



**COUNCIL OF
THE EUROPEAN UNION**

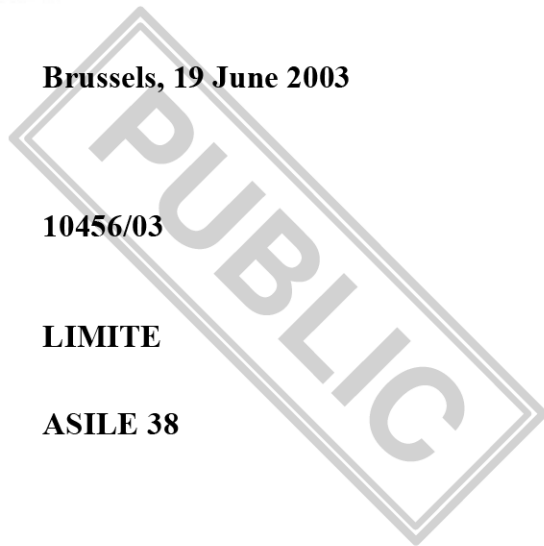
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OUTCOME OF PROCEEDINGS

from : Asylum Working Party

on : 12 June 2003

No. prev.doc. : 10064/03 ASILE 34

No. Cion prop. : 10279/02 ASILE 33 + REV 1 (de, en, fr) - COM(2002) 326 final/2

Subject : Amended proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status

I

Delegations will find attached the text of Chapters III to V as as it result from the work of the Asylum Working Party meeting on 12 June 2003.

Changes to 10064/03 ASILE 34 are in bold.

Delegations comments are set out in the footnotes.

II

Amended proposal for a

COUNCIL DIRECTIVE

On minimum standards on procedures in Member States for granting and withdrawing refugee status

CHAPTER III

Procedures at first instance

Section I

Article 23

Procedures at first instance¹

1. Member States shall examine applications for asylum and the withdrawal of refugee status in procedures at first instance in accordance with the basic principles and guarantees of Chapter II, subject to the provisions of paragraph 2.

2. Procedures at first instance are :

[...]

[...]

¹ **NL/S** : refer to "accelerated procedures" instead of to "procedures at first instance".
D : maintained its suggestion concerning Articles 23 and 40 (see 7254/03 ASILE 15 ADD 3).
A : supports D text.
F : a single procedure with possibilities of acceleration in certain cases should be considered.

- (a) a preliminary examination derogating from the basic principles and guarantees of Chapter II, for the purpose of processing cases considered within the framework of the provisions set out in Section IV;
- (b) procedures derogating from the basic principles and guarantees of Chapter II, for the purpose of taking a decision on the entry of applicants for asylum into the territory of a Member State within the framework set out in Section V;
- (c) a regular¹ procedure for cases that do not fall under the above-mentioned procedures.

Article 24

Time limits for an accelerated procedure

(deleted)

¹ UK : delete "regular".

Section II

Article 25

Cases of inadmissible applications¹

1. Member States shall reject a particular application for asylum as inadmissible² if another Member State, or Norway or Iceland, is responsible³ for examining the application, according to the criteria and mechanisms for determining which Member State is responsible for considering an application for asylum submitted by a national of a third country or stateless person in one of the Member States, unless the Member State examines an application for asylum even if such examination is not its responsibility under such criteria.⁴
2. Member States may reject an application for asylum as inadmissible 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;
 - (c) a country which is not a Member State is considered as a safe third country for the applicant, pursuant to Articles 27 and 28;

¹ **E** : read "unfounded applications" instead of "inadmissible applications".

P : scrutiny reservation regarding the terms "inadmissible applications".

² **UK** : read "Member States shall consider a particular application for asylum as inadmissible and may reject it ..." (rest unchanged).

³ **A/D/I** : add "or has been responsible".

⁴ **F/IRL/I/NL/S** : scrutiny reservations.

- (d) the applicant is allowed to remain in the territory of the Member State concerned on some other ground and as result of which he has been granted a status equivalent to the rights and benefits of the refugee status by virtue of Council Directive .../... [*Proposal for a Council 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*];¹
- (e) the applicant has lodged a subsequent application after a final decision² and he/she does not submit new facts, having occurred after the final decision, establishing a well-founded fear of persecution by virtue of Council Directive .../... [*Proposal for a Council 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*];³
- (f) a dependant of the applicant lodges an application, after he/she has in accordance with Article 5(3), 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 justifying a separate application.⁴

¹ **A/S** : scrutiny reservation. Add cases under Article 29(1) when no reasons for asylum are submitted by the applicant.

FIN : scrutiny reservation.

² **A** : add "from a Member State".

³ **FIN/S** : scrutiny reservations.

⁴ **FIN** : scrutiny reservation.

NL : add a new sub-paragraph (f) "the applicant is allowed to remain in the territory of the Member State concerned on some other grounds which protect him against refoulement."

