided this authority has access to the applicant's file regarding the previous application;~~

~~(d) processing cases in the framework of the procedures provided for in Article 35(1);~~

~~(e) refusing permission to enter in the framework of the procedure provided for in Article 35(2) to (5), subject to the conditions and as set out therein;~~

~~(f) establishing that an applicant is seeking to enter or has entered into the Member State from a safe third country pursuant to Article 36, subject to the conditions and as set out in that Article.~~

~~34.~~ Where ~~an authority~~ ~~authorities are~~ is designated in accordance with paragraph ~~23~~, Member States shall ensure that the personnel of that authority ~~such authorities~~ have the appropriate knowledge or receive the necessary training to fulfil their obligations when implementing this Directive.

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↓ new

5. Applications for international protection made in a Member State to the authorities of another Member State carrying out border or immigration controls there shall be dealt with by the Member State in whose territory the application is made.

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↓ 2005/85/EC

⇒ new

#### Article 5

#### More favourable provisions

Member States may introduce or maintain more favourable standards on procedures for granting and withdrawing ~~refugee status~~ ⇒ international protection ⇐, insofar as those standards are compatible with this Directive.

### CHAPTER II

#### BASIC PRINCIPLES AND GUARANTEES

#### Article 6

#### Access to the procedure

~~1. Member States may require that applications for asylum be made in person and/or at a designated place.~~

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↓ new

1. Member States shall designate competent authorities responsible for the receipt and registration of applications for international protection. Without prejudice to paragraphs 5, 6, 7 and 8, Member States may require that applications for international protection be made in person and/or at a designated place.

2. Member States shall ensure that a person who wishes to make an application for international protection has an effective opportunity to lodge the application with the competent authority as soon as possible.

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↓ 2005/85/EC

⇒ new

23. Member States shall ensure that each adult having legal capacity has the right to make an application for ⇒ international protection ⇐ ~~asylum~~ on his/her own behalf.

34. Member States may provide that an application may be made by an applicant on behalf of his/her dependants. In such cases Member States shall ensure that dependant adults consent to the lodging of the application on their behalf, failing which they shall have an opportunity to make an application on their own behalf.

Consent shall be requested at the time the application is lodged or, at the latest, when the personal interview with the dependant adult is conducted. ⇒ Before consent is requested, each adult among these persons shall be informed in private of relevant procedural consequences and of his or her right to make a separate application for international protection. ⇐

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↓ new

5. Member States shall ensure that a minor has the right to make an application for international protection either on his/her own behalf, or through his/her parents or other adult family members.

6. Member States shall ensure that the appropriate bodies referred to in Article 10 of Directive 2008/115/EC of the European Parliament and of the Council <sup>17</sup> have the right to lodge an application for international protection on behalf of an unaccompanied minor if, on the basis of an individual assessment of his/her personal situation, these bodies are of the opinion that the minor may have protection needs pursuant to Directive [...]/EC [the Qualification Directive].

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↓ 2005/85/EC

⇒ new

47. Member States may determine in national legislation:

- (a) the cases in which a minor can make an application on his/her own behalf;
  - (b) the cases in which the application of an unaccompanied minor has to be lodged by a representative as provided for in Article ~~47~~21 (1)(a);
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<sup>17</sup> OJ L 348, 24.12.2008, p. 98

- (c) the cases in which the lodging of an application for **asylum** ⇒ international protection ⇐ is deemed to constitute also the lodging of an application for **asylum** ⇒ international protection ⇐ for any unmarried minor.

~~5. Member States shall ensure that authorities likely to be addressed by someone who wishes to make an application for asylum are able to advise that person how and where he/she may make such an application and/or may require these authorities to forward the application to the competent authority.~~

↓ new

8. Member States shall ensure that border guards, police and immigration authorities, and personnel of detention facilities have instructions and receive necessary training for dealing with applications for international protection. If these authorities are designated as competent authorities pursuant to paragraph 1, the instructions shall include an obligation to register the application. In other cases, the instructions shall require to forward the application to the authority competent for this registration together with all relevant information.

Member States shall ensure that all other authorities likely to be addressed by someone who wishes to make an application for international protection are able to advise that person how and where he/she may make such an application and/or may require these authorities to forward the application to the competent authority.

9. An application for international protection shall be registered by the competent authorities within 72 hours from the moment a person has expressed his/her wish to apply for international protection pursuant to subparagraph 1 of paragraph 8.

### Article 7

#### **Information and counseling at border crossing points and detention facilities**

1. Member States shall ensure that information on procedures to be followed in order to make an application for international protection is made available at:

(a) border crossing points, including transit zones, at external borders; and

(b) detention facilities.

2. Member States shall provide for interpretation arrangements in order to ensure communication between persons who wish to make an application for international protection and border guards or personnel of detention facilities.

3. Member States shall ensure that organizations providing advice and counseling to applicants for international protection have access to the border crossing points, including transit zones, and detention facilities subject to an agreement with the competent authorities of the Member State.

Member States may provide for rules covering the presence of such organizations in the areas referred to in this Article.

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↓ 2005/85/EC  
⇒ new

### Article ~~78~~

#### Right to remain in the Member State pending the examination of the application

1. Applicants shall be allowed to remain in the Member State, for the sole purpose of the procedure, until the determining authority has made a decision in accordance with the procedures at first instance set out in Chapter III. This right to remain shall not constitute an entitlement to a residence permit.
  2. Member States can make an exception only where, ~~in accordance with Articles 32 and 34,~~ ⇒ a person makes ⇐ a subsequent application ⇒ as described in Article 35 (8) ⇐ ~~will not be further examined~~ or where they will surrender or extradite, as appropriate, a person either to another Member State pursuant to obligations in accordance with a European arrest warrant<sup>18</sup> or otherwise, or to a third country ⇒, with the exception of the country of origin of the applicant concerned ⇐ , or to international criminal courts or tribunals.
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↓ new

3. A Member State may extradite an applicant to a third country pursuant to paragraph 2 only where the competent authorities are satisfied that an extradition decision will not result in direct or indirect *refoulement* in violation of international obligations of the Member State.

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<sup>18</sup> Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1)

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↓ 2005/85/EC (adapted)  
⇒ new

Article 89

**Requirements for the examination of applications**

1. ~~Without prejudice to Article 23(4)(i),~~ Member States shall ensure that applications for ~~asylum~~ ⇒ international protection ⇐ are neither rejected nor excluded from examination on the sole ground that they have not been made as soon as possible.
- 

↓ new

2. Applications for international protection shall first be examined to determine whether applicants qualify as refugees. If not, they shall be examined to determine whether the applicants are eligible for subsidiary protection.
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↓ 2005/85/EC (adapted)  
⇒ new

23. Member States shall ensure that decisions by the determining authority on applications for ⇒ international protection ⇐ ~~asylum~~ are taken after an appropriate examination. To that end, Member States shall ensure that:
- (a) applications are examined and decisions are taken individually, objectively and impartially;
  - (b) precise and up-to-date information is obtained from various sources, such as the United Nations High Commissioner for Refugees (UNHCR) ⇒ and the European Asylum Support Office ⇐, as to the general situation prevailing in the countries of origin of applicants ~~for asylum~~ and, where necessary, in countries through which they have transited, and that such information is made available to the personnel responsible for examining applications and taking decisions ⇒ and, where the determining authority takes it into consideration for the purpose of taking a decision, to the applicant and his/her legal adviser ⇐ ;
  - (c) the personnel examining applications and taking decisions have the knowledge with respect to relevant standards applicable in the field of asylum and refugee law; ⇒

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↓ new

- (d) the personnel examining applications and taking decisions are instructed and have the possibility to seek advice, whenever necessary, from experts on particular issues, such as medical, cultural, child or gender issues.
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↓ 2005/85/EC  
⇒ new

34. The authorities referred to in Chapter V shall, through the determining authority or the applicant or otherwise, have access to the general information referred to in paragraph 23(b), necessary for the fulfilment of their task.
45. Member States ~~may~~ ⇒ shall ⇐ provide for rules concerning the translation of documents relevant for the examination of applications.

#### *Article ~~9~~10*

##### **Requirements for a decision by the determining authority**

1. Member States shall ensure that decisions on applications for ~~asylum~~ ⇒ international protection ⇐ are given in writing.
2. Member States shall also ensure that, where an application is rejected ⇒ with regard to refugee status and/or subsidiary protection status ⇐, the reasons in fact and in law are stated in the decision and information on how to challenge a negative decision is given in writing.

~~Member States need not state the reasons for not granting refugee status in a decision where the applicant is granted a status which offers the same rights and benefits under national and Community law as the refugee status by virtue of Directive 2004/83/EC. In these cases, Member States shall ensure that the reasons for not granting refugee status are stated in the applicant's file and that the applicant has, upon request, access to his/her file.~~

~~Moreover,~~ Member States need not provide information on how to challenge a negative decision in writing in conjunction with a decision where the applicant has been provided with this information at an earlier stage either in writing or by electronic means accessible to the applicant.

3. For the purposes of Article ~~6(3)~~(4), and whenever the application is based on the same grounds, Member States may take one single decision, covering all dependants.



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↓ new

4. Paragraph 3 shall not apply to cases where disclosure of particular circumstances of a person to members of his/her family can jeopardize the interests of that person, including cases involving gender and/or age based persecution. In such cases, a separate decision shall be issued to the person concerned.
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↓ 2005/85/EC (adapted)

⇒ new

*Article ~~10~~11*

**Guarantees for applicants for ~~asylum~~ ⇒ international protection ⇐**

1. With respect to the procedures provided for in Chapter III, Member States shall ensure that all ~~applicants for asylum~~ ⇒ applicants for international protection ⇐ enjoy the following guarantees:
- (a) they shall be informed in a language which they may reasonably be supposed to understand of the procedure to be followed and of their rights and obligations during the procedure and the possible consequences of not complying with their obligations and not cooperating with the authorities. They shall be informed of the time-frame, as well as the means at their disposal for fulfilling the obligation to submit the elements as referred to in Article 4 of ~~Directive 2004/83/EC~~ Directive [...././EC] [the Qualification Directive]. This information shall be given in time to enable them to exercise the rights guaranteed in this Directive and to comply with the obligations described in Article ~~11~~12;
  - (b) they shall receive the services of an interpreter for submitting their case to the competent authorities whenever necessary. Member States shall consider it necessary to give these services at least when the determining authority calls upon the applicant to be interviewed as referred to in Articles ~~12 and 13~~ 13, 14, ⇒ 15, 16 and 30⇐ and appropriate communication cannot be ensured without such services. In this case and in other cases where the competent authorities call upon the applicant, these services shall be paid for out of public funds;
  - (c) they shall not be denied the opportunity to communicate with the UNHCR or with any other organisation ~~working on behalf of the UNHCR in the territory of the Member State pursuant to an agreement with~~ ⇒ providing legal advice or counselling to asylum seekers in accordance with national legislation of ⇐ that Member State;
  - (d) they shall be given notice in reasonable time of the decision by the determining authority on their application for ~~asylum~~ ⇒ international

protection ⇨ . If a legal adviser or other counsellor is legally representing the applicant, Member States may choose to give notice of the decision to him/her instead of to the applicant for ~~asylum~~ ⇨ international protection ⇨ ;

- (e) they shall be informed of the result of the decision by the determining authority in a language that they may reasonably be supposed to understand when they are not assisted or represented by a legal adviser or other counsellor ~~and when free legal assistance is not available~~. The information provided shall include information on how to challenge a negative decision in accordance with the provisions of Article ~~9~~10(2).
2. With respect to the procedures provided for in Chapter V, Member States shall ensure that all applicants ~~for asylum~~ enjoy equivalent guarantees to the ones referred to in paragraph 1(b), (c) and (d) of this Article.

### Article ~~11~~12

#### Obligations of the applicants for ~~asylum~~ ⇨ international protection ⇨

1. ⇨ Applicants for international protection shall cooperate with the competent authorities with a view to establishing their identity and other elements referred to in Article 4(2) of Directive [...]/EC [the Qualification Directive]. ⇨ Member States may impose upon applicants ~~for asylum~~ ⇨ other ⇨ obligations to cooperate with the competent authorities insofar as these obligations are necessary for the processing of the application.
2. In particular, Member States may provide that:
- (a) applicants ~~for asylum~~ are required to report to the competent authorities or to appear before them in person, either without delay or at a specified time;
  - (b) applicants ~~for asylum~~ have to hand over documents in their possession relevant to the examination of the application, such as their passports;
  - (c) applicants ~~for asylum~~ are required to inform the competent authorities of their current place of residence or address and of any changes thereof as soon as possible. Member States may provide that the applicant shall have to accept any communication at the most recent place of residence or address which he/she indicated accordingly;
  - (d) the competent authorities may search the applicant and the items he/she carries with him/her, ⇨ provided the search is carried out by a person of the same sex ⇨;
  - (e) the competent authorities may take a photograph of the applicant; and
  - (f) the competent authorities may record the applicant's oral statements, provided he/she has previously been informed thereof.

### Personal interview

1. Before a decision is taken by the determining authority, the applicant ~~for asylum~~ shall be given the opportunity of a personal interview on his/her application for ~~asylum~~ ⇒ international protection ⇐ with a person competent under national law to conduct such an interview. ⇐ Interviews on the substance of an application for international protection shall always be conducted by the personnel of the determining authority. ⇐

~~Member States may also give the opportunity of a personal interview to each dependant adult referred to in Article 6(3).~~

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↓ new

Where a person has made an application for international protection on behalf of his/her dependants, each adult to whom the applicant relates must be given the opportunity to express his/her opinion in private and to be interviewed on his/her application.

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↓ 2005/85/EC (adapted)  
⇒ new

Member States may determine in national legislation the cases in which a minor shall be given the opportunity of a personal interview.

2. The personal interview ⇒ on the substance of the application ⇐ may be omitted where:
  - (a) the determining authority is able to take a positive decision with ⇒ regard to refugee status ⇐ on the basis of evidence available; or
  - ~~(b) the competent authority has already had a meeting with the applicant for the purpose of assisting him/her with completing his/her application and submitting the essential information regarding the application, in terms of Article 4(2) of Directive 2004/83/EC; or~~
  - ~~(c) the determining authority, on the basis of a complete examination of information provided by the applicant, considers the application to be unfounded in cases where the circumstances mentioned in Article 23(4)(a), (c), (g), (h) and (j) apply.~~

~~3. The personal interview may also be omitted where~~

- ~~(b) it is not reasonably practicable, in particular where~~ the competent authority is of the opinion that the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond his/her control.

When in doubt, ⇒ the competent authority shall consult a medical expert to establish whether the condition is temporary or permanent. ⇐ ~~Member States may require a medical or psychological certificate.~~

Where the Member State does not provide the applicant with the opportunity for a personal interview pursuant to ~~this paragraph~~ point (b), or where applicable, to the dependant, reasonable efforts shall be made to allow the applicant or the dependant to submit further information.

- ~~43.~~ The absence of a personal interview in accordance with this Article shall not prevent the determining authority from taking a decision on an application for ~~asylum~~ ⇒ international protection ⇐ .
- ~~54.~~ The absence of a personal interview pursuant to paragraph 2(b) ~~and (c) and paragraph 3~~ shall not adversely affect the decision of the determining authority.
- ~~65.~~ Irrespective of Article ~~2024~~(1), Member States, when deciding on the application for ~~asylum~~ ⇒ international protection ⇐, may take into account the fact that the applicant failed to appear for the personal interview, unless he/she had good reasons for the failure to appear.

