



**COUNCIL OF
THE EUROPEAN UNION**

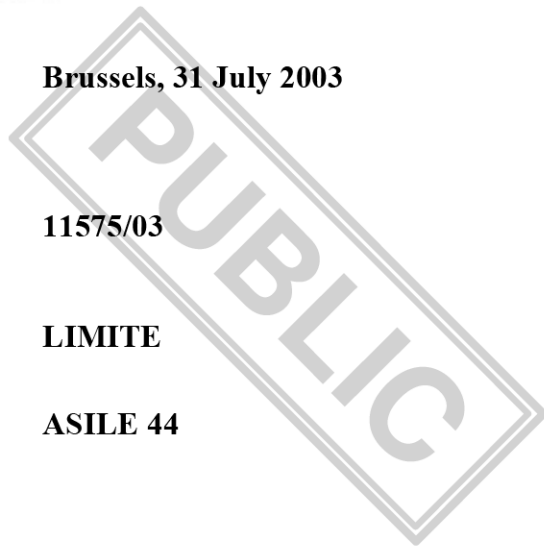
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NOTE

from : the Presidency

to : Asylum Working Party

on : 4 and 5 September 2003

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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 Articles 23 to 47 as they result from the work of the Asylum Working Party meeting on 15 and 16 July 2003, including some drafting changes suggested by the Presidency.

Changes to 11108/03 ASILE 42 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 instance¹

Section I

Article 23

Examination Procedure²

1. Member States shall process applications for asylum and the withdrawal of refugee status in an examination procedure in accordance with the basic principles and guarantees of Chapter II.

¹ The following Recitals will be added to the Preamble :
"The organisation of the processing of applications for asylum is left to the discretion of Member States, they may accordingly choose to prioritise or accelerate the processing of certain applications, in particular applications presumed to be inadmissible or unfounded, taking into account the standards in this Directive."
"Member States agree that it is in the interest of both themselves and applicants for asylum to decide as soon as possible on applications for asylum, they also agree that it is in the interest of Member States to have a common expression of this objective in the form of a non binding target for the time frame within which decisions should normally be taken, in particular as a first step towards a common asylum procedure."

² **B/NL/S** :scrutiny reservations:
- B : Council conclusions regarding this item should be respected.
- NL wants to keep the possibility of not having suspensive effect under accelerated procedures.
- S : avoid lowering the quality of the examination by the first instance.

2. Member States shall ensure that such a procedure is concluded as soon as possible¹, without prejudice to an adequate and complete examination.

Member States shall ensure that, when no decision can be taken within six months, the applicant concerned shall either be informed of the delay or receive, upon his/her request, information on the time-frame within which the decision on his/her application is to be expected.

3. **Member States may choose to prioritise or accelerate any examination in accordance with the basic principles and guarantees of Chapter II.**

¹ **B/Cion** : introduce a short time limit with few exceptions.

Article 23 A
Specific procedures

Member States may moreover provide for the following specific procedures **derogating from the basic principles and guarantees** of Chapter II:

- (a) a preliminary examination [...] for the purpose of processing cases considered within the framework of the provisions set out in Section IV;
- (b) procedures [...] 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.¹

Article 24
Time limits for an accelerated procedure

(deleted)

¹ F : add the following paragraph :
"2. Member States may also provide for a special examination procedure that meets the basic principles and guarantees set out in Chapter II in the following special circumstances:
(a) where the asylum application is deemed inadmissible pursuant to the provisions of Section II and with regard to 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) where the asylum application is deemed unfounded pursuant to the provisions of Section III and with regard to 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*]."

Section II

Article 25

Cases of inadmissible applications

1. **Where an application is considered inadmissible under this Article, Member States are not required to examine whether the applicant qualifies 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*].**

2. A Member State shall consider an application for asylum as inadmissible¹ and may reject it, if another State is responsible for examining the application according to the rules establishing criteria and mechanisms for determining which State is responsible for considering an application for asylum, unless that Member State examines an application for asylum even if such examination is not its responsibility under such criteria.

3. **In addition**, Member States may consider an application for asylum as inadmissible and may reject it 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 NL : scrutiny reservation concerning "inadmissibility" as ground for rejection of an application for asylum.

- (d) the applicant is allowed to remain in 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 elements³, 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*];
- (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 **NL** : add "or if the applicant is allowed to remain in the Member State concerned on some other grounds and which protect him/her against refoulement".