IRL : add cases where the applicant refuses to submit his fingerprints for "Eurodac" purposes.

Article 26

Application of the concept of first country of asylum

A country can be considered to be a first country of asylum for an applicant for asylum if he/she has been admitted to that country as a refugee or for other reasons justifying the granting of protection, and can still avail himself/herself of protection in that country that is in accordance with the relevant standards laid down in international law.¹

¹ E : A country should be considered to be a first country of asylum when the applicant could have submitted an application there and where that country observes the "non-refoulement" principle and has procedures for processing asylum application.

Article 27

National designation of countries as safe third countries¹

1. Member States may consider that a third country is a safe third country for the purpose of examining applications for asylum only in accordance with the principles set out in Annex II.²
2. Member States may retain or introduce legislation that allows for the designation by law or regulation of countries as safe third countries. Such laws or regulations shall be compatible with Article 28.³
3. Member States which, at the date of entry into force of this Directive, have in force laws or regulations designating countries as safe third countries and which wish to retain these laws or regulations, shall notify them to the Commission within six months of the adoption of this Directive and shall notify as soon as possible any subsequent relevant amendments.

Member States shall notify to the Commission as soon as possible any introduction of laws or regulations designating countries as safe third countries after the adoption of this Directive, as well as any subsequent relevant amendments.

¹ **B/E/I** : a list of safe third countries would have no real effect in the absence of readmission agreements with third countries involved.

² **FIN/NL** : the criteria set out in Annex II should be clearer, simpler and shorter.
F : Annex II as drafted is not really helpful for establishing criteria for designating countries as safe third countries.

³ **A/D/I/L** : designation of safe third countries should be done in a common basis, leading to a single list, otherwise, there would be a risk of secondary movements between Member States. A mechanism allowing adjourning of the list should be established.
F : should any list of safe third countries be set out, it should be a common list.
IRL/UK : if a common list of safe third countries is set out, it should a flexible one.
P : reservation concerning the establishment of a contact committee by the Commission on the basis of the Legislative financial statement to the proposal (point 5.2). Such a committee should be envisaged in the Directive itself following comitology rules.

Article 28

Application of the safe third country concept

1. A country that is a safe third country in accordance with the principles set out in Annex II can only be considered as a safe third country for a particular applicant for asylum if, notwithstanding any list there are no grounds for considering that the country is not a safe third country in his/her particular circumstances,¹ and
 - (a) the applicant has either a connection or close links with the country and has an opportunity to avail himself/herself of the protection of the authorities of that country; or
 - (b) this particular applicant will be admitted or re-admitted to this country.²

2. When implementing a decision based on this Article, Member States shall :
 - (a) inform the applicant accordingly; and
 - (b) provide him/her with a document in the language of the third country informing the authorities of that country that the application has not been examined in substance.

¹ **A** : scrutiny reservation concerning paragraph 1.

A/D/IRL : when there is a presumption that the country is safe, a case by case consideration should be avoided.

² **UK** : add a new sub-paragraph (c) :

"or the applicant will be admitted to a part of a country when that part of the country complies with the principles set out in Annex II".

FIN/NL/S : opposed to this UK suggestion. Preferred Presidency text.

Section III

Article 29¹

Cases of unfounded applications

1. Member States shall reject an application for asylum as unfounded if the determining authority has established that the applicant in submitting his/her application and presenting the facts, has only raised issues that are not relevant to the examination of whether he/she qualifies as a refugee by virtue of Council Directive .../... [*Proposal for a Council 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*].²
2. Member States may reject an application for asylum as unfounded if the applicant is from a safe country of origin within the meaning of Articles 30 and 31 of this Directive.³

¹ **D/IRL/S** : scrutiny reservations.

S : differentiate between unfounded and manifestly unfounded applications.

² **A** : reservation linked to Article 25.

F/NL/S : scrutiny reservations.

³ **E** : reservation concerning the safe country of origin concept.

F : scrutiny reservation.

3. Member States may reject an application for asylum as unfounded if the determining authority has established that the applicant has no well-founded fear of being persecuted by virtue of Council Directive .../... [*Proposal for a Council 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 if¹
- (a) the applicant has without good reason,² misled the authorities with respect to his/her identity and/or nationality, by presenting false information or by withholding relevant information that could have had a negative impact on the decision; or
 - (b) the applicant has not produced information to establish with a reasonable degree of certainty his/her identity or nationality, and there are serious reasons for considering that he/she has, in bad faith, destroyed or disposed of an identity or travel document that would have helped establish his/her identity or nationality;³ or
 - (c) the applicant has made deliberately false or misleading representations of a substantial nature in relation to the evidence produced in support of his/her application for asylum; or

¹ **A** : delete the words "the determining authority has established that the applicant has no well-founded fear of being persecuted by virtue of Council Directive .../... [*Proposal for a Council 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".

NL : reservation. Opposed to an exhaustive nature of the accelerated procedure.