#### Article ~~13~~14

### Requirements for a personal interview

1. A personal interview shall normally take place without the presence of family members unless the determining authority considers it necessary for an appropriate examination to have other family members present.
2. A personal interview shall take place under conditions which ensure appropriate confidentiality.
3. Member States shall take appropriate steps to ensure that personal interviews are conducted under conditions which allow applicants to present the grounds for their applications in a comprehensive manner. To that end, Member States shall:
  - (a) ensure that the person who conducts the interview is ~~sufficiently~~ competent to take account of the personal or general circumstances surrounding the application, including the applicant's cultural origin, ⇒ gender, ⇐ or vulnerability; ~~insofar as it is possible to do so; and~~

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↓ new

- (b) wherever possible, provide for the interview with the applicant to be conducted by a person of the same sex if the applicant concerned so requests;

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↓ 2005/85/EC (adapted)  
⇒ new

(~~b~~c) select a ~~n~~ ⇒ competent ⇐ interpreter who is able to ensure appropriate communication between the applicant and the person who conducts the interview. The communication need not necessarily take place in the language preferred by the applicant ~~for asylum~~ if there is another language which he/she ~~may reasonably be supposed to~~ understands and in which he/she is able to communicate ⇒ clearly. Wherever possible, Member States shall provide an interpreter of the same sex if the applicant so requests; ⇐

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↓ new

(d) ensure that the person who conducts an interview on the substance of an application for international protection does not wear a uniform;

e) ensure that interviews with minors are conducted in a child-friendly manner.

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↓ 2005/85/EC

4. Member States may provide for rules concerning the presence of third parties at a personal interview.

~~5. This Article is also applicable to the meeting referred to in Article 12(2)(b).~~

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↓ new

## Article 15

### Content of a personal interview

When conducting a personal interview on the substance of an application for international protection, the determining authority shall ensure that the applicant has an adequate opportunity to present elements needed to substantiate his/her application for international protection in accordance with Article 4 (1) and (2) of Directive [...]/EC [the Qualification Directive]. To that end, Member States shall ensure that:

(a) questions addressed to the applicant are relevant to the assessment of whether he/she is in need of international protection in accordance with Directive [...]/EC [the Qualification Directive];

- (b) the applicant has an adequate opportunity to give an explanation regarding elements needed to substantiate the application which may be missing and/or any inconsistencies or contradictions in his/her statements.

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↓ 2005/85/EC

*Article 14*

**Status of the report of a personal interview in the procedure**

~~1. Member States shall ensure that a written report is made of every personal interview, containing at least the essential information regarding the application, as presented by the applicant, in terms of Article 4(2) of Directive 2004/83/EC.~~

~~2. Member States shall ensure that applicants have timely access to the report of the personal interview. Where access is only granted after the decision of the determining authority, Member States shall ensure that access is possible as soon as necessary for allowing an appeal to be prepared and lodged in due time.~~

~~3. Member States may request the applicant's approval of the contents of the report of the personal interview.~~

~~Where an applicant refuses to approve the contents of the report, the reasons for this refusal shall be entered into the applicant's file.~~

~~The refusal of an applicant to approve the contents of the report shall not prevent the determining authority from taking a decision on his/her application.~~

~~4. This Article is also applicable to the meeting referred to in Article 12(2)(b).~~

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↓ new

*Article 16*

**Transcript and report of personal interviews**

1. Member States shall ensure that a transcript is made of every personal interview.
2. Member States shall request the applicant's approval on the contents of the transcript at the end of the personal interview. To that end, Member States shall ensure that the applicant has the opportunity to make comments and/or provide clarifications with regard to any mistranslations or misconceptions appearing in the transcript.
3. Where an applicant refuses to approve the contents of the transcript, the reasons for this refusal shall be entered into the applicant's file.

The refusal of an applicant to approve the contents of the transcript shall not prevent the determining authority from taking a decision on his/her application.

4. Without prejudice to paragraphs 1 and 2, Member States may make a written report of a personal interview, containing at least the essential information regarding the application, as presented by the applicant. In such cases, Member States shall ensure that the transcript of the personal interview is annexed to the report.
5. Member States shall ensure that applicants have timely access to the transcript and, where applicable, the report of the personal interview before the determining authority takes a decision.

### *Article 17*

#### **Medico-legal reports**

1. Member States shall allow applicants, upon request, to have a medical examination carried out in order to support statements in relation to past persecution or serious harm. To that end, Member States shall grant applicants a reasonable period to submit a medical certificate to the determining authority.
2. Without prejudice to paragraph 1, in cases where there are reasonable grounds to consider that the applicant suffers from post-traumatic stress disorder, the determining authority, subject to the consent of the applicant, shall ensure that a medical examination is carried out.
3. Member States shall provide for relevant arrangements in order to ensure that impartial and qualified medical expertise is made available for the purpose of a medical examination referred to in paragraph 2.
4. Member States shall provide for further rules and arrangements for identification and documentation of symptoms of torture and other forms of physical, sexual or psychological violence, relevant to the application of this Article.
5. Member States shall ensure that persons interviewing applicants in accordance with this Directive receive training with regard to the identification of symptoms of torture.
6. The results of medical examinations referred to in paragraphs 1 and 2 shall be assessed by the determining authority along with other elements of the application. They shall, in particular, be taken into account when establishing whether the applicant's statements are credible and sufficient.

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↓ 2005/85/EC  
⇒ new

Article ~~15~~18

**Right to legal assistance and representation**

1. ⇒ Applicants for international protection shall be given the opportunity ⇐ ~~Member States shall allow applicants for asylum the opportunity, at their own cost,~~ to consult in an effective manner a legal adviser or other counsellor, admitted or permitted as such under national law, on matters relating to their ~~asylum~~ applications ⇒ for international protection, at all stages of the procedure, including following a negative decision ⇐.
2. ~~In the event of a negative decision by a determining authority,~~ Member States shall ensure that free legal assistance and/or representation be granted on request, subject to the provisions of paragraph 3. ⇒ To that end, Member States shall: ⇐

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↓ new

- (a) provide for free legal assistance in procedures in accordance with Chapter III. This shall include, at least, the provision of information on the procedure to the applicant in the light of his/her particular circumstances and explanations of reasons in fact and in law in the case of a negative decision;
- (b) provide for free legal assistance or representation in procedures in accordance with Chapter V. This shall include, at least, the preparation of the required procedural documents and participation in the hearing before a court or tribunal of first instance on behalf of the applicant.

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↓ 2005/85/EC (adapted)  
⇒ new

3. Member States may provide in their national legislation that free legal assistance and/or representation is granted:
  - ~~(a) only for procedures before a court or tribunal in accordance with Chapter V and not for any onward appeals or reviews provided for under national law, including a rehearing of an appeal following an onward appeal or review; and/or~~
  - ~~(b)~~(a) only to those who lack sufficient resources; and/or



~~(e)~~(b) only to legal advisers or other counsellors specifically designated by national law to assist and/or represent applicants ~~for asylum~~ ⇨ for international protection. ⇨ ~~and/or~~

~~(d) only if the appeal or review is likely to succeed.~~

~~Member States shall ensure that legal assistance and/or representation granted under point (d) is not arbitrarily restricted.~~

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↓ new

With respect to the procedures provided for in Chapter V, Member States may choose to only make free legal assistance and/or representation available to applicants insofar as such assistance is necessary to ensure their effective access to justice. Member States shall ensure that legal assistance and/or representation granted pursuant to this paragraph is not arbitrarily restricted.

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↓ 2005/85/EC  
⇨ new

4. Rules concerning the modalities for filing and processing requests for legal assistance and/or representation may be provided by Member States.

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↓ new

5. Member States may allow non-governmental organisations to provide free legal assistance and/or representation to applicants for international protection in procedures provided for in Chapter III and/or Chapter V.

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↓ 2005/85/EC (adapted)  
⇨ new

56. Member States may also:

- (a) impose monetary and/or time-limits on the provision of free legal assistance—and/or representation, provided that such limits do not arbitrarily restrict access to legal assistance—and/or representation;
- (b) provide that, as regards fees and other costs, the treatment of applicants shall not be more favourable than the treatment generally accorded to their nationals in matters pertaining to legal assistance.

67. Member States may demand to be reimbursed wholly or partially for any expenses granted if and when the applicant's financial situation has improved considerably or

if the decision to grant such benefits was taken on the basis of false information supplied by the applicant.

*Article ~~16~~19*

**Scope of legal assistance and representation**

1. Member States shall ensure that a legal adviser or other counsellor admitted or permitted as such under national law, and who assists or represents an applicant for ~~⇒ international protection ⇐ asylum~~ under the terms of national law, shall enjoy access to ~~such~~ ~~⊗~~ the ~~⊗~~ information in the applicant's file ~~⇒ upon which a decision is or will be made. ⇐ as is liable to be examined by the authorities referred to in Chapter V, insofar as the information is relevant to the examination of the application.~~

Member States may make an exception where disclosure of information or sources would jeopardise national security, the security of the organisations or person(s) providing the information or the security of the person(s) to whom the information relates or where the investigative interests relating to the examination of applications ~~of~~ ~~⊗~~ for ~~⊗~~ ~~asylum~~ ~~⇒ international protection ⇐~~ by the competent authorities of the Member States or the international relations of the Member States would be compromised. In these cases, ~~⇒ Member States shall: ⇐~~

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↓ new

- (a) grant access to the information or sources in question at least to a legal advisor or counsellor who has undergone a security check, insofar as the information is relevant to the examination of the application or taking a decision to withdraw international protection;

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↓ 2005/85/EC (adapted)  
⇒ new

- ~~⊗~~ (b) make ~~⊗~~ access to the information or sources in question ~~shall be~~ available to the authorities referred to in Chapter V, ~~except where such access is precluded in cases of national security.~~

2. Member States shall ensure that the legal adviser or other counsellor who assists or represents an applicant for ~~⇒ international protection ⇐ asylum~~ has access to closed areas, such as detention facilities and transit zones, for the purpose of consulting that applicant.

Member States may only limit the possibility of visiting applicants in closed areas where such limitation is, by virtue of national legislation, objectively necessary for the security, public order or administrative management of the area, or in order to

ensure an efficient examination of the application, provided that access by the legal adviser or other counsellor is not thereby severely limited or rendered impossible.

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↓ new

3. Member States shall allow the applicant to bring to the personal interview a legal adviser or other counsellor admitted or permitted as such under national law.
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↓ 2005/85/EC

⇒ new

34. Member States may provide rules covering the presence of legal advisers or other counsellors at all interviews in the procedure, without prejudice to this Article or to Article ~~17~~21(1)(b).

~~4. Member States may provide that the applicant is allowed to bring with him/her to the personal interview a legal adviser or other counsellor admitted or permitted as such under national law.~~

Member States may require the presence of the applicant at the personal interview, even if he/she is represented under the terms of national law by such a legal adviser or counsellor, and may require the applicant to respond in person to the questions asked.

The absence of a legal adviser or other counsellor shall not prevent the competent authority from conducting the personal interview with the applicant, ⇒ without prejudice to Article 21 1(b) ⇐.

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↓ new

## Article 20

### **Applicants with special needs**

1. Member States shall take appropriate measures to ensure that applicants with special needs are given the opportunity to present the elements of an application as completely as possible and with all available evidence. Where needed, they shall be granted time extensions to enable them to submit evidence or take other necessary steps in the procedure.
2. In cases where the determining authority consider that an applicant has been subjected to torture, rape or other serious forms of psychological, physical or sexual violence as described in Article 21 of Directive [.../.../EC] [laying down minimum standards for the reception of asylum seekers (the Reception Conditions Directive)],

the applicant shall be granted sufficient time and relevant support to prepare for a personal interview on the substance of his/her application.

3. Article 27 (6) and (7) shall not apply to the applicants referred to in paragraph 2.

↓ 2005/85/EC (adapted)  
⇒ new

## Article ~~17~~21

### Guarantees for unaccompanied minors

1. With respect to all procedures provided for in this Directive and without prejudice to the provisions of Articles ~~12 and 14~~ 13, ~~14~~ and 15, Member States shall:

- (a) as soon as possible take measures to ensure that a representative represents and/or assists the unaccompanied minor with respect to the lodging and the examination of the application. The representative shall be impartial and have the necessary expertise in the field of childcare. This representative can also be the representative referred to in ~~Article 19 of Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers<sup>19</sup>; Directive [...]/.../EC] [the Reception Conditions Directive];~~
- (b) ensure that the representative is given the opportunity to inform the unaccompanied minor about the meaning and possible consequences of the personal interview and, where appropriate, how to prepare himself/herself for the personal interview. Member States shall ~~allow~~ ensure that ~~the~~ a representative and/or a legal advisor or other counsellor admitted as such under national law are ~~to be~~ present at that interview and have an opportunity to ask questions or make comments, within the framework set by the person who conducts the interview.

Member States may require the presence of the unaccompanied minor at the personal interview, even if the representative is present.

2. Member States may refrain from appointing a representative where the unaccompanied minor:
- (a) will in all likelihood reach the age of maturity before a decision at first instance is taken; or

<sup>19</sup> OJL 31, 6.2.2003, p. 18

~~(b) can avail himself, free of charge, of a legal adviser or other counsellor, admitted as such under national law to fulfil the tasks assigned above to the representative; or~~

~~(c) is married or has been married.~~

~~3. Member States may, in accordance with the laws and regulations in force on 1 December 2005, also refrain from appointing a representative where the unaccompanied minor is 16 years old or older, unless he/she is unable to pursue his/her application without a representative.~~

43. Member States shall ensure that:

- (a) If an unaccompanied minor has a personal interview on his/her application for ~~asylum~~ ⇒ international protection ⇐ as referred to in Articles ~~12, 13 and 14~~, 13, 14 and 15 that interview is conducted by a person who has the necessary knowledge of the special needs of minors;
- (b) an official with the necessary knowledge of the special needs of minors prepares the decision by the determining authority on the application of an unaccompanied minor.

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↓ new

4. Subject to the conditions set out in Article 18, unaccompanied minors shall be granted free legal assistance with respect to all procedures provided for in this Directive.

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↓ 2005/85/EC  
⇒ new

5. Member States may use medical examinations to determine the age of unaccompanied minors within the framework of the examination of an application for ~~asylum~~ ⇒ international protection ⇐ ⇒, where, following his/her general statements or other relevant evidence, Member States still have doubts concerning his/her age ⇐.

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↓ new

Any medical examination shall be performed in full respect of the individual's dignity, selecting the less invasive exams.

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↓ 2005/85/EC  
⇒ new

In cases where medical examinations are used, Member States shall ensure that:

- (a) unaccompanied minors are informed prior to the examination of their application for ~~asylum~~ ⇒ international protection ⇐, and in a language which they ~~may reasonably be supposed to~~ understand, of the possibility that their age may be determined by medical examination. This shall include information on the method of examination and the possible consequences of the result of the medical examination for the examination of the application for ~~asylum~~ ⇒ international protection ⇐, as well as the consequences of refusal on the part of the unaccompanied minor to undergo the medical examination;
- (b) unaccompanied minors and/or their representatives consent to carry out an examination to determine the age of the minors concerned; and
- (c) the decision to reject an application for ~~asylum~~ ⇒ international protection ⇐ from an unaccompanied minor who refused to undergo this medical examination shall not be based solely on that refusal.

The fact that an unaccompanied minor has refused to undergo such a medical examination shall not prevent the determining authority from taking a decision on the application for ~~asylum~~ ⇒ international protection ⇐.

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↓ new

6. Article 27 (6) and (7), Article 29 (2) (c), Article 32, and Article 37 shall not apply to unaccompanied minors.
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↓ 2005/85/EC  
⇒ new

- ~~67.~~ The best interests of the child shall be a primary consideration for Member States when implementing this Article.

