



**COUNCIL OF  
THE EUROPEAN UNION**

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to : Permanent Representatives Committee / Council

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

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

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**I**

1. At its meeting on 29 April 2004, the Council reached a general approach on the above-mentioned proposal, subject to Parliamentary scrutiny reservations from the German, Netherlands, Swedish and United Kingdom delegations. Since then, the German, Swedish and United Kingdom delegations have lifted their reservations. The Council also instructed its bodies to pursue work in order to reach a solution concerning safe countries of origin.

In order to comply with the mandate of the Council, the Strategic Committee on Immigration, Frontiers and Asylum, the Asylum Working Party and the JHA Counsellors met on several occasions.

The solution reached consists on postponing the adoption of a minimum common list of safe countries of origin until after the adoption of the Directive. The Council would then establish the minimum common list acting by qualified majority on a proposal from the Commission and after consultation of the European Parliament. To this end, Recital 19 has been modified, former Recital 21 has been deleted and Article 30 has also been modified.

2. The Permanent Representatives Committee is invited to suggest that the Council, under part "A" of the agenda of a forthcoming session,
  - confirms the general approach as set out in part II of this note,
  - confirms its wish to reconsult the European Parliament on its general approach,
  - takes note of the Presidency note as set out in 14383/04 ASILE 65.

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**II**

**DRAFT**

Amended proposal for a

**COUNCIL DIRECTIVE**

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

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission<sup>1</sup>,

Having regard to the opinion of the European Parliament<sup>2</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>3</sup>,

Whereas:

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

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<sup>1</sup> OJ C 62, 27.2.01, p. 231 - OJ C 291, 26.11.02, p. 143.

<sup>2</sup> OJ C 77, 28.3.02, p. 94.

<sup>3</sup> OJ C 193, 10.7.01, p. 77.

- (2) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention of 28 July 1951 relating to the status of refugees, as supplemented by the New York Protocol of 31 January 1967 ("Geneva Convention"), thus affirming the principle of non-refoulement and ensuring that nobody is sent back to persecution.
- (3) The Tampere Conclusions provide that a Common European Asylum System should include in the short term common standards for fair and efficient asylum procedures in the Member States and in the longer term Community rules leading to a common asylum procedure in the European Community.
- (4) The present minimum standards on procedures in Member States for granting or withdrawing refugee status are therefore a first measure on asylum procedures.
- (5) The main objective of this Directive is to introduce a minimum framework in the European Community on procedures for granting and withdrawing refugee status.
- (6) The approximation of rules on the procedures for granting and withdrawing refugee status should help to limit the secondary movements of applicants for asylum between Member States, where such movement would be caused by differences in legal frameworks.
- (7) It is in the very nature of minimum standards that Member States should have the power to introduce or maintain more favourable provisions for third country nationals or stateless persons who ask for international protection from a Member State, where such a request is understood to be on the grounds that the person concerned is a refugee within the meaning of Article 1(A) of the Geneva Convention.

- (8) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.
- (9) 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.
- (10) It is essential that decisions on all applications for asylum be taken on the basis of the facts and, at the first instance, by authorities whose personnel has the appropriate knowledge or receives the necessary training in the field of asylum and refugee matters.
- (11) It is in the interest of both Member States and applicants for asylum to decide as soon as possible on applications for asylum. The organisation of the processing of applications for asylum is left to the discretion of Member States, so that they may, in accordance with their national needs, prioritise or accelerate the processing of any application, taking into account the standards in this Directive.
- (12) The notion of public order may cover a conviction for committing a serious crime.

- (13) In the interests of a correct recognition of those persons in need of protection as refugees within the meaning of Article 1 of the Geneva Convention, every applicant should, subject to certain exceptions, have an effective access to procedures, the opportunity to co-operate and properly communicate with the competent authorities so as to present the relevant facts of his/her case and sufficient procedural guarantees to pursue his/her case at and throughout all stages of the procedure. Moreover, the procedure in which an application for asylum is examined should normally provide an applicant at least with a right to stay pending a decision by the determining authority, access to the services of an interpreter for submitting his/her case if interviewed by the authorities, the opportunity to communicate with a representative of the United Nations High Commissioner for Refugees (UNHCR) or with any organisation working on its behalf, the right to appropriate notification of a decision, a motivation of that decision in fact and in law, the opportunity to consult a legal adviser or other counsellor, and the right to be informed of his/her legal position at decisive moments in the course of the procedure, in a language he/she can reasonably be supposed to understand.
- (14) In addition, specific procedural guarantees for unaccompanied minors should be laid down, because of their vulnerability. In this context, the best interests of the child should be a primary consideration of Member States.
- (15) Where an applicant makes a subsequent application without presenting new evidence or arguments, it would be disproportionate to oblige Member States to carry out a new full examination procedure. In these cases, Member States should have a choice amongst procedures involving exceptions to the guarantees normally enjoyed by the applicant.