² **IRL** : specify if these grounds are considered as unfounded or manifestly unfounded.

³ **UK** : delete the words "and there is good reason to believe that he/she has, in bad faith, destroyed or disposed of an identity or travel document that would have helped establish his/her identity or nationality."

Cion : opposed to UK proposal. Avoid a situation where all undocumented persons would be subject to the accelerated procedure.

- (d) the applicant has submitted a subsequent application raising no relevant new facts with respect to his/her particular circumstances or to the situation in his/her country of origin; or
- (e) the applicant has failed without reasonable cause to make his/her application earlier, having had ample opportunity to do so, and 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
- (f) the applicant failed to comply with obligations referred to in Articles 9 and 20(1) of this Directive; or¹
- (g) the applicant entered the territory of the Member State unlawfully or prolonged his/her stay unlawfully and, without good reason, has not presented himself/herself to the authorities as soon as possible given the circumstances of his/her entry; or²
- (h) the applicant is a danger to the security of the Member State or constitutes a danger to the community of that Member State, having been convicted by a final judgement of a particularly serious crime.³

¹ **D/P** : read "the applicant failed to comply with obligations referred to in Article 7 of the Qualification Directive and 20(1) of this Directive or he/she has severely failed to comply with his/her obligation to co-operate pursuant to Art. 9A (1) (a) and (b), unless he/she is not responsible for the violation of his obligation to co-operate or he/she was, for important reasons, not in a position to comply."

P : add cases where the applicant refuses to give his fingerprints for "Eurodac" purposes.

FIN : scrutiny reservation.

² **FIN** : scrutiny reservation.

³ **FIN** : scrutiny reservation.

Article 30

National designation of countries as safe countries of origin¹

1. Member States may consider a country to be a safe country of origin for the purpose of examining applications for asylum only in accordance with the principles set out in Annex III.
2. Member States may retain or introduce legislation that allows for the designation by law or regulations of countries as safe countries of origin. Such laws or regulations shall be compatible with Article 31.
3. Member States which, at the date of entry into force of this Directive, have in force laws or regulations designating countries as safe countries of origin and which wish to retain these laws or regulations, shall notify them to the Commission within six months of the adoption of this Directive and shall notify as soon as possible any subsequent relevant amendments.

Member States shall notify to the Commission as soon as possible any introduction of laws or regulations designating countries as safe countries of origin after the adoption of this Directive, as well as any subsequent relevant amendments.

¹ **I** : scrutiny reservation.
A/F/I/L : a common list of safe countries of origin should be established in order to set up an effective functioning of this principle.
FIN/S : opposed to the setting up of an obligatory common list of safe countries of origin, as long as there is an individual examination.
IRL/NL/UK : could accept a common list if it is a flexible one.

Article 31

Application of the safe country of origin concept¹

A country that is a safe country of origin in accordance with the principles set out in Annex III can only be considered as a safe country of origin for a particular applicant for asylum if

- (a) he/she has the nationality of that country or,
- (b) it is his/her country of former habitual residence, if he/she is a stateless person; or
- (c) he/ she is formally habitually resident in that country

and there are no grounds for considering the country not to be a safe country of origin in his/her particular circumstances in terms of his/her qualification as a refugee in accordance with Council Directive .../ ...*[Proposal for a Council 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]*.

¹ P : reservation concerning the Contact Committee envisaged in the legislative financial statement attached to the proposal.

Article 31A

1. **When it is determined that the conditions stated in Articles 25 and 29¹ are met, Member States shall ensure that a decision will be taken within three months² after the abovementioned conditions have been ascertained.**
2. **The time limit referred to in paragraph 1 may be extended for three months for reasons directly relating to the examination of his/her application.**

An extension of the time limit shall not be valid unless notice is given to the applicant or to the legal adviser or other counsellor who assists or represents him/her.

The time limit referred in paragraph 1 doesn't have to be taken into consideration if the applicant is the cause of the delay.

3. **The time limit referred in paragraph 1 doesn't have to be taken into consideration, once one Member State calls upon another State to take charge of an applicant, in accordance with 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.**

Where a Member State does not accept to take charge of an applicant, the provisions of paragraphs 1 and 2 shall be applicable again as from the moment when a Member State has received a negative reply from the other Member State.

¹ **P** : delete the reference to Articles 25 and 29.

S : scrutiny reservation.

² **UK** : opposed to the fixation of time limits.

NL/S : add that if the decision has not been taken within three months, the asylum seeker can remain in the territory of the Member State.

D/FIN : if time limits are included, sanctions as those wanted by NL/S should be included.

P : Council conclusions as set out in 15107/1/01 ASILE 59 REV 1 provided for time limits and sanctions in cases of non-compliance.