² **A** : add "from a Member State".

UK/Cion : considered that the adding wanted by A raised practical problems.

³ **FIN** : scrutiny reservation. It wondered whom and how would be evaluated in practice the submission of new elements.

⁴ **FIN** : scrutiny reservation. Rules concerning dependants should be further detailed.

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

- (a) he/she has been **recognised by that country or by UNHCR in** that country as a refugee, or
- (b) **he/she enjoys equivalent protection in that country,**

provided that he/she can still avail himself/herself of that protection and he/she can reasonably be expected to stay in that country.¹

¹ **B** : asked to consider the possibility for the Member States to exclude persons who stayed in a third country for a certain period (e.g. three months), who have not been forced to quit that country due to changes of the political regime and who have not been persecuted there in the sense of Article 1 of the Geneva Convention.

E : suggested the following alternative wording:

"A country could be considered as first country of asylum if the applicant has been recognised as refugee in that country or if he/she has the right to reside or to obtain asylum in it. In these cases, no danger to his/her life or freedom should exist, nor he/she should be exposed to torture or inhuman or degrading treatment and he/she should be effectively protected against refoulement in accordance with the Geneva Convention."

FIN : rules concerning possibilities of removal should be included here, along the lines suggested by E.

S : an individual examination of the application for asylum must be ensured in all cases.

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 entry into force 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 **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 content of Annexes II and III could be resumed and integrated in an Article containing some concise principles.

The Chair asked these delegations to submit a text for the next meeting.

³ **A/B/D/I/L** : designation of safe third countries should be done in a common basis, through the establishment of criteria, leading to a single list. Otherwise, there would be a risk of secondary movements between Member States. A mechanism allowing updating of the list should be established.

IRL/NL/UK : concerning safe third countries, a flexible mechanism should be established.

F/FIN/P/S : supported the Presidency draft. They were opposed to the establishment of any common list of safe third countries. They could only accept national lists in the Member States wishing to do so.

FIN/NL/S : wanted to preserve the possibility of having an individual assessment in all cases.

D/P : reservations 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, [...] ¹
 - (a) **the applicant has had or would have an opportunity to avail himself/herself of the protection of the authorities of that country; and** ²
 - (b) **this particular applicant will be admitted or re-admitted to this country.**

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 ³ that the application has not been examined in substance.

¹ **FIN/S/Cion** : an individual examination of the applications must be ensured. They were opposed to the deletion of the words "notwithstanding any list there are no grounds for considering that the country is not a safe third country, in the circumstances relating to that applicant."

UK : add cases where the applicant would be admitted to a part of a country when that part of the country complies with the principles set out in Annex II.

D/FIN/S : opposed to this UK suggestion.

² **D** : add "including by travelling through that country".

UK : add "or".

³ **NL**: add "insofar as this is applicable".

Section III

Article 29¹

Cases of unfounded applications

1. Member States **may only** reject an application for asylum as unfounded² if the determining authority has established that the applicant **does not qualify for refugee status pursuant to 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

¹ **D/L/UK** : this Article could be deleted and its content to be covered by Article 39.
IRL: scrutiny reservation due to ongoing changes in its national legislation. This Article supersedes provisions under Article 20
Cion : recalled that a short time-limit or at least a target, should be introduced in Article 23.

² **NL** : refer solely to rejection of applicants for asylum. See footnote under Article 25.

³ **B/E/F/L/P** : scrutiny reservations.

- **B** : the structure set up by the Council Conclusions of 6 and 7 December 2001 should be respected (see 15107/1/01 ASILE 59 REV 1).
- **B/E/F/L/P** : cases of unfoundedness now in Article 40 should also appear under Article 29 following the lines of the London Resolution on manifestly unfounded applications of 30 November and 1 December 1992.
- **P** : also reserved its position concerning the deletion of former paragraph 3.

FIN : the distinction between unfounded and manifestly unfounded applications should be reintroduced in order to differentiate cases to be treated under regular or under accelerated procedures.