#### Article ~~18~~22

### Detention

1. Member States shall not hold a person in detention for the sole reason that he/she is an applicant for ⇒ international protection ⇐ ~~asylum~~. ⇒ Grounds and conditions of detention as well as guarantees available to detained applicants for international

protection shall be in accordance with Directive [.../.../EC] [the Reception Conditions Directive]. ⇐

2. Where an applicant for ~~asylum~~ ⇐ international protection ⇐ is held in detention, Member States shall ensure that there is a possibility of speedy judicial review ⇐ in accordance with Directive [.../.../EC] [the Reception Conditions Directive] ⇐.

#### *Article ~~19~~23*

### **Procedure in case of withdrawal of the application**

1. Insofar as Member States provide for the possibility of explicit withdrawal of the application under national law, when an applicant ~~for asylum~~ explicitly withdraws his/her application for ~~asylum~~ ⇐ international protection ⇐, Member States shall ensure that the determining authority takes a decision to either discontinue the examination or reject the application.
2. Member States may also decide that the determining authority can decide to discontinue the examination without taking a decision. In this case, Member States shall ensure that the determining authority enters a notice in the applicant's file.

#### *Article ~~20~~24*

### **Procedure in the case of implicit withdrawal or abandonment of the application**

1. When there is reasonable cause to consider that an applicant for ~~asylum~~ ⇐ international protection ⇐ has implicitly withdrawn or abandoned his/her application for ~~asylum~~ ⇐ international protection ⇐, Member States shall ensure that the determining authority takes a decision to ~~either discontinue the examination or reject the application on the basis that the applicant has not established an entitlement to refugee status in accordance with Directive 2004/83/EC.~~

Member States may assume that the applicant has implicitly withdrawn or abandoned his/her application for ~~asylum~~ ⇐ international protection ⇐ in particular when it is ascertained that:

- (a) he/she has failed to respond to requests to provide information essential to his/her application in terms of Article 4 of Directive ~~2004/83/EC~~ [.../.../EC] [the Qualification Directive] or has not appeared for a personal interview as provided for in Articles ~~12~~13, ~~13~~14, 15 and ~~14~~16, unless the applicant demonstrates within a reasonable time that his/her failure was due to circumstances beyond his control;
- (b) he/she has absconded or left without authorisation the place where he/she lived or was held, without contacting the competent authority within a reasonable time, or he/she has not within a reasonable time complied with reporting duties or other obligations to communicate.

For the purposes of implementing these provisions, Member States may lay down time-limits or guidelines.

2. Member States shall ensure that the applicant who reports again to the competent authority after a decision to discontinue as referred to in paragraph 1 of this Article is taken, is entitled to request that his/her case be reopened, ~~unless the request is examined in accordance with Articles 32 and 34.~~

~~Member States may provide for a time limit after which the applicant's case can no longer be re-opened.~~

Member States shall ensure that such a person is not removed contrary to the principle of non-refoulement.

Member States may allow the determining authority to take up the examination at the stage where it was discontinued.

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↓ new

3. This Article shall be without prejudice to Regulation (EC) No .../.... [the Dublin Regulation].

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↓ 2005/85/EC  
⇒ new

#### Article ~~24~~25

### The role of UNHCR

1. Member States shall allow the UNHCR:
  - (a) to have access to applicants for ~~international protection~~ ⇒ international protection ⇐ ~~asylum~~, including those in detention and in airport or port transit zones;
  - (b) to have access to information on individual applications for ~~asylum~~ ⇒ international protection ⇐, on the course of the procedure and on the decisions taken, provided that the applicant ~~for asylum~~ agrees thereto;
  - (c) to present its views, in the exercise of its supervisory responsibilities under Article 35 of the Geneva Convention, to any competent authorities regarding individual applications for ~~asylum~~ ⇒ international protection ⇐ at any stage of the procedure.
2. Paragraph 1 shall also apply to an organization which is working in the territory of the Member State concerned on behalf of the UNHCR pursuant to an agreement with that Member State.



### Collection of information on individual cases

For the purposes of examining individual cases, Member States shall not:

- (a) ~~directly~~ disclose information regarding individual applications for ~~⇒ international protection ⇐ asylum~~, or the fact that an application has been made, to the alleged actor(s) of persecution ~~⇒ or serious harm ⇐ of the applicant for asylum~~;
- (b) obtain any information from the alleged actor(s) of persecution ~~⇒ or serious harm ⇐~~ in a manner that would result in such actor(s) being directly informed of the fact that an application has been made by the applicant in question, and would jeopardise the physical integrity of the applicant and his/her dependants, or the liberty and security of his/her family members still living in the country of origin.

## CHAPTER III

### PROCEDURES AT FIRST INSTANCE

#### SECTION I

#### Examination procedure

1. Member States shall process applications for ~~asylum~~ ~~⇒ international protection ⇐~~ in an examination procedure in accordance with the basic principles and guarantees of Chapter II.
2. Member States shall ensure that such a procedure is concluded as soon as possible, without prejudice to an adequate and complete examination.

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↓ new

3. Member States shall ensure that a procedure is concluded within 6 months after the application is lodged.  
Member States may extend that time limit for a period not exceeding a further 6 months in individual cases involving complex issues of fact and law.
4. Member States shall ensure that, where a decision cannot be taken within the time period referred to in subparagraph 1 of paragraph 3, the applicant concerned shall:

(a) be informed of the delay; and

(b) receive, upon his/her request, information on the reasons for the delay and the time-frame within which the decision on his/her application is to be expected.

The consequences of failure to adopt a decision within the time limits provided for in paragraph 3 shall be determined in accordance with national law.

↓ 2005/85/EC (adapted)  
⇒ new

~~Member States shall ensure that, where a decision cannot be taken within six months, the applicant concerned shall either:~~

~~(a) be informed of the delay; or~~

~~(b) receive, upon his/her request, information on the time frame within which the decision on his/her application is to be expected. Such information shall not constitute an obligation for the Member State towards the applicant concerned to take a decision within that time frame.~~

35. Member States may prioritise ~~or accelerate any~~  an  examination  of an application for international protection  in accordance with the basic principles and guarantees of Chapter II, ~~including where the application is likely to be well founded or where the applicant has special needs:~~

(a) where the application is likely to be well founded;

(b) where the applicant has special needs;

(c) in other cases with the exception of applications referred to in paragraph 6.

↓ 2005/85/EC (adapted)  
⇒ new

46. Member States may ~~also~~ provide that an examination procedure in accordance with the basic principles and guarantees of Chapter II be ~~prioritised or~~ accelerated if:

(a) the applicant, in submitting his/her application and presenting the facts, has only raised issues that are not relevant ~~or of minimal relevance~~ to the examination of whether he/she qualifies as a refugee  or a person eligible for subsidiary protection  by virtue of ~~Directive 2004/83/EC~~ Directive [...]/EC [the Qualification Directive] ; or

~~(b) the applicant clearly does not qualify as a refugee or for refugee status in a Member State under Directive 2004/83/EC; or~~

~~(c) the application for asylum is considered to be unfounded;~~

~~(i)(b) because the applicant is from a safe country of origin within the meaning of Articles 29, 30 and 31~~  this Directive  ~~or~~

~~(ii) because the country which is not a Member State, is considered to be a safe third country for the applicant, without prejudice to Article 28(1); or~~

~~(c)~~  the applicant has misled the authorities by presenting false information or documents or by withholding relevant information or documents with respect to his/her identity and/or nationality that could have had a negative impact on the decision; or

~~(e) the applicant has filed another application for asylum stating other personal data; or~~

~~(f)(d) the applicant has not produced information establishing with a reasonable degree of certainty his/her identity or nationality, or it is likely that, in bad faith, he/she has destroyed or disposed of an identity or travel document that would have helped establish his/her identity or nationality; or~~

~~(e) the applicant has made inconsistent, contradictory, improbable or insufficient representations which make his/her claim clearly unconvincing in relation to his/her having been the object of persecution referred to in Directive 2004/83/EC; or~~

~~(h) the applicant has submitted a subsequent application which does not raise any relevant new elements with respect to his/her particular circumstances or to the situation in his/her country of origin; or~~

~~(i) the applicant has failed without reasonable cause to make his/her application earlier, having had opportunity to do so; or~~

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new

(e) the application was made by an unmarried minor to whom Article 6 (7) (c) applies, after the application of the parents or parent responsible for the minor has been rejected and no relevant new elements were raised with respect to his/her particular circumstances or to the situation in his/her country of origin; or

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2005/85/EC (adapted)  
 new

~~(f)(f) the applicant is making an application merely in order to delay or frustrate the enforcement of an earlier or imminent decision which would result in his/her removal; or~~

~~(k) the applicant has failed without good reason to comply with obligations referred to in Article 4(1) and (2) of Directive 2004/83/EC or in Articles 11(2)(a) and (b) and 20(1) of this Directive; or~~

~~(l) the applicant entered the territory of the Member State unlawfully or prolonged his/her stay unlawfully and, without good reason, has either not presented himself/herself to the authorities and/or filed an application for asylum as soon as possible, given the circumstances of his/her entry; or~~

~~(m) the applicant is a danger to the national security or public order of the Member State, or the applicant has been forcibly expelled for serious reasons of public security and public order under national law; or~~

~~(n) the applicant refuses to comply with an obligation to have his/her fingerprints taken in accordance with relevant Community and/or national legislation; or~~

~~(o) the application was made by an unmarried minor to whom Article 6(4)(e) applies, after the application of the parents or parent responsible for the minor has been rejected and no relevant new elements were raised with respect to his/her particular circumstances or to the situation in his/her country of origin.~~

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↓ new

7. In cases of unfounded applications, as referred to in Article 28, in which any of the circumstances listed in paragraph 6 apply, Member States may reject an application as manifestly unfounded following an adequate and complete examination.
8. Member States shall lay down reasonable time limits for the adoption of a decision in the procedure at first instance pursuant to paragraph 6.
9. The fact that an application for international protection was submitted after an irregular entry into the territory or at the border, including in transit zones, as well as the lack of documents or use of forged documents, shall not *per se* entail an automatic recourse to an accelerated examination procedure.

#### Article 28

### Unfounded applications

Without prejudice to Article 23, Member States shall only consider an application for international protection as unfounded if the determining authority has established that the applicant does not qualify for international protection pursuant to Directive [..././EC] [the Qualification Directive].

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↓ 2005/85/EC  
⇒ new

~~Article 24~~

~~Specific procedures~~

~~1. Member States may provide for the following specific procedures derogating from the basic principles and guarantees of Chapter II:~~

~~(a) a preliminary examination for the purposes of processing cases considered within the framework set out in Section IV;~~

~~(b) procedures for the purposes of processing cases considered within the framework set out in Section V.~~

~~2. Member States may also provide a derogation in respect of Section VI.~~

**SECTION II**

*Article ~~25~~29*

**Inadmissible applications**

1. In addition to cases in which an application is not examined in accordance with ~~Regulation (EC) No 343/2003~~ Regulation [No .../....] [the Dublin Regulation] , Member States are not required to examine whether the applicant qualifies ~~as a refugee~~ ⇒ for international protection ⇐ in accordance with ~~Directive 2004/83/EC~~ Directive ..././EC [the Qualification Directive] where an application is considered inadmissible pursuant to this Article.

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↓ 2005/85/EC  
⇒ new

2. Member States may consider an application for ~~asylum~~ ⇒ international protection ⇐ as inadmissible ⇒ only ⇐ ~~pursuant to this Article~~ if:
  - (a) another Member State has granted refugee status;
  - (b) a country which is not a Member State is considered as a first country of asylum for the applicant, pursuant to Article ~~26~~31;
  - (c) a country which is not a Member State is considered as a safe third country for the applicant, pursuant to Article ~~27~~32;

~~(d)~~ the applicant is allowed to remain in the Member State concerned on some other grounds and as result of this he/she has been granted a status equivalent to the rights and benefits of the refugee status by virtue of Directive 2004/83/EC;

~~(e)~~ the applicant is allowed to remain in the territory of the Member State concerned on some other grounds which protect him/her against refoulement pending the outcome of a procedure for the determination of status pursuant to point (d);

~~(f)~~(d) the applicant has lodged an identical application after a final decision;

~~(g)~~(e) a dependant of the applicant lodges an application, after he/she has in accordance with Article ~~6(3)~~(4) consented to have his/her case be part of an application made on his/her behalf, and there are no facts relating to the dependant's situation, which justify a separate application.

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↓ new

## Article 30

### Special rules on an admissibility interview

1. Member States shall allow applicants to present their views with regard to the application of the grounds referred to in Article 29 in their particular circumstances before a decision to consider an application inadmissible is taken. To that end, Member States shall conduct a personal interview on the admissibility of the application. Member States may make an exception only in accordance with Article 36 in cases of subsequent applications.
2. Paragraph 1 shall be without prejudice to Article 5 of Regulation (EC) No .../.... [the Dublin Regulation].

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↓ 2005/85/EC  
⇒ new

## Article ~~26~~31

### The concept of first country of asylum

A country can be considered to be a first country of asylum for a particular applicant for ~~asylum~~ ⇒ international protection ⇐ if:

- (a) he/she has been recognised in that country as a refugee and he/she can still avail himself/herself of that protection; or

- (b) he/she otherwise enjoys sufficient protection in that country, including benefiting from the principle of non-refoulement;

provided that he/she will be readmitted to that country.

In applying the concept of first country of asylum to the particular circumstances of an ~~applicant for asylum~~ ⇒ applicant for international protection ⇐ Member States may take into account Article ~~27~~32 (1).

*Article ~~27~~32*

**The safe third country concept**

1. Member States may apply the safe third country concept only where the competent authorities are satisfied that a person seeking ~~asylum~~ ⇒ international protection ⇐ will be treated in accordance with the following principles in the third country concerned:

- (a) life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;

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↓ new

- (b) there is no risk of serious harm as defined in [Directive ..././EC] [the Qualification Directive];

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↓ 2005/85/EC  
⇒ new

~~(b)~~(c) the principle of non-refoulement in accordance with the Geneva Convention is respected;

~~(c)~~(d) the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected; and

~~(d)~~(e) the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention.

2. The application of the safe third country concept shall be subject to rules laid down in national legislation, including:

- (a) rules requiring a connection between the person seeking ~~asylum~~ ⇒ international protection ⇐ and the third country concerned on the basis of which it would be reasonable for that person to go to that country;

- (b) rules on the methodology by which the competent authorities satisfy themselves that the safe third country concept may be applied to a particular country or to a particular applicant. Such methodology shall include case-by-case consideration of the safety of the country for a particular applicant and/or national designation of countries considered to be generally safe;
  - (c) rules in accordance with international law, allowing an individual examination of whether the third country concerned is safe for a particular applicant which, as a minimum, shall permit the applicant to challenge the application of the safe third country concept ~~on the grounds that he/she would be subjected to torture, cruel, inhuman or degrading treatment or punishment~~ ⇒ on the grounds that the third country is not safe in his/her particular circumstances. The applicant shall also be allowed to challenge the existence of a connection between him/her and the third country in accordance with point (a) ⇐ .
3. When implementing a decision solely based on this Article, Member States shall:
- (a) inform the applicant accordingly; and
  - (b) provide him/her with a document informing the authorities of the third country, in the language of that country, that the application has not been examined in substance.
4. Where the third country does not permit the ~~applicant for asylum~~ ⇒ applicant for international protection ⇐ to enter its territory, Member States shall ensure that access to a procedure is given in accordance with the basic principles and guarantees described in Chapter II.
5. Member States shall inform the Commission periodically of the countries to which this concept is applied in accordance with the provisions of this Article.