Article 31B¹

Article 31A shall also apply in case:

- (a) **of processing applications for asylum considered to be inadmissible under Section II, where there is no need to examine whether the applicant is a refugee in accordance with Council Directive .../... ..[Proposal for a Council 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];**

- (b) **of processing applications for asylum considered to be [...] unfounded under Section III in accordance with Council Directive .../... [Proposal for a Council 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];**

[N.B: all the provisions in the following Articles of the Directive (i.e. review and appeal) referred to accelerated procedures will be referred to provisions of application of Article 31A]

¹ **IRL** : this provision could be deleted since it duplicates Article 31A.

Section IV

Article 32

(deleted)

Article 33

Cases of subsequent applications¹

1. Member States may adopt or retain a specific procedure entailing a preliminary examination as referred to in paragraph 2, where a person makes a subsequent application for asylum:
 - (a) after his/her previous application has been withdrawn by virtue of Articles 19 or 20;
 - (b) after a final² decision has been reached on his/her previous application.³

¹ **S** : reservation.
FIN : scrutiny reservation.
D : refer to the period between a final decision and the lodging of a new application and whether new facts have arisen.
E : differentiate more clearly between cases where a new file must be opened and cases where a revision of an existing file is needed.

² **B** : delete "final".

³ **F** : avoid allowing the applicant a choice between appeal or entering a new claim. Never-ending procedures must be avoided.

2. A subsequent application for asylum shall¹ first be subject to a preliminary examination as to whether, after the withdrawal of the previous application or after the final decision on this application has been reached,
- (a) the personal circumstances of the applicant which are relevant to the examination of whether he/she qualifies as a refugee by virtue of Council Directive .../... [*Proposal for a Council 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*] or his/her legal situation has changed or²
 - (b) there is new information based on significant facts relating to the examination of whether he/she qualifies as a refugee by virtue of Council Directive .../... [*Proposal for a Council 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*], indicating that a decision more favourable to the applicant could be taken or could have been taken or³
 - (c) the final decision on a former application for asylum was taken on an incorrect or false basis or⁴
 - (d) there are other reasons relating to the examination of whether he/she qualifies as a refugee under national law to further examine that subsequent application.⁵

¹ L : add "in particular".

² E/IRL/UK : sub-paragraph (a) is already covered by (b) and could be deleted.

³ IRL : (a) and (b) could be merged as follows :

"the basis for the subsequent application is sufficiently different from the original application as to have a realistic prospect of a more favourable decision."

E/FIN : reservations.

⁴ E/F/IRL : delete sub-paragraph (c).

⁵ E/F/IRL : delete sub-paragraph (d).

If one of the reasons described under subparagraphs (a), (b), (c) and (d) applies and the applicant concerned was, through no fault of his/her own, incapable of asserting those reasons set forth in this paragraph in the previous procedure, in particular by filing an appeal before a court, the application will be further examined in conformity with Chapter II.¹

3. This procedure may also be applicable in the case of
 - a) a dependant who lodges an application, after he/she has in accordance with Article 5(3), 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 2 will consist of examining whether there are facts relating to the dependant's situation justifying a separate application;
 - [(b) 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 to appear before the competent authorities at a specified time.]²

¹ **L**, supported by **F/UK** : add "provided that these are serious indications of a well-founded fear".

B : add the possibility of submitting elements of substance before an instance which is competent to take a decision concerning such elements of substance.

² **E** : reservation. This is not a case of subsequent application.

IRL/NL : scrutiny reservations.

Article 34
Procedural rules¹

1. Member States shall ensure that applicants for asylum whose application is subject to a preliminary examination pursuant to Article 33 enjoy the guarantees listed in Article 9 (1).²

2. Member States may lay down in national law rules on the preliminary examination pursuant to Article 33. 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 which it has been obtained by him or her;

 - (c) permit the preliminary examination to be conducted on the sole basis of written submissions without a personal interview.

The conditions shall not render the access applicants for asylum to a new procedure impossible nor result in the effective annulment or severe curtailment of such access.

¹ **FIN** : scrutiny reservation.

² **UK** : add "provided that authorities agree that a subsequent application has been made".

3. Member States shall ensure that

- (a) the determining authority which has taken the decision on the previous application is responsible for the preliminary examination;
- (b) 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 and of the possibilities of challenging it;¹
- (c) if one of the situations referred to in Article 33(2) applies, the determining authority shall further examine the subsequent application in conformity with the provisions of Chapter II as soon as possible.

¹ **IRL** : reservations on (a) and (b), linked to its decision-making structure. Appeals should not be possible in the framework of preliminary decisions.

Cion : right to appeal or review is a basic right which must always be respected.

D : make clear that such appeals refer to the substance of the decision, not to an expulsion order.

UK : scrutiny reservation.

Section V

Article 35

Cases of border procedures¹

1. Subject to the provisions of this Article, Member States may maintain in accordance with laws or regulations in force at the time of the adoption of this Directive procedures derogating from the basic principles and guarantees described in Chapter II in order to decide at the border on the entry to their territory of applicants for asylum who have arrived and made an application for asylum at the border. These procedures shall ensure in particular that the persons concerned:²
 - must be immediately informed of their rights and obligations, as described in Article 9 (1) (a); and
 - have access, if necessary, to the services of an interpreter, as described in Article 9(1) (b); and
 - can consult a legal adviser or counsellor admitted as such under national law, as described in Articles 13(1); and
 - are interviewed 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 10 to 11; and
 - have a representative appointed in the case of unaccompanied minors, as described in Article 15(1).