2. Member States may **in particular** reject an application for asylum as unfounded if [...]
- (a) **the determining authority has established that the applicant in submitting his/her application and presenting the fact, has only raised issues that are not relevant or of minimal relevance¹ 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**
 - (b) **where, based on all information related to his/her case, the applicant clearly does not qualify as a refugee under 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];**
 - (c) **where the application for asylum is considered to be unfounded because the applicant is from a safe country of origin within the meaning of Articles 30 and 31 of this Directive.**

¹ **D/F/FIN/S/Cion** : scrutiny reservations. The criterion of "minimal relevance" introduces a subjective element. This is a substantial change in a provision which limits the suspensive effect of the appeal.

E/L : add cases where the application is manifestly inconsistent, contradictory or unlikely, following the wording of paragraph 6 (c) of the London Resolution.

A : add "or the fact as presented does not correspond to the actual situation".

² **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 : scrutiny reservation on the mandatory and exhaustive character of the subsequent list of reasons for rejecting an application.

Article 30

[National] designation of countries as safe countries of origin¹

1. **Without prejudice to Article 30A**, 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.²

¹ **A/B/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. There should always be an individual examination. **FIN** : parliamentary scrutiny reservation on this matter.

IRL/NL/UK : could accept a common list if it is a flexible one.

² **UK** : add the following paragraph :

"4. Member States may also designate part of a country as safe or designate a country as safe for a specified group of persons in that country where the conditions of Annex III are applicable to that part or group."

D/F/FIN/NL/P/S : scrutiny reservations on this UK suggestion. **D/F/FIN/S** considered that such a provision could lead to discriminations on the basis of sex, race, religion, etc.

Article 30A¹

1. **The Council may, acting by a qualified majority on a proposal from the Commission and after obtaining the assent of the European Parliament, adopt a common list of third countries that shall be regarded by all Member States as safe countries of origin in accordance with the principles set out in Annex III. When making its proposal, the Commission shall [also] make use of information from the Member States, the UNHCR, the Council of Europe and other relevant international organisations.**
2. **Member States shall reject an application for asylum as unfounded if, in accordance with Article 31, the applicant is from a country on the common list and if that country can be considered to be a safe country of origin for the particular applicant.**
3. **Once the Council decision under paragraph 1 takes effect, national designations of safe countries of origin pursuant to Article 30 which are incompatible with that decision, cease to apply.**
4. **The Council may, acting by a qualified majority on a proposal from the Commission and after obtaining the assent of the European Parliament, amend the common list adding or removing third countries, in accordance with the principles set out in Annex III. The Commission shall examine any request made by the Council or by a Member State that it submit a proposal to amend the common list.**

¹ **FIN** : scrutiny reservation concerning the establishment of national lists of safe countries of origin.
P : such a provision could raise difficulties linked to the Common Foreign Security Policy.
S : this Article would not be consistent with other provisions of this Directive, which is supposed to lay down common minimum standards and not a full harmonisation concerning some aspects only.

- 5. Where the Council requests the Commission to submit a proposal for removing a third country from the common list, the obligation of Member States pursuant to paragraph 2 shall be suspended with regard to this third country as of the day following the Council decision requesting such a submission.**

- 6. Where a Member State requests the Commission to submit a proposal to the Council for removing a third country from the 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 paragraph 2 shall be suspended with regard to the third country as of the day following the notification of the request to the Council.**

- 7. The European Parliament shall be informed of the suspensions under paragraphs 5 and 6.**

- 8. The suspensions under paragraphs 5 and 6 shall end after [three] months, unless the Commission makes a proposal, before the end of this period, to withdraw the third country from the common list. The suspensions shall end in any case where the Council rejects, by a qualified majority and after having obtained the assent of the European Parliament, a proposal by the Commission to withdraw the third country from the list.**

- 9. Upon request by the Council, the Commission shall report to the Council and the European Parliament on whether the situation of a country on the common list is still in conformity with the principles set out in Annex III. When presenting its report to the Council and the European Parliament, the Commission may make such recommendations or proposals as it deems appropriate.**

Article 31

Application of the safe country of origin concept

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) **(deleted)**¹

and **the applicant has not submitted any**² 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]*.

Article 31A

(deleted)

Article 31B

(deleted)

¹ **FIN/UK** : scrutiny reservations on the deletion of this paragraph. UK wanted to cover cases of persons being born in a safe country without having its nationality.

² **B/F/S** : scrutiny reservations. They expressed doubts on whether this should be covered by a procedures Directive.