### SECTION III

#### ~~Article 28~~

#### ~~Unfounded applications~~

~~1. Without prejudice to Articles 19 and 20, Member States may only consider an application for asylum as unfounded if the determining authority has established that the applicant does not qualify for refugee status pursuant to Directive 2004/83/EC.~~

~~2. In the cases mentioned in Article 23(4)(b) and in cases of unfounded applications for asylum in which any of the circumstances listed in Article 23(4)(a) and (c) to (e) apply, Member States may also consider an application as manifestly unfounded, where it is defined as such in the national legislation.~~

#### ~~Article 29~~



### ~~Minimum common list of third countries regarded as safe countries of origin~~

~~1. The Council shall, acting by a qualified majority on a proposal from the Commission and after consultation of the European Parliament, adopt a minimum common list of third countries which shall be regarded by Member States as safe countries of origin in accordance with Annex II.~~

~~2. The Council may, acting by a qualified majority on a proposal from the Commission and after consultation of the European Parliament, amend the minimum common list by adding or removing third countries, in accordance with Annex II. The Commission shall examine any request made by the Council or by a Member State to submit a proposal to amend the minimum common list.~~

~~3. When making its proposal under paragraphs 1 or 2, the Commission shall make use of information from the Member States, its own information and, where necessary, information from UNHCR, the Council of Europe and other relevant international organisations.~~

~~4. Where the Council requests the Commission to submit a proposal for removing a third country from the minimum common list, the obligation of Member States pursuant to Article 31(2) shall be suspended with regard to this third country as of the day following the Council decision requesting such a submission.~~

~~5. Where a Member State requests the Commission to submit a proposal to the Council for removing a third country from the minimum common list, that Member State shall notify the Council in writing of the request made to the Commission. The obligation of this Member State pursuant to Article 31(2) shall be suspended with regard to the third country as of the day following the notification to the Council.~~

~~6. The European Parliament shall be informed of the suspensions under paragraphs 4 and 5.~~

~~7. The suspensions under paragraphs 4 and 5 shall end after three months, unless the Commission makes a proposal before the end of this period, to withdraw the third country from the minimum common list. The suspensions shall in any case end where the Council rejects a proposal by the Commission to withdraw the third country from the list.~~

~~8. Upon request by the Council, the Commission shall report to the European Parliament and the Council on whether the situation of a country on the minimum common list is still in conformity with Annex II. When presenting its report, the Commission may make such recommendations or proposals as it deems appropriate.~~

### *Article ~~30~~33*

#### **National designation of third countries as safe countries of origin**

- ~~1. Without prejudice to Article 29, Member States may retain or introduce legislation that allows, in accordance with Annex II, for the national designation of third countries other than those appearing on the minimum common list, as safe countries~~

of origin for the purposes of examining applications for asylum ⇒ international protection ⇐ ~~This may include designation of part of a country as safe, where the conditions in Annex II are fulfilled in relation to that part.~~

~~2. By derogation from paragraph 1, Member States may retain legislation in force on 1 December 2005 that allows for the national designation of third countries, other than those appearing on the minimum common list, as safe countries of origin for the purposes of examining applications for asylum where they are satisfied that persons in the third countries concerned are generally neither subject to:~~

~~(a) persecution as defined in Article 9 of Directive 2004/83/EC; nor~~

~~(b) torture or inhuman or degrading treatment or punishment.~~

~~3. Member States may also retain legislation in force on 1 December 2005 that allows for the national designation of part of a country as safe, or a country or part of a country as safe for a specified group of persons in that country, where the conditions in paragraph 2 are fulfilled in relation to that part or group.~~

~~4. In assessing whether a country is a safe country of origin in accordance with paragraphs 2 and 3, Member States shall have regard to the legal situation, the application of the law and the general political circumstances in the third country concerned.~~

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↓ new

2. Member States shall ensure a regular review of the situation in third countries designated as safe in accordance with this Article.

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↓ 2005/85/EC (adapted)  
⇒ new

53. The assessment of whether a country is a safe country of origin in accordance with this Article shall be based on a range of sources of information, including in particular information from other Member States, ⇒ the European Asylum Support Office, ⇐ the UNHCR, the Council of Europe and other relevant international organisations.

64. Member States shall notify to the Commission the countries that are designated as safe countries of origin in accordance with this Article.

#### Article ~~31~~34

### The safe country of origin concept

1. A third country designated as a safe country of origin in accordance with ~~⊗~~ this Directive ~~⊗~~ either Article 29 or 30 may, after an individual examination of the

application, be considered as a safe country of origin for a particular applicant ~~for asylum~~ only if:

- (a) he/she has the nationality of that country; or
- (b) he/she is a stateless person and was formerly habitually resident in that country;
- (c) and he/she has not submitted any serious grounds for considering the country not to be a safe country of origin in his/her particular circumstances and in terms of his/her qualification as a refugee  $\Rightarrow$  or a person eligible for subsidiary protection  $\Leftarrow$  in accordance with Directive 2004/83/EC [Directive .../.../EC] [the Qualification Directive] .

~~2. Member States shall, in accordance with paragraph 1, consider the application for asylum as unfounded where the third country is designated as safe pursuant to Article 29.~~

32. Member States shall lay down in national legislation further rules and modalities for the application of the safe country of origin concept.

## SECTION IV

### Article ~~32~~35

#### Subsequent application

1. Where a person who has applied for ~~asylum~~  $\Rightarrow$  international protection  $\Leftarrow$  in a Member State makes further representations or a subsequent application in the same Member State, that Member State ~~may~~  $\Rightarrow$  shall  $\Leftarrow$  examine these further representations or the elements of the subsequent application in the framework of the examination of the previous application or in the framework of the examination of the decision under review or appeal, insofar as the competent authorities can take into account and consider all the elements underlying the further representations or subsequent application within this framework.
2. ~~Moreover,~~  $\Rightarrow$  For the purpose of taking a decision on the admissibility of an application for international protection pursuant to Article 29 (2) (d),  $\Leftarrow$  Member States may apply a specific procedure as referred to in paragraph 3  $\boxtimes$  of this Article  $\Leftarrow$ , where a person makes a subsequent application for ~~asylum~~  $\Rightarrow$  international protection  $\Leftarrow$  :
  - (a) after his/her previous application has been withdrawn ~~or abandoned~~ by virtue of Articles ~~19 or 20~~23 ;
  - ~~(b) after a decision has been taken on the previous application. Member States may also decide to apply this procedure only after a final decision has been taken.~~

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↓ new

(b) after a final decision has been taken on the previous application.

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↓ 2005/85/EC  
⇒ new

3. A subsequent application for ~~asylum~~ ⇒ international protection ⇐ shall be subject first to a preliminary examination as to whether, after the withdrawal of the previous application or after the decision referred to in paragraph 2(b) of this Article on this application has been reached, new elements or findings relating to the examination of whether he/she qualifies as a refugee ⇒ or a person eligible for subsidiary protection ⇐ by virtue of ~~Directive 2004/83/EC~~ Directive [...]/.../EC] [the Qualification Directive] have arisen or have been presented by the applicant.
4. If, following the preliminary examination referred to in paragraph 3 of this Article, new elements or findings arise or are presented by the applicant which significantly add to the likelihood of the applicant qualifying as a refugee ⇒ or a person eligible for subsidiary protection ⇐ by virtue of ~~Directive 2004/83/EC~~ Directive [...]/.../EC] [the Qualification Directive], the application shall be further examined in conformity with Chapter II.
5. Member States may, in accordance with national legislation, further examine a subsequent application where there are other reasons why a procedure has to be reopened.
6. Member States may decide to further examine the application only if the applicant concerned was, through no fault of his/her own, incapable of asserting the situations set forth in paragraphs 3, 4 and 5 of this Article in the previous procedure, in particular by exercising his/her right to an effective remedy pursuant to Article ~~39~~ 41.
7. The procedure referred to in this Article may also be applicable in the case of a dependant who lodges an application after he/she has, in accordance with Article ~~6(3)(4)~~, consented to have his/her case be part of an application made on his/her behalf. In this case the preliminary examination referred to in paragraph 3 of this Article will consist of examining whether there are facts relating to the dependant's situation which justify a separate application.
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↓ new

8. If, following a final decision to consider a subsequent application inadmissible pursuant to Article 29 (2) (d) or a final decision to reject a subsequent application as unfounded, the person concerned lodges a new application for international protection in the same Member State before a return decision has been enforced, that Member State may:

(a) make an exception to the right to remain in the territory, provided the determining authority is satisfied that a return decision will not lead to direct or indirect *refoulement* in violation of international and Community obligations of that Member State; and/or

(b) provide that the application be subjected to the admissibility procedure in accordance with this Article and Article 29; and/or

(c) provide that an examination procedure be accelerated in accordance with Article 27 (6) (f).

In cases referred to in points (b) and (c) of the first subparagraph, Member States may derogate from the time limits normally applicable in the admissibility and/or accelerated procedures, in accordance with national legislation.

9. Where a person with regard to whom a transfer decision has to be enforced pursuant to Regulation (EC) [...] [the Dublin Regulation] makes further representations or a subsequent application in the transferring Member State, those representations or subsequent applications shall be examined by the responsible Member State, as defined in Regulation (EC) [...] [the Dublin Regulation], in accordance with this Directive.

↓ 2005/85/EC (adapted)  
⇒ new

#### ~~Article 33~~

#### ~~Failure to appear~~

~~Member States may retain or adopt the procedure provided for in Article 32 in the case of an application for asylum filed at a later date by an applicant who, either intentionally or owing to gross negligence, fails to go to a reception centre or appear before the competent authorities at a specified time.~~

#### ~~Article 34~~36

#### **Procedural rules**

1. Member States shall ensure that applicants ~~for asylum~~ ⇒ for international protection ⇐ whose application is subject to a preliminary examination pursuant to Article ~~32~~ 35 enjoy the guarantees provided for in Article ~~10~~ 11 (1).
2. Member States may lay down in national law rules on the preliminary examination pursuant to Article ~~32~~ 35. Those rules may, inter alia:
  - (a) oblige the applicant concerned to indicate facts and substantiate evidence which justify a new procedure;

~~(b) require submission of the new information by the applicant concerned within a time limit after he/she obtained such information;~~

~~(b)~~ permit the preliminary examination to be conducted on the sole basis of written submissions without a personal interview ~~⇒~~, with the exception of cases referred to in Article 35 (7) ~~⇐~~.

The conditions shall not render impossible the access of applicants ~~for asylum~~ to a new procedure or result in the effective annulment or severe curtailment of such access.

3. Member States shall ensure that:

- (a) the applicant is informed in an appropriate manner of the outcome of the preliminary examination and, in case the application will not be further examined, of the reasons for this and the possibilities for seeking an appeal or review of the decision;
- (b) if one of the situations referred to in Article ~~32(2)~~ 35(3) applies, the determining authority shall further examine the subsequent application in conformity with the provisions of Chapter II as soon as possible.

## SECTION V

### Article ~~35~~37

#### Border procedures

1. Member States may provide for procedures, in accordance with the basic principles and guarantees of Chapter II, in order to decide at the border or transit zones of the Member State on:

(a) ~~⇒~~ the admissibility of an ~~⇐~~ application~~s~~ made at such locations~~s~~; ~~⊗~~ and/or ~~⊗~~

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↓ new

(b) the substance of an application in an accelerated procedure pursuant to Article 27 (6).

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↓ 2005/85/EC  
⇒ new

~~2. However, when procedures as set out in paragraph 1 do not exist, Member States may maintain, subject to the provisions of this Article and in accordance with the laws or regulations in force on 1 December 2005, procedures derogating from the~~

~~basic principles and guarantees described in Chapter II, in order to decide at the border or in transit zones as to whether applicants for asylum who have arrived and made an application for asylum at such locations, may enter their territory;~~

~~3. The procedures referred to in paragraph 2 shall ensure in particular that the persons concerned:~~

~~(a) are allowed to remain at the border or transit zones of the Member State, without prejudice to Article 7;~~

~~(b) are immediately informed of their rights and obligations, as described in Article 10(1)(a);~~

~~(c) have access, if necessary, to the services of an interpreter, as described in Article 10(1)(b);~~

~~(d) are interviewed, before the competent authority takes a decision in such procedures, in relation to their application for asylum by persons with appropriate knowledge of the relevant standards applicable in the field of asylum and refugee law, as described in Articles 12, 13 and 14;~~

~~(e) can consult a legal adviser or counsellor admitted or permitted as such under national law, as described in Article 15(1); and~~

~~(f) have a representative appointed in the case of unaccompanied minors, as described in Article 17(1), unless Article 17(2) or (3) applies.~~

~~Moreover, in case permission to enter is refused by a competent authority, this competent authority shall state the reasons in fact and in law why the application for asylum is considered as unfounded or as inadmissible.~~

42. Member States shall ensure that a decision in the framework of the procedures provided for in paragraph 21 is taken within a reasonable time. When a decision has not been taken within four weeks, the applicant ~~for asylum~~ shall be granted entry to the territory of the Member State in order for his/her application to be processed in accordance with the other provisions of this Directive.

53. In the event of ~~particular types of arrivals, or~~ arrivals involving a large number of third country nationals or stateless persons lodging applications for ~~asylum~~ ⇒ international protection ⇐ at the border or in a transit zone, which makes it practically impossible to apply there the provisions of paragraph 1 ~~or the specific procedure set out in paragraphs 2 and 3~~, those procedures may also be applied where and for as long as these third country nationals or stateless persons are accommodated normally at locations in proximity to the border or transit zone.

## SECTION VI

### Article ~~36~~38

#### The European safe third countries concept

1. Member States may provide that no, or no full, examination of the asylum application and of the safety of the applicant in his/her particular circumstances as described in Chapter II, shall take place in cases where a competent authority has established, on the basis of the facts, that the applicant for ~~asylum~~ ⇒ international protection ⇐ is seeking to enter or has entered illegally into its territory from a safe third country according to paragraph 2.

2. A third country can only be considered as a safe third country for the purposes of paragraph 1 where:

(a) it has ratified and observes the provisions of the Geneva Convention without any geographical limitations;

(b) it has in place an asylum procedure prescribed by law; ⇒ and ⇐

(c) it has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms and observes its provisions, including the standards relating to effective remedies, ~~and~~.

~~(d) it has been so designated by the Council in accordance with paragraph 3.~~

~~3. The Council shall, acting by qualified majority on a proposal from the Commission and after consultation of the European Parliament, adopt or amend a common list of third countries that shall be regarded as safe third countries for the purposes of paragraph 1.~~

~~43.~~ The Member States concerned shall lay down in national law the modalities for implementing the provisions of paragraph 1 and the consequences of decisions pursuant to those provisions in accordance with the principle of non-refoulement ~~under the Geneva Convention~~, including providing for exceptions from the application of this Article for humanitarian or political reasons or for reasons of public international law.

~~54.~~ When implementing a decision solely based on this Article, the Member States concerned shall:

(a) inform the applicant accordingly; and

(b) provide him/her with a document informing the authorities of the third country, in the language of that country, that the application has not been examined in substance.

~~65.~~ Where the safe third country does not re-admit the applicant for asylum, Member States shall ensure that access to a procedure is given in accordance with the basic principles and guarantees described in Chapter II.