¹ **B/E/UK** : the scope of this provision should be clarified.
FIN/P : scrutiny reservations.
UK : reservation.

A : reservation linked to the obligation to give all these guarantees to a person who is not yet in the territory of the Member State.

² **F** : delete references in the indents to Articles 9, 10, 11, 13 and 15.

2. This procedure may also be applicable to applicants for asylum arriving in airport, port and railway transit zones.
3. Member States shall ensure that a decision to refuse entry to the territory of a Member State for a reason arising from the application¹ for asylum is taken within three weeks, subject to an extension of the time limit in a procedure prescribed by national law.²

Non-compliance with the time limits provided for in this paragraph shall result in the applicant for asylum being 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. Member States shall ensure that applicants for asylum, who, as the result of the rejection of their application, are refused entry in accordance with this procedure, enjoy the guarantees referred to in Chapter IV.

4. The refusal of entry into the territory can not override the decision on the application for asylum, unless it is based upon a rejection of the application for asylum after an examination on the basis of the facts of the case by authorities competent in the field of asylum and refugee law.³

¹ **NL** : clarify the expression "for a reason arising from the application".

² **B** : scrutiny reservation.

³ **F** : scrutiny reservation.

Article 35A¹

1. Member States may also provide that a person requesting asylum with a border authority can be refused leave to enter if,
 - (a) he enters from a safe third State in the sense of Article 27;
 - (b) it is obvious that the person was safe from political persecution in another third country;
or
 - (c) he poses a threat to the general public, because he has non-appealably been punished with imprisonment of at least three years in the Member State on account of a particularly serious criminal offence and where his leaving the Member State did not take place more than three years ago.

2. The person requesting asylum can be removed if the border authority finds in the vicinity of the border immediately before or after in illegal entry and if the conditions pursuant to paragraph 1 apply.

3. In cases of an illegal entry of a person requesting asylum from a safe third State according to paragraph 1(a), the person may be removed to such a safe State by the competent national authorities also from inside the country.

4. Member States may provide that no asylum procedure according to Chapter II of this Directive takes place in cases of paragraph 1(c) of this Article. Articles 17 and 22 of this Directive apply accordingly.

¹ Text proposed by **D**.
A/UK : support D text.
UK : modify heading of paragraph 1 as follows :
"Member States may also provide that a person requesting asylum with a border authority cannot be allowed to enter the territory if,"
E/FIN/NL/S : cannot support this text since :
- it does not give any guarantees to those seeking asylum at the border (FIN/NL/S);
- deals with expulsion of irregular immigrants and does not have its place in an asylum instrument (E).
F/I/P : scrutiny reservations.

Section VI

Article 36

Withdrawal of refugee status

Member States shall ensure that an examination may be started to withdraw the refugee status of a particular person when information comes to light indicating that there are reasons to reconsider the validity of his/her refugee status.¹

Article 37

Procedural rules

1. Where in a Member State a determining authority² reconsiders a refugee's qualification, the withdrawal of a refugee status shall be examined under the regular procedure in accordance with the provisions of this Directive.

Where in a Member State a court or another body reconsiders a refugee's qualification, the withdrawal of a refugee status shall be examined under the same conditions as the review of decisions taken under the regular procedure.³

2. Member States may derogate from Articles 9 to 12 when it is technically impossible for the competent authority to comply with the provisions of those Articles.⁴

¹ **D** : add an exception for cases of cessation of status without need of withdrawal procedure under Article 13 of draft Directive on qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection.

E : differentiate more clearly between cessation due to change of circumstances and withdrawal because the protection status should not have been given in the first place.

² **IRL** : scrutiny reservation.

P : include a definition of "regular procedure" in this Directive.

³ **IRL** : this sub-paragraph should be clarified.

⁴ **D** : this wording is too restrictive. In such cases, the applicant's opinion should be required.

CHAPTER IV
Appeals procedures¹

Article 38

The right to an effective remedy before a court or tribunal²

1. Member States shall ensure that applicants for asylum have the right to an effective remedy³ of a decision taken on their application for asylum before a court or tribunal [In accordance with caselaw relating to Article 234 ECT].⁴
2. Member States shall ensure that the effective remedy referred to in paragraph 1 includes the possibility of an examination on both facts and points of law.⁵

¹ **D/I** : scrutiny reservations on the entire Chapter.

A/IRL/UK : reservations on the entire Chapter.

² **A/B/EL/IRL/P/UK** : recalled that Council conclusions (15107/1/01 ASILE 59 REV 1) established that the term "judicial body" should cover the concept of "quasi-judicial" in certain Member States. They considered a reference to effective remedy before a national authority would be sufficient.