Section IV

Article 32

(deleted)

Article 33

Cases of subsequent applications¹

1. Member States may apply a specific procedure 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 [...] decision has been **taken** on his/her previous application.² **Member States may decide to apply this procedure only after a final decision has been taken.**
2. A subsequent application for asylum shall be subject first 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, new elements **or findings** 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*] **have arisen**.³

¹ E/F/FIN/IRL/L/NL/S : scrutiny reservations.

² B : specify that it refers to decisions on the substance or relating to the refugee status.

³ D : read "have been presented by the applicant" instead of "have arisen".

3. **If such new elements have arisen and they indicate that a more favourable decision could be taken or could have been taken in relation to whether the applicant 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*], the application shall be further examined in conformity with Chapter II.**
4. **Member States may lay down in national law that a subsequent application shall be further examined if no new elements set out in paragraph 2 have arisen, provided there are other reasons indicating that a more favourable decision could be taken or could have been taken in relation to whether the applicant 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*].¹**
5. 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 and 4 in the previous procedure, in particular by filing an appeal before a court or tribunal.
6. This procedure may also be applicable in the case of 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 4 will consist of examining whether there are facts relating to the dependant's situation justifying a separate application.

¹ **B** : add the possibility of submitting elements of substance before an instance which is competent to take a decision concerning such elements of substance.

Article 33A

(deleted)¹

Article 34

Procedural rules

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. Member States may lay down in national law rules on the preliminary examination pursuant to Article 33. Those rules may inter alia:²
 - (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 of applicants for asylum to a new procedure impossible nor result in the effective annulment or severe curtailment of such access.

¹ **D** : reservation on the deletion of this Article which read "Member States may retain or adopt the procedure provided for in Article 33 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 to appear before the competent authorities at a specified time". (See Article 39(3)(b)(xi).

² **UK** : paragraph 2 is not necessary, since it repeats provisions under Article 9.

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 and of the possibilities of seeking an appeal or review of the decision;¹
- (b) 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 **D/UK** : scrutiny reservations linked to the final drafting of Chapter IV.

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 adoption² of this Directive, procedures derogating from the basic principles and guarantees described in Chapter II. [...]
 - (a) **in order to decide, at the border or in transit zones, on the application for asylum made at such locations before entry to the territory is permitted;**
 - (b) **where no such procedure is available, in order to decide, at the border or in transit zones, on the permission to enter their territory of applicants for asylum who have arrived and made an application for asylum at such locations.**

¹ **B** : there should be a possibility for the Member States for restraining the freedom of movements of those applicants who do not have the necessary documents establishing their identity. Some of the cases of the former version of Article 17 should be taken on board (see 9646/03 ASILE 31 ADD 1).

E : supported B. Those not having the necessary documents for entry the country may be kept in detention.

FIN : scrutiny reservation. In its country a specific border procedure does not exist. It wants to establish a link between Articles 35 and 40. Its definitive position will depend on whether accelerated procedures may be maintained within the framework of Article 39.

UK : parliamentary scrutiny reservation concerning this Article. In its country asylum seekers at the border are temporarily admitted in the territory. It is not clear whether such situations are covered by this provision.

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 **P** : refer to the date of transposal under Article 45.

2. These procedures shall ensure in particular that the persons concerned:
- **shall be allowed to remain in the Member State, as described in Article 6; and**
 - 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
 - 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 10¹ to 12; and
 - can consult a legal adviser or counsellor admitted as such under national law, as described in Article 13 (1); and
 - have a representative appointed in the case of unaccompanied minors, as described in Article 15 (1).

[...]

3. Member States shall ensure that a decision [...] in the framework of the procedures provided for in this Article 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.

4. **(deleted, see Article 38 (1) (d))**

¹ **F** : delete reference to Article 10.

5. **Where an application for asylum has been made in the framework of the procedures provided for in this Article under paragraph 1 (b) and permission to enter is refused, such a decision shall state the reasons in fact and in law as to whether the applicant qualifies as a refugee, as examined by authorities competent in the field of asylum and refugee law.¹**

6. **In case of a sudden arrival of third country nationals or stateless persons lodging an application for asylum at the border or in transit zones, a Member State may apply the specific procedure set out in this Article at other locations [, such as an accommodation centre in close proximity of the border], if [,due to this arrival,] it is no longer possible to comply with the standards laid down in Council Directive 2003/9/EC in the locations at the border or in transit zones referred to in paragraph 1.**

7. **Member States shall notify the Council and the Commission of the maintenance of the procedures referred to in this Article.**

¹ **F** : Reservation. This paragraph mixes up the concepts of entry into the territory, possibilities of removal and examination of the asylum applications and should be deleted.
P : add a new paragraph which could read either:
"This procedure can also be applicable to procedures that evaluate the admissibility or foundness of the asylum claims at the border, existing in accordance with laws or regulations in force at the time of the adoption of this Directive"; or
"This procedure can also be applicable to other kinds of border procedures existing in the Member States in accordance with laws or regulations in force at the time of the transposal of this Directive."