~~7. Member States which have designated third countries as safe countries in accordance with national legislation in force on 1 December 2005 and on the basis of the criteria in paragraph 2(a), (b) and (c), may apply paragraph 1 to these third countries until the Council has adopted the common list pursuant to paragraph 3.~~

## CHAPTER IV

### PROCEDURES FOR THE WITHDRAWAL OF ~~REFUGEE~~ ⇒ INTERNATIONAL PROTECTION ⇐ STATUS

#### Article ~~37~~39

#### Withdrawal of ~~refugee~~ ⇒ international protection ⇐ status

Member States shall ensure that an examination to withdraw the ~~refugee~~ ⇒ international protection ⇐ status of a particular person may commence when new elements or findings arise indicating that there are reasons to reconsider the validity of his/her ~~refugee~~ ⇒ international protection ⇐ status.

#### Article ~~38-40~~

#### Procedural rules

1. Member States shall ensure that, where the competent authority is considering withdrawing the ~~refugee~~ ⇒ international protection ⇐ status of a third country national or stateless person in accordance with Article 14 ⇒ or Article 19 ⇐ of ~~Directive 2004/83/EC~~ Directive [...]/../EC [the Qualification Directive], the person concerned shall enjoy the following guarantees:
  - (a) to be informed in writing that the competent authority is reconsidering his or her qualification for ~~refugee~~ ⇒ international protection ⇐ status and the reasons for such a reconsideration; and
  - (b) to be given the opportunity to submit, in a personal interview in accordance with Article ~~10~~ 11 (1) (b) and Articles ~~12, 13, and~~ 14 and 15 or in a written statement, reasons as to why his/her ~~refugee~~ ⇒ international protection ⇐ status should not be withdrawn.

In addition, Member States shall ensure that within the framework of such a procedure:

- (a) the competent authority is able to obtain precise and up-to-date information from various sources, such as, where appropriate, from the UNHCR ⇒ and the European Asylum Support Office ⇐, as to the general situation prevailing in the countries of origin of the persons concerned; and

- (b) where information on an individual case is collected for the purposes of reconsidering the **refugee** ⇒ **international protection** ⇐ status, it is not obtained from the actor(s) of persecution ⇒ or serious harm ⇐ in a manner that would result in such actor(s) being directly informed of the fact that the person concerned is a **refugee** ⇒ **beneficiary of international protection** ⇐ whose status is under reconsideration, nor jeopardise the physical integrity of the person and his/her dependants, or the liberty and security of his/her family members still living in the country of origin.
2. Member States shall ensure that the decision of the competent authority to withdraw the **refugee** ⇒ **international protection** ⇐ status is given in writing. The reasons in fact and in law shall be stated in the decision and information on how to challenge the decision shall be given in writing.
  3. Once the competent authority has taken the decision to withdraw the **refugee** ⇒ **international protection** ⇐ status, Article ~~15~~18, paragraph 2, Article ~~16~~19, paragraph 1 and Article ~~21~~ 25 are equally applicable.
  4. By derogation to paragraphs 1, 2 and 3 of this Article, Member States may decide that the **refugee** ⇒ **international protection** ⇐ status shall lapse by law ~~in case of cessation in accordance with Article 11(1)(a) to (d) of Directive 2004/83/EC~~ or if the **refugee** ⇒ **beneficiary of international protection** ⇐ has unequivocally renounced his/her recognition as a **refugee** ⇒ **beneficiary of international protection** ⇐.

## CHAPTER V

### APPEALS PROCEDURES

#### *Article ~~39~~41*

#### **The right to an effective remedy**

1. Member States shall ensure that applicants for **asylum** ⇒ **international protection** ⇐ have the right to an effective remedy before a court or tribunal, against the following:
  - (a) a decision taken on their application for **asylum** ⇒ **international protection** ⇐, including a decision:

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↓ new

- (i) to consider an application unfounded in relation to refugee status and/or subsidiary protection status,

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↓ 2005/85/EC  
⇒ new

~~(i)(ii)~~ to consider an application inadmissible pursuant to Article ~~25(2)~~ 29,  
~~(ii)(iii)~~ taken at the border or in the transit zones of a Member State as  
described in Article ~~35~~ 37 (1),

~~(iii)(iv)~~ not to conduct an examination pursuant to Article ~~36~~ 38;

(b) a refusal to re-open the examination of an application after its  
discontinuation pursuant to Articles ~~19~~ 23 and ~~20~~ 24;

~~(c)~~ a decision not to further examine the subsequent application pursuant to  
Articles ~~32~~ and ~~34~~;

~~(d)~~ a decision refusing entry within the framework of the procedures  
provided for under Article ~~35(2)~~;

~~(e)(c)~~ a decision to withdraw of refugee ⇒ international protection ⇐ status  
pursuant to Article ~~38~~ 40.

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↓ new

2. Member States shall ensure that persons recognized by the determining authority as  
eligible for subsidiary protection have the right to an effective remedy as referred to  
in paragraph 1 against a decision to consider an application unfounded in relation to  
refugee status.

The person concerned shall be entitled to the rights and benefits guaranteed to  
beneficiaries of subsidiary protection pursuant to Directive [..././EC] [the  
Qualification Directive] pending the outcome of the appeal procedures.

3. Member States shall ensure that the effective remedy referred to in paragraph 1  
provides for a full examination of both facts and points of law, including an *ex nunc*  
examination of the international protection needs pursuant to Directive [..././EC]  
[the Qualification Directive], at least in appeal procedures before a court or tribunal  
of first instance.

---

↓ 2005/85/EC Article 4  
⇒ new

24. Member States shall provide for ⇒ reasonable ⇐ time-limits and other necessary  
rules for the applicant to exercise his/her right to an effective remedy pursuant to  
paragraph 1.

---

↓ 2005/85/EC Article 4

~~3. Member States shall, where appropriate, provide for rules in accordance with their international obligations dealing with:~~

~~(a) the question of whether the remedy pursuant to paragraph 1 shall have the effect of allowing applicants to remain in the Member State concerned pending its outcome;~~

~~(b) the possibility of legal remedy or protective measures where the remedy pursuant to paragraph 1 does not have the effect of allowing applicants to remain in the Member State concerned pending its outcome. Member States may also provide for an *ex officio* remedy; and~~

~~(c) the grounds for challenging a decision under Article 25(2)(c) in accordance with the methodology applied under Article 27(2)(b) and (c).~~

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↓ new

The time limits shall not render impossible or excessively difficult the access of applicants to an effective remedy pursuant to paragraph 1. Member States may also provide for an *ex officio* review of decisions taken pursuant to Article 37.

5. Without prejudice to paragraph 6, the remedy provided for in paragraph 1 of this Article shall have the effect of allowing applicants to remain in the Member State concerned pending its outcome.

6. In the case of a decision taken in the accelerated procedure pursuant to Article 27 (6) and of a decision to consider an application inadmissible pursuant to Article 29 (2) (d), and where the right to remain in the Member State pending the outcome of the remedy is not foreseen under national legislation, a court or tribunal shall have the power to rule whether or not the applicant may remain on the territory of the Member State, either upon request of the concerned applicant or acting on its own motion.

This paragraph shall not apply to procedures referred to in Article 37.

7. Member States shall allow the applicant to remain in the territory pending the outcome of the procedure referred to in paragraph 6.

8. Paragraphs 5, 6 and 7 shall be without prejudice to Article 26 of Regulation (EC) No [...]/.... [the Dublin Regulation].

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↓ 2005/85/EC Article 4

⇒ new

49. Member States ~~may~~ ⇒ shall ⇐ lay down time-limits for the court or tribunal pursuant to paragraph 1 to examine the decision of the determining authority.

510. Where an applicant has been granted a status which offers the same rights and benefits under national and Community law as the refugee status by virtue of ~~Directive 2004/83/EC~~ Directive [...]/.../EC [the Qualification Directive], the applicant may be considered as having an effective remedy where a court or tribunal decides that the remedy pursuant to paragraph 1 is inadmissible or unlikely to succeed on the basis of insufficient interest on the part of the applicant in maintaining the proceedings.
611. Member States may also lay down in national legislation the conditions under which it can be assumed that an applicant has implicitly withdrawn or abandoned his/her remedy pursuant to paragraph 1, together with the rules on the procedure to be followed.

## CHAPTER VI

### GENERAL AND FINAL PROVISIONS

#### Article ~~40~~2

#### Challenge by public authorities

This Directive does not affect the possibility for public authorities of challenging the administrative and/or judicial decisions as provided for in national legislation.

#### Article ~~41~~3

#### Confidentiality

Member States shall ensure that authorities implementing this Directive are bound by the confidentiality principle as defined in national law, in relation to any information they obtain in the course of their work.

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↓ new

#### Article 44

#### Cooperation

Member States shall each appoint a national contact point and communicate its address to the Commission. The Commission shall communicate that information to the other Member States.

Member States shall, in liaison with the Commission, take all appropriate measures to establish direct cooperation and an exchange of information between the competent authorities.

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↓ 2005/85/EC (adapted)  
⇒ new

#### Article ~~42~~45

##### Report

No later than ~~1 December 2009~~ ⇒ [...] ⇐, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose any amendments that are necessary. Member States shall send the Commission all the information that is appropriate for drawing up this report. After presenting the report, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States at least every ~~two years~~ ⇒ five years ⇐.

#### Article ~~43~~46

##### Transposition

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with ~~this Directive by 1 December 2007~~ ☒ Articles [...] [The Articles which have been changed as to the substance by comparison with the earlier Directive] by [...] at the latest ☒. ~~Concerning Article 15, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 December 2008.~~ They shall forthwith inform ☒ communicate to ☒ the Commission ~~thereof~~ ☒ the text of those provisions and a correlation table between those provisions and this Directive ☒.

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↓ new

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 27 (3) by [3 years from the date of the transposition]. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

---

↓ 2005/85/EC (adapted)  
⇒ new

When Member States adopt those provisions, they shall contain a reference to this Directive or ~~shall~~ be accompanied by such a reference on the occasion of their official publication. ~~The methods of making such reference shall be laid down by Member States.~~ ☒ They shall also include a statement that references in existing laws, regulations and administrative provisions to the directive repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated. ☒

Member States shall communicate to the Commission the text of the ☒ main ☒ provisions of national law ~~which they adopt in the field~~ covered by this Directive ☒ and a correlation table between those provisions and this Directive ☒ .

*Article ~~44~~47*

**Transitional provisions**

Member States shall apply the laws, regulations and administrative provisions set out in subparagraph 1 of Article ~~43~~ 46 to applications for ~~asylum~~ ⇒ international protection ⇐ lodged after ~~1 December 2007~~ ⇒ [...] ⇐ and to procedures for the withdrawal of ~~refugee status~~ ⇒ international protection ⇐ started after ~~1 December 2007~~ ⇒ [...] ⇐. ⇒ Applications submitted before [...] and procedures for the withdrawal of refugee status initiated before [...] shall be governed by the laws, regulations and administrative provisions in accordance with Directive 2005/85/EC. ⇐

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↓ new

Member States shall apply the laws, regulations and administrative provisions set out in subparagraph 2 of Article 46 to applications for international protection lodged after [...]. Applications submitted before [...] shall be governed by the laws, regulations and administrative provisions in accordance with Directive 2005/85/EC.

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↓

*Article 48*

**Repeal**

Directive 2005/85/EC is repealed with effect from [day after the date set out in the first subparagraph of Article 46 of this Directive], without prejudice to the obligations of the

Member States relating to the time-limit for transposition into national law of the Directive set out in Annex III, Part B.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex IV.

---

↓ 2005/85/EC (adapted)

*Article ~~45~~49*

### **Entry into force**

This Directive shall enter into force on the ~~20th~~twentieth day following ☒ that of ☒ its publication in *the Official Journal of the European Union*.

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↓

Articles [...] shall apply from [day after the date set out in the first subparagraph of Article 46].

---

↓ 2005/85/EC (adapted)

*Article ~~46~~50*

### **Addressees**

This Directive is addressed to the Member States ~~in conformity with the Treaty establishing the European Community~~.

Done at [...]

*For the European Parliament*

*The President*

[...]

*For the Council*

*The President*

[...]



**ANNEX I**

Definition of "determining authority"

When implementing the provision of this Directive, Ireland may, insofar as the provisions of section 17(1) of the Refugee Act 1996 (as amended) continue to apply, consider that:

- "determining authority" provided for in Article 2 ~~(e)~~ (f) of this Directive shall, insofar as the examination of whether an applicant should or, as the case may be, should not be declared to be a refugee is concerned, mean the Office of the Refugee Applications Commissioner; and
- "decisions at first instance" provided for in Article 2 ~~(e)~~ (f) of this Directive shall include recommendations of the Refugee Applications Commissioner as to whether an applicant should or, as the case may be, should not be declared to be a refugee.

Ireland will notify the Commission of any amendments to the provisions of section 17(1) of the Refugee Act 1996 (as amended).

## ANNEX II

Designation of safe countries of origin for the purposes of Articles ~~29 and 30~~ 33(1)

A country is considered as a safe country of origin where, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is generally and consistently no persecution as defined in Article 9 of ~~Directive 2004/83/EC~~ Directive [..././EC] [the Qualification Directive], no torture or inhuman or degrading treatment or punishment and no threat by reason of indiscriminate violence in situations of international or internal armed conflict.

In making this assessment, account shall be taken, inter alia, of the extent to which protection is provided against persecution or mistreatment by:

- (a) the relevant laws and regulations of the country and the manner in which they are applied;
- (b) observance of the rights and freedoms laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms and/or the International Covenant for Civil and Political Rights and/or the Convention against Torture, in particular the rights from which derogation cannot be made under Article 15(2) of the said European Convention;
- (c) respect of the non-refoulement principle according to the Geneva Convention;
- (d) provision for a system of effective remedies against violations of these rights and freedoms.