P : a definition of "court or tribunal" would be needed.

Cion : recalled existing caselaw of the Court of Justice of the European Communities concerning this issue.

The Council Legal Service opinion regarding this question is set out in 8124/03 JUR 168 ASILE 21.

³ **E** : linguistic reservation.

⁴ (The reference to caselaw relating to Article 234 ECT could be moved to a Recital).

S : reservation. Add the possibility of not having appeals when security threats appear.

⁵ **B** : the above-mentioned Council conclusions should be faithfully quoted here. A Directive on minimum standards should not oblige Member States to modify their administrative structures.

3. Member States shall ensure that:
- (a) a refusal to re-open the examination of an application after its discontinuation pursuant to Articles 19 and 20, and¹
 - (b) an extension of the time limit pursuant to Article 24 can also be subjected to examination through appeal proceedings before a court or tribunal.²
4. Member States shall ensure that persons have the right to an effective remedy against the withdrawal of a refugee status before a court or tribunal. This effective remedy includes the possibility of an examination on both facts and points of law.

¹ **IRL/I/UK** : delete this sub-paragraph.

EL : scrutiny reservation.

² **E/IRL/I/UK** : delete this sub-paragraph.

D : reservation linked to Article 24.

EL : scrutiny reservation.

Article 39

Review and appeal proceedings against decisions taken under the regular procedure¹

1. Member States shall allow applicants for asylum lodging an appeal before a court **or tribunal** against a decision taken in the regular procedure to remain **in** the [...] Member State concerned pending its outcome. Member States shall also allow applicants for asylum requesting a review of a decision taken under the regular procedure by an administrative body prior to appeal before a court of law to remain on the territory of the Member State concerned pending its outcome.
2. Member States may derogate from paragraph 1 by virtue of laws or regulations in force on the date of adoption of this Directive.²
3. Where national law provides that an applicant for asylum is not allowed to remain in the Member State concerned awaiting the outcome of his/her appeal or review, Member States shall ensure that the court or tribunal has the competence to rule whether or not such an applicant may, given the particular circumstances of his/her case,³ remain in the Member State concerned, either upon request of the applicant. The request may be based either upon an appeal against a decision pursuant to this Directive or upon an appeal against an order to remove the applicant concerned following a decision pursuant to this Directive.⁴
4. No expulsion may take place until the court of law has ruled in the case referred to in paragraph 3.⁵ Member States may provide for an exception where it has been decided that grounds of national security or public policy preclude the applicant for asylum from remaining on the territory of the Member State concerned.

¹ **B/UK** : paragraphs (1) and (2) could be deleted.

B : the possibility of a suspensive effect of appeals to decisions before an administrative body should be let to Member States. Concerning appeals before a Court of Justice, the Court should decide whether the appeal has or not a suspensive effect.

² **FIN/L/NL/S** : reservations. This provision would sanction important differences between procedures in the Member States.

NL : appeals before a judicial body should always have a suspensive effect.

³ **D** : add that these appeals or reviews should be likely to be successful.

I : clarify the notion of "particular circumstances of his/her case".

⁴ **IRL** : scrutiny reservation.

⁵ **E** : scrutiny reservation.

Article 40

Review and appeal proceedings against decisions taken in the accelerated procedure

1. Member States shall lay down in national law those cases in which applicants for asylum lodging an appeal against or requesting a review of a decision taken under the accelerated procedure are not to be allowed to remain on the territory of the Member State concerned pending its outcome.¹
2. In such cases, Member States shall ensure that a court or tribunal has the competence to rule whether or not this applicant for asylum may, given the particular circumstances of his/her case, remain in the Member State concerned, either upon request of the concerned applicant.² The request may be based either upon an appeal against a decision pursuant to this Directive or upon an appeal against an order to remove the applicant concerned following a decision pursuant to this Directive.³
3. No expulsion shall take place until the court or tribunal has ruled in the case referred to in paragraph 2. Member States may provide for an exception in the following cases:⁴
 - (a) where it has been decided that an application for asylum is inadmissible as referred to in Article 25;⁵

¹ **E/F/IRL/L** : reservations. No suspensive effect should be introduced within the context of accelerated procedures. Say that Member States may establish that the appeal or review has no suspensive effect.

NL : avoid establishing a case by case examination concerning the suspensive effect of each appeal or review.

² **F** : set out a differentiation between the asylum application procedure and the possibility of expulsion.

IRL/P : scrutiny reservations.

NL : start this paragraph by saying "If no authorisation is given in accordance with paragraph 1...".

³ **IRL** : scrutiny reservation.

⁴ **FIN/NL** : this provision goes too far and is difficult to accept.

⁵ **NL** : refer to Article 25 under (a), (d) and (e) only.