Article 35A¹

1. Member States may also² provide that a person requesting asylum with a border authority cannot be allowed to enter the territory 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 persecution in another third country³; or
 - (c) he poses a threat to the general public⁴, 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.⁵
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.

¹ Text proposed by **D**.

A/UK : support D text.

B/E/FIN/NL/P/S/Cion : cannot support this text since :

- it does not give any guarantees (including legal certainty) to those seeking asylum at the border (FIN/NL/P/S);
- cases of inadmissible or unfounded applications should also imply the prohibition of entry into the territory (E). Read "within the framework of a previous procedure for entry into the territory different from the asylum procedure".

F/I : scrutiny reservations. (F : positive scrutiny reservations concerning paragraphs 2, 3 and 4).

² **IRL** : delete the word "also" in order to avoid giving the impression that a link exist with the provisions of Article 35.

³ **IRL/FIN/NL** : this sub-paragraph is does not give any objective criteria.

B : this sub-paragraph contradicts the provisions of Article 34.

⁴ **F** : delete the rest of this sub-paragraph. Reference to public order should suffice.

⁵ **I** : this sub-paragraph seems to refer to cases of unfounded applications under Article 29 and does not have its place here.

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 paragraphs 1 to 3 of this Article. Articles 17 and 22 of this Directive apply accordingly.
5. When the removal of the applicant cannot be effected, Member States shall in any case apply the provisions of this Directive.

CHAPTER IV

Withdrawal procedures

Article 36

Withdrawal of refugee status¹

Member States shall ensure that an examination may be started to withdraw the refugee status of a particular person when **new elements [or findings] arise** indicating that² there are reasons to reconsider the validity of his/her refugee status.

Article 37

Procedural rules

1. **Member States shall ensure that, where the competent authority is considering to revoke, end or refuse to renew the refugee status of a third country national or stateless person in accordance with Article 14B 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*], 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 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 9 (1) (b) and Articles 10 to 12, reasons as to why his/her refugee status should not be revoked, end or not be renewed.**

¹ **B** : this Article is superfluous, given the new wording of Article 37(1).

² **UK** : delete "when new elements or findings arise".

In addition, Member States shall ensure that within the framework of such a procedure:¹

- (c) the competent authority is able to obtain precise and up to date information from various sources, such as information from the United Nations High Commissioner for Refugees (UNHCR), as to the general situation prevailing in the countries of origin of the persons concerned; and**
- (d) Where information is collected on the individual case for the purpose of reconsidering the refugee status, it is not obtained from the actor(s) of persecution in a manner that would result in such actor(s) being directly informed of the fact that the person concerned is a refugee, whose status is under reconsideration, nor jeopardize 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.**

Member States may derogate from Articles 9 (1) (b) and Articles 10 to 12 when it is technically impossible for the competent authority to comply with the provisions of those Articles.

Member States may also provide that, instead of a personal interview, the person concerned is requested to provide a written statement.²

- 2. Member States shall ensure that the decision of the competent authority to revoke, end or refuse to renew the refugee 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 decision³ shall be given in writing.**

¹ **D/E/F/FIN/NL/P/S** : scrutiny reservations.

UK : subparagraphs (c) and (d) are superfluous.

² **NL** : scrutiny reservation. An interview should be always possible for persons present in the Member State.

UK : delete this subparagraph and add in subparagraph (b) the possibility for the applicant to provide a written statement.

³ **UK** : reservation concerning the possibility of challenging the decision on withdrawal.