---

↓ 2005/85/EC  
⇒ new

### ANNEX III

#### Definition of "applicant" or "applicant for asylum"

~~When implementing the provisions of this Directive Spain may, insofar as the provisions of "Ley 30/1992 de Régimen jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común" of 26 November 1992 and "Ley 29/1998 reguladora de la Jurisdicción Contencioso-Administrativa" of 13 July 1998 continue to apply, consider that, for the purposes of Chapter V, the definition of "applicant" or "applicant for asylum" in Article 2(e) of this Directive shall include "recurrente" as established in the abovementioned Acts.~~

~~A "recurrente" shall be entitled to the same guarantees as an "applicant" or an "applicant for asylum" as set out in this Directive for the purposes of exercising his/her right to an effective remedy in Chapter V.~~

~~Spain will notify the Commission of any relevant amendments to the abovementioned Act.~~



**ANNEX III**

**Part A**

**Repealed Directive**  
(referred to in Article 48)

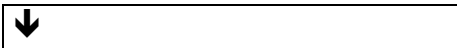
Council Directive 2005/85/EC

(OJ L 326, 13.12.2005, p. 13)

**Part B**

**Time-limit for transposition into national law**  
(referred to in Article 48)

Directive	Time-limits for transposition
2005/85/EC	First deadline: 1 December 2007 Second deadline: 1 December 2008



## ANNEX IV

### CORRELATION TABLE

<b>Directive 2005/85/EC</b>	<b>This directive</b>
Article 1	Article 1
Article 2 (a)	Article 2 (a)
Article 2 (b)	Article 2 (b)
Article 2 (c)	Article 2 (c)
-	Article 2 (d)
Article 2 (d)	Article 2 (e)
Article 2 (e)	Article 2 (f)
Article 2 (f)	Article 2 (g)
-	Article 2 (h)
-	Article 2 (i)
Article 2 (g)	Article 2 (j)
-	Article 2 (k)
-	Article 2 (l)
Article 2 (h)	Article 2 (m)
Article 2 (i)	Article 2 (n)
Article 2 (j)	Article 2 (o)
Article 2 (k)	Article 2 (p)
Article 3 (1)	Article 3 (1)
Article 3 (2)	Article 3 (2)
Article 3 (3)	-
Article 3 (4)	Article 3 (3)
Article 4 (1) first subparagraph	Article 4 (1) first subparagraph

Article 4 (1) second subparagraph	-
-	Article 4 (2)
Article 4 (2)	Article 4 (3)
Article 4 (3)	Article 4 (4)
-	Article 4 (5)
Article 5	Article 5
Article 6 (1)	-
-	Article 6 (1)
-	Article 6 (2)
Article 6 (2)	Article 6 (3)
Article 6 (3)	Article 6 (4)
-	Article 6 (5)
-	Article 6 (6)
Article 6 (4)	Article 6 (7)
Article 6 (5)	-
-	Article 6 (8)
-	Article 6 (9)
-	Article 7 (1) to (3)
Article 7 (1)	Article 8 (1)
Article 7 (2)	Article 8 (2)
-	Article 8 (3)
Article 8 (1)	Article 9 (1)
-	Article 9 (2)
Article 8 (2) (a)	Article 9 (3) (a)
Article 8 (2) (b)	Article 9 (3) (b)
Article 8 (2) (c)	Article 9 (3) (c)
-	Article 9 (3) (d)

Article 8 (3)	Article 9 (4)
Article 8 (5)	Article 9 (5)
Article 9 (1)	Article 10 (1)
Article 9 (2), first subparagraph	Article 10 (2), first subparagraph
Article 9 (2), second subparagraph	-
Article 9 (3)	Article 10 (3)
-	Article 10 (4)
Article 10	Article 11
Article 11	Article 12
Article 12 (1)	Article 13 (1)
Article 12 (2) (a)	Article 13 (2) (a)
Article 12 (2) (b)	-
Article 12 (2) (c)	-
Article 12 (3)	Article 13 (2) (b)
Article 12 (4) to (6)	Article 13 (3) to (5)
Article 13 (1) and (2)	Article 14 (1) and (2)
Article 13 (3) (a)	Article 14 (3) (a)
-	Article 14 (3) (b)
Article 13 (3) (b)	Article 14 (3) (c)
-	Article 14 (3) (d)
-	Article 14 (3) (e)
Article 13 (4)	Article 14 (4)
Article 13 (5)	-
-	Article 15
Article 14	-
-	Article 16
-	Article 17

Article 15 (1), (2) and (3) first subparagraph	Article 18 (1), (2) and (3) first subparagraph
Article 15 (3) (a)	-
Article 15 (3) (b)	Article 18 (3) (a)
Article 15 (3) (c)	Article 18 (3) (b)
Article 15 (3) (d)	-
Article 15 (3) second subparagraph	-
-	Article 18 (3) second subparagraph
Article 15 (4)	Article 18 (4)
-	Article 18 (5)
Article 15 (5)	Article 18 (6)
Article 15 (6)	Article 18 (7)
Article 16 (1)	Article 19 (1)
Article 16 (2)	Article 19 (2)
-	Article 19 (3)
Article 16 (3)	Article 19 (4)
Article 16 (4)	Article 19 (4)
-	Article 20 (1) to (3)
Article 17 (1)	Article 21 (1)
Article 17 (2) (a)	Article 21 (2) (a)
Article 17 (2) (b)	-
Article 17 (2) (c)	Article 21 (2) (b)
Article 17 (3)	-
Article 17 (4)	Article 21 (3)
-	Article 21 (4)
Article 17 (5)	Article 21 (5)
-	Article 21 (6)



Article 17 (6)	Article 21 (7)
Article 18	Article 22
Article 19	Article 23
Article 20	Article 24
Article 20 (1) (a) and (b)	Article 24 (1) (a) and (b)
Article 20 (2)	Article 24 (2)
-	Article 24 (3)
Article 21	Article 25
Article 22	Article 26
Article 23	Article 27
Article 23 (1)	Article 27 (1)
Article 23 (2), first subparagraph	Article 27 (2)
Article 23 (2), second subparagraph	-
-	Article 27 (3)
-	Article 27 (4)
Article 23 (3)	Article 27 (5)
Article 23 (4)	Article 27 (6)
Article 23 (4) (a)	Article 27 (6) (a)
Article 23 (4) (b)	-
Article 23 (4) (c) (i)	Article 27 (6) (b)
Article 23 (4) (c) (ii)	-
Article 23 (4) (d)	Article 27 (6) (c)
Article 23 (4) (e)	-
Article 23 (4) (f)	Article 27 (6) (d)
Article 23 (4) (g)	-

Article 23 (4) (h)	-
Article 23 (4) (i)	-
Article 23 (4) (j)	Article 27 (6) (f)
Article 23 (4) (k) to (n)	-
Article 23 (4) (o)	Article 27 (6) (e)
-	Article 27 (7)
-	Article 27 (8)
-	Article 27 (9)
-	Article 28
Article 24	-
Article 25	Article 29
Article 25 (1)	Article 29 (1)
Article 25 (2) (a) to (c)	Article 29 (2) (a) to (c)
Article 25 (2) (d) and (e)	-
Article 25 (2) (f) and (g)	Article 29 (2) (d) and (e)
-	Article 30
Article 26	Article 31
Article 27	Article 32
Article 27 (1) (a)	Article 32 (1) (a)
-	Article 32 (1) (b)
Article 27 (1) (b) to (d)	Article 32 (1) (c) to (e)
Article 27 (2) to (5)	Article 32 (2) to (5)
Article 28	-
Article 29	-
Article 30	Article 33
Article 30 (2) to (4)	-
-	Article 33 (2)

Article 30 (5)	Article 33 (3)
Article 30 (6)	Article 33 (4)
Article 31	Article 34
Article 31 (2)	-
Article 31 (3)	Article 34 (2)
Article 32 (1) to (7)	Article 35 (1) to (7)
-	Article 35 (8) and (9)
Article 33	-
Article 34	Article 36
Article 34 (1) and (2) (a)	Article 36 (1) and (2) (a)
Article 34 (2) (b)	-
Article 34 (2) (c)	Article 36 (2) (b)
Article 34 (3) (a) and (b)	Article 36 (3) (a) and (b)
Article 35 (1)	Article 37 (1) (a)
-	Article 37 (1) (b)
Article 35 (2) and (3) (a) to (f)	-
Article 35 (4)	Article 37 (2)
Article 35 (5)	Article 37 (3)
Article 36 (1) to (2)(c)	Article 38 (1) to 2(c)
Article 36 (2)(d)	-
Article 36(3)	-
Article 36(4)	Article 38(3)
Article 36(5)	Article 38(4)
Article 36(6)	Article 38(5)
Article 36(7)	-
Article 37	Article 39
Article 38	Article 40

Article 39	Article 41
Article 39 (1) (a)	Article 41 (1) (a)
-	Article 41 (1) (a) (i)
Article 39 (1) (a) (i)	Article 41 (1) (a) (ii)
Article 39 (1) (a) (ii)	Article 41 (1) (a) (iii)
Article 39 (1) (a) (iii)	-
Article 39 (1) (b)	Article 41 (1) (b)
Article 39 (1) (c) and (d)	-
Article 39 (1) (e)	Article 41 (1) (c)
-	Article 41 (2) and (3)
Article 39 (2)	Article 41 (4)
Article 39 (3)	-
-	Article 41 (5) to (8)
Article 39 (4)	Article 41 (9)
Article 39 (5)	Article 41(10)
Article 39 (6)	Article 41 (11)
Article 40	Article 42
Article 41	Article 43
-	Article 44
Article 42	Article 45
Article 43	Article 46
Article 44	Article 47
-	Article 48
Article 45	Article 49
Article 46	Article 50
Annex I	Annex I
Annex II	Annex II

Annex III

-

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Annex III

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Annex IV

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EN

EN



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21.10.2009  
COM(2009) 554 final  
**ANNEX**

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**

**(Recast)**

**ANNEX**

{SEC(2009) 1376}

{SEC(2009) 1377}

## **1. Detailed Explanation of the Proposal**

### **Article 1**

The reference to "procedures for granting and withdrawing refugee status" is replaced by a reference to "procedures for granting and withdrawing international protection by virtue of Directive [.../.../EC] [the Qualification Directive]" so as to underline that this Directive applies to examination procedures in relation with both the refugee status and the subsidiary protection status as set out in Directive [.../.../EC] [Proposal for a directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (hereafter: the Qualification Directive)].

### **Article 2**

(b) The notion of 'application for asylum' is replaced by a notion of "application for international protection". This amendment aims to ensure consistency with the terminology used in the Qualification Directive, and to underline that Member States are required to examine applications both as applications on the basis of the Geneva Convention relating to the Status of Refugees of 28 July 1951 and as applications for subsidiary protection (hereafter: the single procedure). These changes are reflected in all relevant provisions throughout the Directive.

(c) The notion of "applicant for asylum" is replaced by a notion of "applicant for international protection" in line with the proposed amendment under point (b). This amendment is also reflected in all relevant provisions of the proposal.

(d) With a view to lay down additional guarantees for applicants with special needs, such as women, children, survivors of torture, and elderly or disabled applicants, the definition of applicants with special needs is inserted in this Article.

(e) A reference to subsidiary protection is inserted in line with the proposed amendment under point (b).

(g) The definition of "refugee" is amended to ensure consistency with Directive [.../.../EC] [the Qualification Directive].

(h) As the term "person eligible for subsidiary protection" is used in this proposal, it is appropriate to insert a definition.

(i) For reasons of legal clarity, the definition of international protection status is inserted.

(k) As the term "subsidiary protection status" is used in the Directive, it is appropriate to insert a definition.

(l) For reasons of legal clarity and with a view to align the Directive with the 1989 UN Convention on the Rights of the Child, the definition of a minor is inserted in this Article.

(m) The definition of an unaccompanied minor is amended to ensure consistency with Directive [.../.../EC] [the Qualification Directive].



(n) With a view to align the Directive with the 1989 UN Convention on the Rights of the Child, as interpreted by the UN Child Rights Committee, the definition of a representative is clarified.

(p) The reference to refugee status is replaced by a reference to international protection, and an additional reference to subsidiary protection status is inserted so as to underline that this Directive applies to procedures for withdrawing both the refugee status and the subsidiary protection status.

### **Article 3**

In order to accommodate the specific situation of asylum seekers arriving at sea borders, the territorial scope of the Directive is clarified by specifying that the notion of "territory" covers territorial waters of the Member States.

Since the proposal requires Member States to examine application for international protection in the single procedure, the third paragraph is deleted.

A reference to Directive [.../.../EC] [the Qualification Directive] is inserted thus recognising the discretion of Member States to apply this Directive to applications for international protection falling outside the scope of the Qualification Directive.

### **Article 4**

With a view to lay down necessary conditions for ensuring quality and efficient decision making at first instance, it is proposed to introduce additional requirements for a determining authority, namely:

- (a) the determining authority should be staffed with sufficient numbers of personnel;
- (b) these personnel should be primarily responsible for examining applications for international protection and be properly prepared to carry out their tasks.

The Article further sets out the requirements for training programmes to be made available to the personnel of the determining authority. Firstly, it is specified that both initial and follow up training must be provided. Secondly, the amendments lay down the minimum requirements for the content of the training programmes which are largely based on the European Asylum Curriculum and are in line with the Commission Proposal for a Regulation of the European Parliament and of the Council establishing a European Asylum Support Office.

With a view to limit the current exceptions to the principle of a single determining authority, it is proposed to replace former paragraph 2 by a new paragraph allowing Member States to derogate from the principle of a single determining authority only in respect with cases falling under Regulation (EC) No .../..... [Proposal for a regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third country national or a stateless person] (hereafter: the Dublin Regulation).

Paragraph 5 essentially corresponds to subparagraph 2 of former Article 4 (1). In addition, a reference to border controls is inserted so as to reflect the specifics of joint border controls conducted by several Member States.

## **Article 6**

Several sets of guarantees are introduced with a view to enhancing access to examination procedures for persons who wish to apply for international protection. These amendments are *inter alia* informed by the considerations of the European Court of Justice which indicate that a procedural system for exercising a right to residence permits provided for in Community Law should be "*easily accessible and capable of ensuring that the persons concerned will have their applications dealt with objectively and within a reasonable time.*"<sup>1</sup> The accessibility of asylum procedures is also a key pre-condition for ensuring respect for the principle of non-*refoulement* for persons who wish to apply for international protection and are present at the border crossing points or areas close to the external border of the Union<sup>2</sup>. To this effect, the amendments firstly spell out the positive obligation of Member States to ensure the accessibility of examination procedures for persons who wish to apply for international protection. To that end, the proposal implies that (i) the competent authorities must be designated, that (ii) those authorities must be obliged by law to register an application for international protection, and that (iii) while Member States may require persons to lodge their application at a designated place, the institutional and procedural system for receiving applications for international protection must be organised in a way that makes it possible for an asylum seeker to lodge his/her application with the competent authority without delay.

It is also clarified that the discretion of Member States to require that applications for international protection be made in person must be without prejudice to the provisions dealing with the applications on behalf of minors.

The Article further introduces an additional guarantee for dependent adults who give their consent to the lodging on the application on their behalf. Such adults should be informed in private of relevant procedural consequences and of his/her right to make a separate application for international protection. The amendment primarily aims at making the examination procedures gender sensitive and reducing the root causes of subsequent applications.

With a view to align the Directive with Article 22 (1) of the 1989 UN Convention of the Rights of the Child, the Article explicitly stipulates the right of a minor to make an application for international protection. The proposal further specifies that this right may be exercised either by the minor himself/herself or through his/her parents or other caregivers. This provision should be read in conjunction with paragraph 7 which corresponds to former paragraph 4, and allows Member States to determine the cases in which the application may be lodged by or on behalf of a minor.

In order to provide additional safeguards for unaccompanied minors who are the subject to return procedures pursuant to Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, the Article requires Member States to

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<sup>1</sup> Case C-327/02

<sup>2</sup> See Gebremedhin [Gaberamadhien] v. France, Application No 25389/05, 26.04.2007

recognise the right of bodies referred to in Article 10 (1) of the Return Directive to lodge an application for international protection on behalf of an unaccompanied minor.

Another set of guarantees aims at facilitating access to the competent authorities and examination procedures for *de facto* asylum seekers who are subject to border controls. In this respect, the amendments single out 4 categories of national authorities likely to be addressed by a person who wishes to make an application for international protection, namely the border guards, police, immigration authorities and personnel of detention facilities, and require Member States to issue instructions and provide necessary training for these authorities. In cases where such authorities are not designated as the competent authority within the meaning of paragraphs 1 and 2, the instructions must include the obligation to forward the application to the competent authorities.

Subparagraph 2 of paragraph 8 essentially corresponds to former paragraph 5. In the proposed framework, its functional role is to ensure that public authorities which are not explicitly referred to in this proposal are able to facilitate access to procedures by providing information to a person and/or forwarding his/her application to the competent authorities.

The proposal sets out the 72 hour time limit for completing necessary formalities related to the lodging of an application for international protection.