- (b) where a court or tribunal has already rejected a request from the concerned applicant for asylum to remain in the Member State concerned and it has been decided that, since that rejection, no new relevant facts have been submitted with respect to the particular circumstances of the applicant or his/her country of origin after this rejection;
- (c) Where a subsequent application will not be further examined in conformity with Chapter II as referred to in Article 33;¹
- (d) Where it has been decided that grounds of national security or public policy preclude the applicant for asylum from remaining at the border, the airport or port transit zones or in the Member State concerned.

¹ **D** : refer to accelerated or other special procedure.

Article 41

Time limits and scope of the examination in review or appeal

1. Member States shall lay down:¹
 - (a) reasonable time limits for giving notice of appeal and, where applicable, for requesting a review; these time limits may be shorter for giving notice of appeal and requests for review in respect of decisions taken under the accelerated procedure;²
 - (b) all other necessary rules for lodging an appeal and, where applicable, for requesting a review;
 - (c) powers whereby the court or tribunal is enabled to uphold or overturn the decision of the determining authority or has both;³
 - (d) rules whereby, if the court or tribunal overturns a decision, it must either remit the case to the determining authority for a new decision or must itself take a decision on the merits of the application.⁴
2. Member States shall lay down the conditions under which it can be assumed that an applicant has implicitly withdrawn or abandoned his/her review or appeal together with the rules on the procedure to be followed in these cases.⁵
3. Member States may lay down time limits for the court or tribunal to examine the decision of the determining authority.

¹ **I** : say "Member States lay down when necessary".

² **D** : delete the second part of this sub-paragraph.

³ **IRL/I** : this sub-paragraph could be deleted.

⁴ **L** : this sub-paragraph should be redrafted or deleted.

⁵ **B** : add that Member States shall communicate to the Commission the procedural rules of their competent administrative and judicial bodies.

CHAPTER V
General and final provisions

Article 42
Non-discrimination¹

Member States shall implement this Directive without discrimination on the basis of sex, race, nationality, membership of a particular social group, health, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinions, membership of a national minority, fortune, birth, disabilities, age or sexual orientation or country of origin.

Article 43
Penalties²

Member States shall lay down the penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all the measures necessary to ensure that they are enforced. The penalties laid down must be effective, proportionate and dissuasive. Member States shall notify those provisions to the Commission by no later than the date specified in Article 45 and shall notify it without delay of any subsequent amendments affecting them.

Article 44
Report

No later than two years after the date specified in Article 45, 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.

¹ **F** : this Article should be deleted and replaced by a recital.

² **D/E/F** : delete this Article.

UK : say "Member States may", otherwise delete this Article.

Article 45
Transposal

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 2005 at the latest.¹ They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Member States shall communicate to the Commission the text of the provisions of national law, which they adopt in the field covered by this Directive.

Article 46
Entry into force

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

Article 47
Addressees

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

Done at Brussels,

For the Council
The President

¹ NL : say 24 months after the date of its adoption.

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) continues to apply, consider that:

- “*determining authority*” provided for in Article 2(e) 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) 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 European Commission of any amendments to the provisions of section 17(1) of the Refugee Act 1996 (as amended).

PRINCIPLES WITH RESPECT TO THE DESIGNATION OF SAFE THIRD COUNTRIES¹

I. Requirements for designation

A country is considered as a safe third country if it fulfils, with respect to those foreign nationals or stateless persons to which the designation would apply, the following two requirements:

- A. it consistently observes the standards laid down in international law for the protection of refugees;
- B. it consistently observes basic standards laid down in international human rights law from which there may be no derogation in time of war or other public emergency threatening the life of the nation.

A. The standards laid down in international law for the protection of refugees

- 1) A safe third country is any country that has ratified the Geneva Convention, observes the provisions of that Convention with respect to the rights of persons who are recognised and admitted as refugees and has in place with respect to persons who wish to be recognised and admitted as refugees an asylum procedure in accordance with the following principles:
 - The asylum procedure is prescribed by law.²
 - Decisions on applications for asylum are taken objectively and impartially.
 - Applicants for asylum are allowed to remain at the border or on the territory of the country as long as the decision on their application for asylum has not been decided on.
 - Applicants for asylum have the right to a personal interview, where necessary with the assistance of an interpreter.

¹ **F/IRL/I/NL/UK** : these principles should be simplified in order to help proper implementation. Avoid the risk of having accelerated procedures more slow in functioning than the regular procedure.

² **NL/UK** : delete "by law".