3. **Once the competent authority has taken the decision to revoke, end or refuse to renew the refugee status, Articles 13, paragraph 2, 14, paragraph 1 and 21 are equally applicable.**

4. **By derogation to paragraphs 1, 2 and 3, Member States may decide that the refugee status lapses by law in case of cessation in accordance with Article 13(1), subparagraphs (a), (b), (c) and (d) 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 if the refugee has unequivocally renounced his recognition as a person entitled to asylum.¹**

Article 37A

(deleted)

¹ **A/D** : scrutiny reservations.

CHAPTER V
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 before a court or tribunal **against the following :**
 - (a) a decision taken on their application for asylum **made in the territory, including at the border or in the transit zones;**⁴
 - (b) a refusal to re-open the examination of an application after its discontinuation pursuant to Articles 19 and 20;
 - (c) **a decision not to further examine the subsequent application pursuant to Articles 33 and 34;**
 - (d) **a decision refusing entry within the framework of the procedures provided for under Article 35 (1) (b);**
 - (e) a withdrawal of **the** refugee status.

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

A/EL/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 **S** : reservation. Add the possibility of not having appeals when security threats appear.

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.¹

Article 39

Suspensive effect of review and appeal proceedings

1. Member States shall allow applicants for asylum lodging an appeal before a court or tribunal against a decision taken in the examination 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 examination procedure by an administrative body prior to appeal before a court of law to remain in the territory of the Member State concerned pending its outcome.

2. **Member States may maintain national laws or regulations in force on the date of the adoption of this Directive, which derogate from the principle of the suspensive effect once the applicant has lodged an appeal or requested a review, or which apply the suspensive effect only upon a decision by a court or tribunal.**
3. **Member States may derogate from paragraph 1 by virtue of national legislation in the following cases:**
 - (a) **where the application for asylum is considered to be inadmissible; or**

¹ **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.

- (b) where the application is considered to be unfounded pursuant to Article 29 paragraph 1 and¹**
- (i) the applicant has² misled the authorities with respect to his/her identity and/or nationality and/or the authenticity of his/her documents, by presenting false information or documents or by withholding relevant information that could have had a negative impact on the decision or if the applicant has filed another application for asylum stating other personal data; or**
 - (ii) the applicant has not produced information to establish with a reasonable degree of certainty his/her identity or nationality, or, in bad faith, has destroyed or disposed of an identity or travel document that would have helped establish his/her identity or nationality; or**
 - (iii) 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 if most of the information provided is inconsistent, contradictory, unlikely or not substantiated; or**
 - (iv) the applicant has submitted a subsequent application raising no relevant new elements with respect to his/her particular circumstances or to the situation in his/her country of origin;³ or**

¹ **FIN/L/NL/S** : reservations. This provision would sanction important differences between procedures in the Member States.

NL : reservation. Suggests to replace paragraphs 1 and 2 by a new paragraph aiming to give Member States the choice between automatic suspensive effect or non suspensive effect combined with the possibility of a suspensive effect upon the request of the applicant.

² **NL** : scrutiny reservation on the deletion of the words "without good reason".

³ **S** : scrutiny reservation linked to paragraph 3(c).

- (v) **the applicant has failed without reasonable cause to make his/her application earlier, having had opportunity to do so; or¹**
- (vi) **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**
- (vii) **the applicant failed to comply with obligations referred to in Articles 7(1)(2) 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*], in Article 20(1) of this Directive, or has² severely failed to comply with his/her obligation under Article 9A(2)(a) and (b) of this Directive, unless he/she is not responsible for the violation of the obligations³; or**
- (viii) **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 and/or filed an application for asylum as soon as possible given the circumstances of his/her entry; or**

¹ **B** : sub-paragraphs (v), (viii), (x) and (xi) only refer to procedural aspects, with no relation to the unfounded character of the application. They should be put apart, as complementary elements.

² **UK** : read "or has, without good reason, failed to comply".

³ **NL**, supported by **IRL** and **UK** : maintain the reference to Article 9A(2)(a) and (b), but delete the words "or has severely failed to comply with his/her obligation... unless he/she is not responsible for the violation of the obligations".

- (ix) **the applicant is a danger to the security of the Member State or constitutes a danger to the community of that Member State,¹ or has been convicted by a final judgement of a particularly serious crime or the applicant has enforceable been expelled for serious reasons of public security and public order under national law; or²**
- (x) **the applicant refuses to comply with an obligation to have his/her fingerprints taken in accordance with relevant Community and/or national legislation; or**
- (xi) **the applicant, without good reason, fails either to go a reception centre or to appear before or to report to the competent authorities at a specified time;³ or**
- (c) **where the application is considered to be unfounded pursuant to Article 29 paragraph 2; or**
- (d) **where a subsequent application will not be further examined in conformity with Chapter II as referred to in Article 33; or**

¹ **FIN** : this sub-paragraph constitutes a new sanction for the asylum seekers. It should be deleted or further specified.