## **Article 7**

This Article lays down necessary safeguards aimed at enabling a *de facto* asylum seeker who is present at the border and/or in an immigration detention facility to articulate his/her request for international protection. In essence, the safeguards concern information, advice and the possibility to communicate intention to apply for international protection to the border guards or other relevant authorities. In this respect, the amendments aim to ensure that (i) information about the possibility and procedure for lodging an application for international protection is made accessible to persons who are subject to border controls pursuant to the Schengen Borders Code, that (ii) organisations providing advice and counselling to asylum seekers enjoy access to the border crossing points, including transit zones, and detention facilities with a view to providing advice and counselling to persons who wish to apply for international protection and that (iii) interpretation arrangements aimed at ensuring at least a basic level of communication which makes it possible to identify that the person concerned wishes to apply for international protection are made available to the border guards and personnel of detention facilities. The proposed provisions require Member States to make relevant arrangements available at border crossing points and in detention facilities rather than introduce additional rights for third country nationals or stateless persons. In this respect, an expression of the wish to apply for international protection remains a key pre-condition for the applicability of this Directive *ratione personae*. The amendments, however, take account of the fact that a number of factors, such as trauma, difficult journey, or lack of knowledge of common languages, may negatively affect the ability of persons whose reasons for travel are protection related to articulate their request for international protection already during the initial contacts with the authorities of the destination Member State. The proposal is largely informed by arrangements available in several Member States which aim at providing counselling and advice to persons who wish to apply for international protection and are present at the border and/or in detention facilities.<sup>3</sup>

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<sup>3</sup> See *inter alia* the report *Access to protection at airports in Europe*, Hungarian Helsinki Committee, August 2008.

## **Article 8**

The amendments introduce two clarifications with respect to the Member States' right to surrender or extradite an applicant for international protection to a third country. First, the Article explicitly prohibits extradition of an applicant for international protection to his/her country of origin. In this respect, it is considered that the determining authorities and, where applicable, a court or tribunal should examine, in the first place, as to whether an applicant qualifies for international protection pursuant to the Qualification Directive before taking a decision with regard to an extradition request. This approach is in line with the case law of the European Court of Human Rights which has repeatedly stressed that extradition may engage the responsibility of a state under Article 3 of the European Convention of Human Rights.<sup>4</sup> The amendment is also consistent with Articles 12 (2) (b), 17 (1) (b) and 17 (3) of the Qualification Directive which lay down the exclusion clauses in relation to refugee and subsidiary protection status.

The Article further makes it clear that in case of extradition or surrender to a third country other than the country of origin of an applicant Member States remain bound by the non-refoulement principle. To this effect, the Article implies that the competent authorities must always consider the risk of direct and indirect refoulement before acceding to any extradition request from a third country.

## **Article 9**

The reference to former Article 23 (4) (i) is deleted so as to reflect changes in that Article.

The amendments also introduce additional requirements for the examination of applications.

Firstly, the Article establishes a mandatory sequence of the examination of applications. To this effect, it is specified that the question of whether the person qualifies for refugee status must always be examined in the first place.

The proposal also clarifies that country of origin information must be made accessible to the applicant or his/her legal advisor to the extent it has been used by the determining authority for the purpose of taking a decision on the application. This amendment is considered necessary in the light of evolving jurisprudence of the European Court of Justice with regard to the right of defence (to be heard) and the principle of equality of arms.

With a view to lay down necessary conditions for ensuring quality decision making at first instance, the Article requires Member States to make expertise and advice available to the personnel examining applications for international protection.

## **Article 10**

Several additional requirements for a decision by the determining authorities are introduced in order to lay down necessary conditions for ensuring access to effective remedy in the context of a single examination procedure, and to ensure the confidentiality of a decision in cases involving gender and/or age based persecution. To this effect, the amendment firstly specifies that the determining authority must state reasons in fact and in law in a decision rejecting the application with respect to (i) refugee status or (ii) international protection status (i.e. both

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<sup>4</sup> See *inter alia* Ryabikin v. Russia, Application no. 8320/04, 19 June 2008, para 110

refugee status and subsidiary protection status). The amendment is necessary with a view to aligning the single procedure, as set out in this proposal, with the principle of effective judicial protection of rights guaranteed by Community Law.

Secondly, the proposal requires Member States to issue a separate decision to a dependent person where disclosure of personal circumstances to family members of that person can be against his/her interests.

### **Article 11**

The amendments aim to facilitate access to independent advice and counselling by extending guarantees applicable to UNHCR partner organisations to all other Civil Society organisations providing legal advice and counselling to asylum seekers according to national legislation of Member States.

As the proposal provides for free legal assistance in first instance procedures, the reference to free legal assistance in sub-paragraph (e) is deleted.

### **Article 12**

With a view to preserving the integrity of procedures, the proposal introduces an additional obligation for applicants to cooperate with the competent authorities in establishing the elements of their application for international protection. It is clarified that applicants for international protection must be searched by a person of a same sex.

### **Article 13**

The amendments introduce a number of modifications with regard to arrangements for personal interviews.

Firstly, in line with the principle of a single determining authority set out in Article 4, it is underlined that an interview on the substance of an application for international protection must always be conducted by the personnel of the determining authority.

Secondly, with a view to align the Directive with evolving case law of the European Court of Justice regarding *the right to be heard*, the proposal reduces the current possibilities for Member States to omit a personal interview. In this respect, it is proposed to delete an optional provision allowing Member States to give the opportunity of a personal interview to dependent adults who have consented to lodging an application on his/her behalf, and to introduce a mandatory provision obliging Member States to interview dependent adults in such cases. In order to provide an applicant with a realistic opportunity to present all elements of his/her application in line with Article 4 (1) (2) of the Qualification Directive, the amendments further delete the grounds for omitting a personal interview falling under former Articles 12 (2) (b) and 12 (2) (c). The amendment implies that Member States are required to conduct a personal interview in all cases, including where the application is examined in an accelerated procedure, unless the applicant clearly qualifies for refugee status or is unfit or unable to be interviewed. The latter exception is qualified by a duty of the determining authority to consult a medical expert in order to establish whether the condition is temporary or permanent.

### **Article 14**

A personal interview is an essential element of asylum procedures which, to a large extent, predetermines the outcome of an examination of the protection needs in accordance with the Qualification Directive. The amendments introduce several additional requirements for a personal interview aimed at creating necessary conditions for an applicant to present the elements of his/her application and, where applicable, taking into account gender, age and trauma considerations.

The proposal adjusts the requirements for a person who conducts a personal interview. To this effect, the amendments delete the term "sufficiently" in point (a) of paragraph 3 of former Article 13 thus making it clear that the personal interviews must always be conducted by competent personnel. The amendment is in line with Article 4 of this proposal which *inter alia* requires Member States to train the personnel of the determining authority regarding interview techniques.

It is also specified that the person conducting a personal interview must be competent to take account of gender considerations. This amendment is in line with the definition of applicants with special needs, and aims at making examination procedures gender sensitive. The phrase "insofar as it is possible to do so" are considered to be redundant as the paragraph addresses the issue of preparedness of a person to conduct a personal interview and not the actual situations which may occur when interviewing the applicants.

The amendments, in point (b), further require Member States to assign an interviewing person of the same sex if the applicant so requests. Same applies to the obligation of Member States to select an interpreter for a personal interview as specified in point (c). These requirements are introduced in view of enabling applicants to present elements of their application in cases involving gender based persecution as referred to in Article 9 (2) (f) of the Qualification Directive.

It is also specified that in a personal interview the communication must take place in a language which the applicant (i) understands and (ii) in which he/she is able to communicate clearly. The amendment therefore modifies the current standard which refers to a language which the applicant "may reasonably be supposed to understand." The amendment is considered to be crucial in order to ensure the correct and reliable assessment of the elements of applications for international protection according to Article 4 (1), (2) of the Qualification Directive.

The Article also specifies that the person who conducts an interview on the substance of an application for international protection must not wear a uniform. The amendment aims to address the specific situation of applicants in cases involving acts of past persecution or serious harm conducted by military or para-military personnel.

The reference to Article 12 (2) (b) is deleted so as to reflect amendments with respect to the possibility to omit a personal interview.

### **Article 15**

This new Article complements the proposed framework for personal interviews by imposing minimum requirements for the content of personal interviews. In this respect, it makes clear that (i) the content of the interview must enable the determining authority to collect information needed to apply substantive grounds of international protection in accordance with the Qualification Directive, and (ii) that the applicant must be given the opportunity to

provide necessary clarifications with regard to the elements of his/her application or any inconsistencies which occur in his/her statements.

### **Article 16**

This Article replaces former Article 14, and aims to ensure that the testimony of an applicant is documented correctly and adequately. To this effect, the Article describes the steps to be taken with a view to documenting the testimony of the applicant. It firstly requires Member States to make a transcript of every personal interview, and to give the opportunity to the applicant to comment on its content. In order to reflect the current practices based on former Article 14, the Article also refers to a written report of a personal interview.

The proposal also provides for the right of an applicant to access the transcript and, where applicable, the report of a personal interview before a decision at first instance has been taken.

### **Article 17**

This new Article sets out the procedural standards relating to the use and status of medico-legal reports in procedures for granting international protection.

1. This paragraph sets out the general rule that an applicant for international protection must be entitled to request a medical examination in order to support his/her statements relating to past persecution or serious harm. It is also specified that the applicant must be given a reasonable time limit to submit a medical certificate to the determining authority.

2. The proposal imposes the positive obligation on Member States to ensure that a medical examination is carried out in cases where the determining authority suspects symptoms of post traumatic stress disorder.

3. This paragraph is introduced in order to ensure that expertise relevant to the application of this Article is made available for the personnel of the determining authority. In this respect, it gives Member States a margin of flexibility to proceed with relevant institutional arrangements which make it possible to examine and document the symptoms of torture.

4. This paragraph requires Member States to lay down further rules dealing with the issues related to the identification and documentation of symptoms of torture.

5. This paragraph addresses the role of medico-legal reports in the examination procedures. In this respect, it provides for two important clarifications. First, the paragraph makes it clear that medico-legal reports must be taken into account by the determining authorities when assessing the elements of the application according to Article 4 (2), (3) of the Qualification Directive. Another important implication of this paragraph is that the findings of the medical examination referred to in this Article must be taken into account when establishing the general credibility of the applicant.

### **Article 18**

The amendments revise in several respects the current framework for exercising the right to legal assistance set out in former Article 15.

Paragraph 1 clarifies that applicants for international protection shall be given the opportunity to consult in an effective manner a legal advisor or counsellor at all stages of the procedure,

including at the appeal stage. This general rule may be implemented in different forms, including *inter alia* by granting free legal assistance as described in paragraphs 2.

In paragraph 2 the reference to "a negative decision by a determining authority" is deleted thus indicating that the right to free legal assistance is also applicable in procedures at first instance, subject to the limitations referred to in paragraph 3. Paragraph 2 further requires Member States to provide for rules dealing with the provision of free legal assistance in respectively first instance and appeal procedures. The paragraph aims to lay down the minimum requirements regarding the types of services to be covered by free legal assistance in Member States. To this effect, it is specified that free legal assistance in first instance procedures must include at least 2 elements, namely

(i) provision of information on the asylum procedure in the light of the applicant's particular circumstances;

(ii) explanation of the reasons in fact and in law in the case of a negative decision with regard to refugee status and/or subsidiary protection status.

Paragraph 3 aims to lay down grounds for limiting free legal assistance which apply in both first instance and appeal procedures. To this effect, points (a) and (d) of former paragraph 3 are deleted as they refer to appeal procedures in accordance with Chapter V only. At the same time, an additional subparagraph is inserted for the purpose of enabling Member States to apply a test before granting free legal assistance in appeal procedures before a court or tribunal. The proposed wording is in line with Article 47 of the Charter of Fundamental Rights.

As regards the appeal procedures, the amendments require Member States to provide free legal assistance at least in procedures before a court or tribunal hearing an appeal as the first instance appeal body. In order to accommodate administrative traditions of different Member States, the amendments refer to a possibility of contracting a non-governmental organisation for the purpose of providing free legal assistance to applicants in first instance and/or appeal procedures.

## **Article 19**

The amendments aim to align the Directive's provisions on the scope of legal assistance with the principle of equality of arms and the right to effective judicial protection. To this effect, the Article firstly specifies that a legal advisor or counsellor representing an applicant must enjoy access to the applicant's file upon which a decision is or will be made. The amendment implies that this opportunity must be allowed in both first instance and appeal procedures. The Article further introduces additional guarantees with a view of ensuring sufficient procedural safeguards for applicants and their representatives in cases where Member States make an exception to the above entitlement for reasons of national security, security of other persons or organisations or the investigative interests in accordance with former Article 16 (1). In this respect, the proposal requires Member States (i) to allow the opportunity of enjoying access to the information in the applicant's file to a special representative (i.e. a legal advisor or other counsellor) and (ii) to make access to the information or sources in question available to the appeal authorities. These amendments are informed by evolving jurisprudence of respectively the European Court of Justice and the European Court of Human Rights regarding access to effective remedy.



The amendment also requires Member States to allow a legal advisor or other counsellor who represent an applicant to attend his/her personal interview. However, Member States remain free to provide for rules covering the presence of legal advisors or other counsellors at interviews, including the rules defining the rights and obligations of a legal advisor or counsellor during the interview.

Finally, in order to ensure consistency with the proposed amendments with regard to the guarantees for unaccompanied minors, it is clarified that the right of the competent authority to conduct a personal interview where a legal advisor or other counsellor is absent must be without prejudice to the special guarantees applicable to unaccompanied minors.

### **Article 20**

This new Article spells out guarantees for applicants with special needs with a view of enabling them to present properly the elements of their application for international protection as required by Article 4 (1), (2) of the Qualification Directive. Essentially, the Article provides for four standards.

Firstly, it sets out the general obligation of Member States to design their asylum procedures in a context sensitive way thus taking account of gender, age or trauma implications. This general obligation is further specified with regard to survivors of torture. In this respect, the Article lays down two basic guarantees aimed at reducing negative consequences of trauma on the results of the examination of the protection needs of persons who have been subjected to torture. Thus, the amendments require Member States to give such applicants a necessary period of time and relevant support to prepare for a personal interview, and exempt them from accelerated procedures. The Article makes it clear that these guarantees must only apply to victims of torture or other acts of violence following an individual examination of their situation. In this respect, a reference to Article 21 of the Commission Proposal for the Reception Conditions Directive is inserted thus making sure that the survivors of torture identified in accordance with the Reception Conditions Directive are able to benefit from the guarantees set out in this Article.

### **Article 21**

With a view to align the Directive with the UN Convention of the Rights of the Child, the amendments provide for several additional safeguards for unaccompanied minors. To this effect, it is clarified that the tasks of a representative of an unaccompanied minor cover both the duty to represent and the duty to assist. In line with the UN Child Rights Committee conclusions, the amendments also requires Member States to grant free legal assistance to unaccompanied minors throughout the procedure, including, where relevant, in the appeal stage. In this respect, it provides for mandatory presence of a representative and/or a legal advisor or other counsellor representing an unaccompanied minor in accordance with national legislation at a personal interview. The current provision allowing Member States to derogate from the duty to appoint a representative where the unaccompanied minor can avail himself, free of charge, of a legal advisor is deleted. It is likewise proposed to delete the stand still clause allowing Member States to refrain from appointing a representative where the unaccompanied minor is 16 years old or older. This amendment is in line with the proposed definition of a minor.

Given that unaccompanied minors may be unable, due to their age, to properly articulate and substantiate their request for international protection, the amendments also provide for

exempting them from (i) admissibility procedures based on the safe third country notion and (ii) accelerated procedures.

For reasons of consistency with the Commission proposal for the Reception Conditions Directive which maintains that unaccompanied minors must not be detained, the amendments also provide for exempting unaccompanied minors from border procedures.