- Applicants for asylum are not denied the opportunity to communicate with the UNHCR or other organisations that are working on behalf of the UNHCR pursuant to an agreement with this country.
 - There is provision for appeal to a higher administrative authority or to a court of law against the decision on each application for asylum or there is an effective possibility to have the decision reviewed.
 - The UNHCR or other organisations working on behalf of the UNHCR pursuant to an agreement with this country have, in general, access to asylum applicants and to the authorities to request information regarding individual applications, the course of the procedure and the decisions taken and, in the exercise of their supervisory responsibilities under Article 35 of the Geneva Convention, can make representations to these authorities regarding individual applications for asylum.
- 2) Notwithstanding the above, a country that has not ratified the Geneva Convention may still be considered a safe third country if:
- it consistently observes the principle of non-refoulement as laid down in the OAU Convention governing the specific aspects of refugee problems in Africa of 10 September 1969 and has in place with respect to the persons who request asylum for this purpose a procedure that is in accordance with the above-mentioned principles; or
 - it has followed the conclusions of the 19–22 November 1984 Cartagena Declaration of Refugees to ensure that national laws and regulations reflect the principles and criteria of the Geneva Convention and that a minimum standard of treatment for refugees is established; or¹
 - it nonetheless consistently observes in practice the standards laid down in the Geneva Convention with respect to the rights of persons in need of international protection within the meaning of this Convention and has in place with respect to the persons who wish to be so protected a procedure which is in accordance with the above-mentioned principles; or

¹ NL : a reference to the existence of a procedure in accordance with the above-mentioned principles should also be added here.

- as evinced by the UNHCR it complies in another manner with the need for international protection of these persons, either through cooperation with UNHCR or other organisations which may be working on behalf of the UNHCR or by other means deemed to be adequate for that purpose by the UNHCR.

For the purpose of part A a safe third country is also a country that has ratified the Geneva Convention and, while not having (yet) put in place a procedure in accordance with the principles under 1), nonetheless consistently observes in practice the standards laid down in the Geneva Convention with respect to the rights of persons in need of international protection within the meaning of this Convention as evinced by the UNHCR.

B. The basic standards laid down in international human rights law

- 1) Any country that has ratified either the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter referred to as ‘European Convention’) or both the 1966 International Covenant on Civil and Political Rights (hereafter referred to as ‘International Covenant’) and the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter referred to as ‘Convention against Torture’), and consistently observes the standards laid down therein with respect to the right to life, freedom from torture and cruel, inhuman or degrading treatment, freedom from slavery and servitude, the prohibition of retro-active criminal laws, the right to recognition as a person before the law, freedom from being imprisoned merely on the ground of inability to fulfil a contractual obligation and the right to freedom of thought, conscience and religion.
- 2) Observance of the standards for the purpose of designating a country as a safe third country also includes provision by that country of effective remedies that guarantee these foreign nationals or stateless persons from being removed in breach of Article 3 of the European Convention or Article 7 of the International Covenant and Article 3 of the Convention against Torture.

II. Procedure for designation

Every general assessment of the observance of these standards for the purpose of designating a country as a safe third country in general or with respect to certain foreign nationals or stateless persons in particular must be based on a range of sources of information, which may include reports from diplomatic missions, international and non-governmental organisations and press reports.

Member States may in particular take into consideration information from the UNHCR.

The report of the general assessment shall be in the public domain.

Where Member States solely assess in an individual decision the safety of a third country with respect to a particular applicant, such a decision need not be motivated on the basis of a general assessment as provided above.

PRINCIPLES¹ WITH RESPECT TO THE DESIGNATION OF SAFE COUNTRIES OF ORIGIN

I. Requirements for designation

A country is considered as a safe country of origin if it consistently² observes the basic standards laid down in international human rights law from which there may be no derogation in time of war or other public emergency threatening the life of the nation, and it:³

- A. has democratic structures and the following rights are consistently observed there: the right to freedom of thought, conscience and religion, the right to freedom of expression, the right to freedom of peaceful assembly, the right to freedom of associations with others, including the right to form and join trade unions and the right to take part in government directly or through freely chosen representatives;
- B. allows monitoring by international organisations and NGOs of its observance of human rights;⁴
- C. is governed by the rule of law⁵ and the following rights are consistently observed there: the right to liberty and security of person, the right to recognition as a person before the law and equality before the law;
- D. provides for generally effective remedies against violations of these civil and political rights and, where necessary, for extraordinary remedies;⁶
- E. is a stable country.⁷

¹ E : read "judgment elements" instead of "principles".

² F : delete "consistently".

³ F : modify the order in which these principles appear : first quote C. and then A. combined with B.

NL : add that these countries must be part of certain international Conventions (as in Annex II).

⁴ NL : this paragraph could be deleted.

⁵ I : in italian, refer to "Stati di diritto".

⁶ E : this paragraph could be deleted.

⁷ F/IRL/I/L/NL : this concept should be clarified or otherwise deleted.

II. Procedure for designation

Every general assessment of the observance of these standards for the purpose of designating a country as a safe country of origin must be based on a range of sources of information, which may include reports from diplomatic missions, international and non-governmental organisations and press reports. Member States may in particular take into consideration information from the UNHCR.

The report of the general assessment shall be in the public domain.

Where Member States solely assess in an individual decision the safety of a country of origin with respect to a particular applicant, such a decision need not be motivated on the basis of a general assessment as provided above.