² **F** : suggested the following alternative wording:
"the applicant :

- is a danger to the security of the Member State or constitutes a danger to the community of that Member State, or
- has been convicted by a final judgement of a particularly serious crime, or
- has enforceable been expelled for serious reasons of public security and public order under national law; or"

³ **FIN** : scrutiny reservation.

B : delete this sub-paragraph. Sanctions for not appearing in a reception centre do not belong to this Directive.

D/NL : delete the words "or to appear before or to report to the competent authorities at a specified time".

E/FIN : add that this circumstance can only apply in cases where such a centre has being designated as a residence by the competent authorities.

A : add the following sub-paragraph:

"information concerning the persecution by an applicant who entered the territory of the

(e) where entry is refused within the framework of the procedures provided for under Article 35.

4. When [...] an applicant for asylum is not allowed to remain in the Member State concerned **according to paragraphs 2 and 3**, [...] Member States shall ensure that the court or tribunal has the competence to rule whether or not **this** applicant may, [...] ¹ **upon** ² **request of the applicant**, remain in the Member State concerned [...].

The request may be based upon

- (a) an appeal against a decision pursuant to this Directive; or
- (b) an appeal against an order to remove the applicant concerned following a decision pursuant to this Directive.³

¹ Member State obviously does not correspond to the actual situation".

¹ **D** : add that these appeals or reviews should be likely to be successful.

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

² **NL** : add "timely", since the applicant should not be allowed to remain in the Member State concerned if he did not make his request on time.

³ **IRL** : scrutiny reservation.

5. **No expulsion shall take place until the court or tribunal has ruled in the case referred to in paragraph 4. Member States may provide for an exception in the following cases:**¹
- (a) **where it has been decided that an application for asylum is inadmissible;[...]**²
 - (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;**³
 - (d) **where it has been decided that grounds of national security or public policy preclude the applicant for asylum from remaining at the border, airport or port transit zones or in the Member State concerned;**
 - (e) **where the applicant for asylum is from a safe country of origin within the meaning of Articles 30 and 31.**

Article 40

(deleted)

¹ **FIN/NL** : this provision goes too far and is difficult to accept.

² **NL** : refer only to Article 25 paragraphs 1 and 2 under (a), (e) and (f).

³ **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 VI
General and final provisions

Article 42
Non-discrimination

(deleted)¹

Article 43
Penalties

(deleted)

Article 43A
Confidentiality

Member States shall ensure that authorities implementing this Directive are bound by the confidentiality principle, as defined in the national law, in relation to any information they obtain in the course of their work.²

¹ The following Recital will be added to the Preamble:
"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."

² (Former paragraph 5 of Article 7).

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.

Article 45

Transposal

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [24 months after the date of its adoption] 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

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 [...] observes the standards laid down in international law for the protection of refugees;
- B. it [...] 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 formally prescribed.
 - 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 **The Chair** announced that a new simplified draft to be presented by **NL** and **UK** will be discussed at the next meeting of the Working Party. Such a text will specify that the removal of the person to a third country has to respect obligations under the Geneva Convention and under the European Convention for the Protection of Human Rights and Fundamental Freedoms.

- 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 [...] 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 procedure in compliance with the above mentioned principles as well as a minimum standard of treatment for refugees are established; or
 - it nonetheless [...] 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

- 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 [...] 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 [...] 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 where, **on the basis of the legal situation, the application of the law and the general political circumstances, it can be clearly shown that there is generally neither persecution as defined in Article 11 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]* nor serious harm as defined in Article 15 of the said Council Directive.**

To that end, the assessment of the legal situation, the application of the law and the general political circumstances shall [inter alia] take into account whether

- (a) the country is governed by the rule of law;**
- (b) it has democratic structures;**
- (c) it observes 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, in particular the rights from which derogation cannot be made under Article 15(2) of the said European Convention; and**
- (d) it provides for a system of effective remedies against violations of these rights and freedoms.**

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