#### **Article 22**

With a view to align this Directive with the Commission proposal for the Reception Conditions Directive, it is clarified that a possibility of speedy judicial review must be ensured in line with the Reception Conditions Directive. Same applies to grounds and conditions of detention.

#### **Article 24**

Several changes are introduced in the Directive's provisions dealing with implicit withdrawal or abandonment of the application. The amendments essentially aim at reducing the root causes of subsequent applications. To this effect, it is specified that Member States, in case of implicit withdrawal or abandonment of the application, must take a decision to discontinue the examination.

In order to ensure consistency with the proposed changes in the Directive's provisions dealing with subsequent applications, the reference to Articles 32 and 34 is deleted. In line with the principle of non-refoulement, it is also proposed to delete the optional provision which limits the applicant's right to request that his/her case be reopened by allowing Member States to set out a time limit which the applicant's case can no longer be re-opened.

With a view to align the Directive with Regulation (EC) No .../.... [the Dublin Regulation], the amendments make it clear that the notion of implicit withdrawal or abandonment of the application is not applicable where the person concerned is transferred to the responsible Member State in accordance with the Dublin Regulation.

#### **Article 26**

In order to ensure consistency with the Qualification Directive and in the light of proposed provisions relating to the single examination procedure, it is specified that Member States must not disclose information regarding individual applications for international protection to the alleged actor(s) of serious harm. Same applies to the requirement to refrain from obtaining information from the alleged actor(s) of serious harm.

#### **Article 27**

The amendments provide for several sets of changes in the current framework for examination procedures.

Firstly, for the purpose of improving efficiency of the first instance procedure, it is proposed to set out a time limit for taking a decision on an application for international protection. This amendment is *inter alia* informed by the ECJ findings that decisions on residence permits taken on the basis of Community Law require a procedural system which makes it possible to

take a decision within a reasonable period of time<sup>5</sup>. Based on the average duration of procedures at first instance in Member States, it is proposed to set out the 6 month limit for taking a decision on an application for international protection. For the purpose of ensuring an adequate and complete examination, the proposal specifies that the initial 6 month period may be extended for a further 6 months in cases involving complex issues of fact and law. This can also include cases of applicants with special needs in line with Article 20 (1). Member States also remain bound by the current obligation to inform the applicant of the delay.

The Article leaves it for Member States to determine in national legislation any consequences of non-compliance with the proposed time limits.

The Directive's provisions on prioritised and accelerated procedures are revised so as to ensure that an applicant is given a realistic opportunity to present and substantiate his/her claim, while the determining authority has sufficient time to assess the elements of the application in line with Article 4 (1), (2) and (3) of the Qualification Directive. In this respect, the amendments firstly make a distinction between the notion of *prioritised examination* and the notion of *accelerated procedures*. To this effect, it is specified that prioritised procedures may be applied to process certain categories of cases, such as well founded cases or cases of applicants with special needs. Member States are therefore given discretion to organise their examination procedures in a way that makes it possible to proceed quicker with certain types of applications. Given diverse practices in Member States, it is, however, considered unnecessary to set out an exhaustive list of such cases. Furthermore, this discretion should be subject to two limitations, namely (i) such a prioritised examination must not be based on considerations that the case in question may be unfounded and (ii) the basic principles and guarantees as well as the requirement of an adequate and complete examination must be fully respected.

Accelerated procedures are designed differently. Firstly, grounds of an accelerated examination are directly linked with the elements of the application as described in Article 4 (2) of the Qualification Directive. In this respect, an accelerated examination should be a logical consequence of serious deficiencies in the application for international protection. The deficiencies may relate to both the statements of the applicant and the documents he/she submits or is expected to submit in order to substantiate the claim. In such cases, it is justified and indeed reasonable to enable the determining authority to process applications in an accelerated procedure thus preserving the integrity of the asylum system and optimising efforts and resources for dealing with cases which raise more complex issues of facts and law. This approach is in line with UNHCR Executive Committee Conclusion No. 30.

The above considerations informed the revised list of cases which can be considered as manifestly unfounded and, consequently, fall under provisions allowing Member States to accelerate an examination procedure. These include cases where:

(i) the applicant has raised issues that are not relevant to the examination of whether he/she qualifies for international protection;

(ii) the applicant is from a safe country of origin;

(iii) the applicant has intentionally misled the authorities with regard to his/her identity or nationality which could have had a negative impact on the decision;

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<sup>5</sup> Case C-327/02, paras 26, 27

(iii) there are valid reasons to consider that the applicant, in bad faith, has destroyed or disposed of an identity or travel document that would have helped establish his/her identity or nationality;

(iv) the applicant is making an application for the purpose of misusing the procedure in order to delay or frustrate the enforcement of a return decision;

(v) the application was made by an unmarried minor, after the application of the parents has been rejected and no new elements were raised.

Paragraph 7 essentially corresponds to former Article 28 (2).

With a view to ensure that the determining authority has sufficient time to conduct a meaningful assessment of the elements of the application in line with Article 4 (2), (3) of the Qualification Directive, the amendments require Member States to provide for reasonable time limits for taking a decision in accelerated procedures.

It is further underlined that the manner in which the applicant has entered into the territory, the location in which an application has been submitted or the mere fact that an applicant lacks documents or uses forged documents may not *per se* lead to an accelerated examination of the application.

### **Article 28**

Article 28 corresponds to Article to former Article 28 (1).

### **Old Article 24**

Article 24 of the current Directive is deleted so as to reflect amendments in Sections IV, V and VI.

### **Article 29**

The amendments aim to align the inadmissibility grounds set out in former Article 25 with the right to asylum enshrined in Article 18 of the Charter of Fundamental Rights and the general principles of Community Law. In this respect, it should be recalled that refugee status is a right conferred to individuals by the Community *acquis*. For this reason, the current provisions allowing Member States to consider an application inadmissible where the applicant is allowed to remain in the Member State on some other grounds and consequently is granted a status equivalent to the rights and benefits of the refugee status by virtue of Directive 2004/83/EC or is allowed to remain pending the outcome of a procedure for the determination of such a status are deleted.

### **Article 30**

This Article aims to guarantee the right to be heard, in line with the general principles of Community Law, for applicants for international protection at the admissibility stage of the procedure. In this respect, the Article requires Member States to give the opportunity to the applicant to present his/her views with regard to the applicability of the inadmissibility grounds in his/her individual circumstances in the form of a personal interview.

### **Article 32**

The amendments address both the material requirements for considering a third country as a safe third country and the rules dealing with an individual examination of particular circumstances of the applicant. An additional criterion is inserted in the list of material requirements set out in paragraph 1 of former Article 27 so as to reflect both forms of international protection provided for in the Qualification Directive. This implies that the competent authorities must refrain from applying the safe third country notion to a country in which an applicant may be subjected to serious harm as defined in Article 15 of the Qualification Directive. The amendment essentially incorporates the requirements of Article 18 of the Charter in the Community rules on safe third countries.

In line with the proposed arrangements on the admissibility interview and with a view to ensuring the right to be heard for concerned applicants, the amendments also clarify that national rules dealing with an individual examination of the safety of the third country for a particular applicant must allow the applicant to challenge both the safety of the country and the reasonableness for requesting international protection in that country.

### **Old Article 28**

Paragraph 1 is moved to Article 28, whilst paragraph 2 is deleted so as to reflect the proposed amendments with regard to manifestly unfounded applications.

### **Old Article 29**

This Article is deleted with a view of consolidating the Directive's provisions dealing with safe countries of origin. The proposal implies that the designation of third countries as safe countries of origin should be dealt with at national level in accordance with the substantive criteria set out in the Directive.

### **Article 33**

The substantive criteria for the national designation of safe countries of origin are further clarified in this Article. In essence, the amendments aim to ensure that the application of the notion is subject to the same conditions in all Member States covered by the Directive.

Firstly, references to the minimum common list of safe countries of origin are deleted.

Secondly, the optional provision allowing Member States to apply the notion to part of a country is also deleted. The material requirements for the national designation must therefore be fulfilled with respect to the entire territory of a country.

It is further proposed to delete the stand still clauses which allow Member States to derogate from the material requirements in respect with a country or part of a country and/or to apply the notion to a specified group in that country or in part of that country.

With a view to ensuring reliable and up to date determinations, the proposal also requires Member States to review regularly the situation in countries designated as safe countries of origin. The reference to the European Asylum Support Office is inserted so as to reflect the proposed role of that office in the Common European Asylum System in accordance with the Commission proposal for establishing a European Asylum Support Office.

### **Article 34**

The amendments firstly clarify that the applicant may challenge the presumption of safety of a country of origin in relation with both the refugee definition and the grounds of subsidiary protection. This clarification aims to ensure consistency with the Qualification Directive and is in line with the single procedure concept.

In view of the proposed deletion of the common list of safe countries of origin, the obligation of Member States to consider an application as unfounded where the country of origin of an applicant appears on the minimum common list of safe countries is also deleted.

### **Article 35**

The Directive's framework for subsequent applications is re-designed with a view to reducing the root causes of this phenomenon, and enabling the competent authorities to deal effectively with repeated applications whilst ensuring necessary safeguards against *refoulement*. In this respect, it is worth recalling that causes of subsequent application essentially fall under the following categories:

- (a) international protection needs arising *sur place* in accordance with Article 5 of the Qualification Directive;
- (b) procedural deficiencies in the legislative framework preventing a person to properly articulate his/her protection needs where the application is examined for the first time;
- (c) where evidence is obtained or testimony is given at a latter stage, in particular in the case of survivors of torture;
- (d) legal reasons, for example, where a decision in relation with the first application was taken on the basis of an incorrect interpretation of Community Law;
- (e) subsequent applications by dependents in cases where the first application was submitted on their behalf;
- (g) where applicants abuse the asylum procedure with a view to *inter alia* delaying or frustrating the enforcement of a return decision.

The proposal firstly aims to address the root causes of subsequent applications as described in points (b) and (c) above. The philosophy behind the amendments is that all necessary efforts should be taken to ensure a rigorous examination of the protection needs where a person lodges an application for the first time.

To this effect, the proposal requires Member States to examine further representations or the elements of the subsequent application in the framework of the examination of the previous application, including, where relevant, in appeal procedures. In this respect, it is further clarified that a preliminary examination procedure is applicable where a person makes a subsequent application after a final decision has been taken on the previous application or his /her application has been explicitly withdrawn.

For reasons of legal clarity, it is underlined that a preliminary examination procedure with regard to subsequent applications may result either in a new substantive examination of the subsequent application or in declaring the identical application inadmissible in accordance with Article 29 (2) (d) of this proposal.

The amendments introduce two important clarifications with regard to the applicability of a preliminary examination procedure, namely Member States may apply this procedure (i) where the previous application was explicitly withdrawn or (ii) after a final decision had been taken on the previous application.

In order to ensure consistency with the Qualification Directive it is also clarified that the new elements must be assessed in the light of both the refugee definition and the grounds of subsidiary protection.

With a view to preventing abuse of asylum procedures referred to in point (g) above, the last set of amendments introduces procedural devices aimed at dealing with multiple applications for international protection lodged in the same Member State. To this effect, the proposal allows Member States to make an exception to the right to remain in the territory. Member States are also given a margin of flexibility to apply a preliminary examination procedure or examine a subsequent application in an accelerated procedure.

### **Old Article 33**

The situations described in former Article 33 are essentially addressed in Article 24 (1) (a) and (b) of this proposal. For this reason and due to lack of added value, former Article 33 is deleted.

### **Article 36**

Two changes are proposed with regard to the procedural rules applicable in a preliminary examination procedure. Firstly, the optional provision allowing Member States to require submission of the new information within a time limit is deleted to avoid possible tension with the principle of non-refoulement. Secondly, it is clarified that the optional provision allowing Member States to omit a personal interview on the sole basis of written submissions must not apply to cases of dependent adults who have previously consented to the lodging of application on his/her behalf.

### **Article 37**

Several amendments are introduced with a view to harmonising national arrangements on border procedures. The current framework provides for two types of border procedures, namely (i) the procedures in accordance with the basic principles and guarantees and (ii) the procedures derogating from the basic principles and guarantees. The amendments aim at ensuring the availability of basic principles and guarantees for all applicants for international protection irrespective of where the application is lodged. To this effect, the amendments specify that the border procedures may be employed in order to decide at the border or transit zones on the admissibility of an application for international protection and/or on the substance of an application in cases where a Member State applies an accelerated procedure. This implies that admissible cases which do not fall under the notion of manifestly unfounded applications should be processed in in-land procedures.

In light of the above, the stand still clauses allowing Member States to maintain border procedures which derogate from the basic principles and guarantees are deleted.

It is also specified that Member States may apply border procedures to applicants accommodated at locations in proximity to the border or transit zone in the case of arrivals

involving a large number of third country nationals or stateless persons only. In this respect, the reference to "particular types of arrivals" is deleted.

### **Article 38**

This old Article 36 is amended. In particular, the European safe third country concept is revisited to the extent that the common list is no longer foreseen.

### **Article 39**

The phrase "in case of cessation in accordance with Article 11 (a) to (d) of Directive 2004/83/EC" is deleted" so as to enable the person concerned to bring forward his/her views with regard to the applicability of the cessation clauses in his/he particular circumstances in line with the case law of the European Court of Justice regarding the right to be heard.

### **Article 41**

The amendments aim to incorporate the latest developments in the case law of the European Court of Justice as regards the principle of effective judicial protection, and to align the Directive's provisions on appeals procedures with the notion of a single asylum procedure. To this effect, the amendments firstly entitle an applicant to lodge an appeal against a negative decision with regard to (i) the refugee definition or (ii) both the refugee definition and the grounds of subsidiary protection.

In order to ensure consistency with proposed amendments deleting the European safe third country and special border procedures notions, references to old Article 36 and old Article 35 (2) are deleted.

Based on established case law of the European Court of Human Rights, the proposal underlines the principle of a full and *ex nunc* examination of appeals. In particular, the amendments explicitly provide for review of both facts and points of law at least in appeal procedures before a court or tribunal of first instance. This provision is in line with respective case law of the European Court of Justice and the European Court of Human Rights.

With a view to ensure the accessibility of a remedy, Member States are required to ensure that the time limits for giving notice of appeal are reasonable and do not render access to a remedy impossible or excessively difficult.

The amendments set out the general principle of automatic suspensive effect of appeals. The proposal further stipulates that where Member States opt for exceptions in the case of a decision taken in an accelerated procedure or of a decision to consider an identical application inadmissible, a court or tribunal shall have the power to rule whether or not the applicant may remain on the territory of the Member State. No expulsion may take place pending the outcome of that procedure.

### **Article 44**

This article requires Member States to appoint a national contact with a view to facilitating cooperation and an exchange of information relevant to the implementation of this Directive.

### **Article 45**

To ensure consistency with the Qualification Directive, the evaluation and reporting mechanism is adjusted. In this respect, it is specified that the Commission reports to the European Parliament and to the Council every 5 years.

### **Article 46**



It is proposed to introduce an obligation for a correlation table. The Commission systematically proposes such a table.

#### **Article 47**

This Article lays down the transitional clauses. It is proposed that Member States will apply the amended Directive to applications submitted and procedures for the withdrawal of international protection status initiated after the dates by which Member States will be obliged to bring into force the transposition measures. It is also specified that applications for international protection submitted before those dates must be dealt with in accordance with Directive 2005/85/EC. Same applies to procedures for the withdrawal of refugee status.

#### **Article 48**

This is a standard article specifying the result of adopting this Directive.

#### **Old Annex III**

Former Annex III is deleted to ensure consistency with the proposed notion of an applicant for international protection and the rules dealing with the issue of suspensive effect of appeals.