- (16) Many asylum applications are made at the border or in a transit zone of a Member State prior to a decision on the entry of the applicant. Member States should be able to keep existing procedures adapted to the specific situation of these applicants at the border. Common rules should be defined on possible exceptions made in these circumstances to the guarantees normally enjoyed by applicants. Border procedures should mainly apply to those applicants who do not meet the conditions for entry into the territory of the Member States.
- (17) A key consideration for the well-foundedness of an asylum application is the safety of the applicant in his/her country of origin. Where a third country can be regarded as a safe country of origin, Member States should be able to designate it as safe and presume its safety for a particular applicant, unless he/she presents serious counter-indications.
- (18) Given the level of harmonisation achieved on the qualification of third country nationals and stateless persons as refugees, common criteria for designating third countries as safe countries of origin should be established.
- (19) Where the Council has satisfied itself that those criteria are met in relation to a particular country of origin, and has consequently included it in the minimum common list of safe countries of origin to be adopted pursuant to this Directive, Member States should be obliged to consider applications of persons with the nationality of that country, or of stateless persons formerly habitually resident in that country, on the basis of the rebuttable presumption of the safety of that country. In the light of the political importance of the designation of safe countries of origin, in particular in view of the implications of an assessment of the human rights situation in a country of origin and its implications for the policies of the European Union in the field of external relations, the Council should take any decisions on the establishment or amendment of the list, after consultation of the European Parliament.
- (20) It results from the status of Bulgaria and Romania as candidate countries for the accession to the European Union and the progress made by these countries for membership that they should be regarded as constituting safe countries of origin for the purposes of this Directive until the date of their accession to the European Union.

- (21) The designation of a third country as a safe country of origin for the purposes of this Directive cannot establish an absolute guarantee of safety for nationals of that country. By its very nature, the assessment underlying the designation can only take into account the general civil, legal and political circumstances in that country and whether actors of persecution, torture or inhuman or degrading treatment or punishment are subject to sanction in practice when found liable in the country concerned. For this reason, it is important that, where an applicant shows that there are serious reasons to consider the country not to be safe in his/her particular circumstances, the designation of the country as safe can no longer be considered relevant for him/her.
- (22) Member States should examine all applications on the substance, i.e. assess whether the applicant in question qualifies as a refugee in accordance with Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted,<sup>1</sup> except where this Directive provides otherwise, in particular where it can be reasonably assumed that another country would do the examination or provide sufficient protection. Especially, Member States should not be obliged to assess the substance of an asylum application where a first country of asylum has granted the applicant refugee status or otherwise sufficient protection and the applicant will be readmitted to this country.

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<sup>1</sup> OJ L 304, 30.9.2004, p. 12.

- (23) Member States should also not be obliged to assess the substance of an asylum application where the applicant, due to a connection to a third country as defined by national law, can reasonably be expected to seek protection in that third country. Member States should only proceed on this basis where this particular applicant would be safe in the third country concerned. In the interest of avoiding secondary movements of applicants, common principles for the consideration or designation by Member States of third countries as safe should be established.
- (24) Furthermore, with respect to certain European third countries, which observe particularly high human rights and refugee protection standards, Member States should be allowed to carry out no or no full examination of asylum applications regarding applicants who enter their territory from such European third countries. Given the potential consequences for the applicant of a restricted or omitted examination, this application of the safe third country concept should be restricted to cases involving third countries with respect to which the Council has satisfied itself that the high standards for the safety of the third country concerned, as set out in this Directive, are fulfilled. The Council should take decisions in this matter after consultation of the European Parliament.
- (25) It follows from the nature of the common standards concerning both safe third country concepts as set out in this Directive, that the practical effect of the concepts depends on whether the third country in question permits the applicant in question to enter its territory.
- (26) With respect to the withdrawal of refugee status, Member States shall ensure that the persons benefiting from the refugee status are duly informed of a possible reconsideration of their status and have the opportunity to submit their point of view before the authorities can take a motivated decision to withdraw their status. However, these guarantees can be dispensed with where the reasons for the cessation of the refugee status is not related to a change of the conditions on which the recognition was based.

- (27) It reflects a basic principle of Community law that the decisions taken on an application for asylum and on the withdrawal of a refugee status must be subject to an effective remedy before a court or tribunal in the meaning of Article 234 of the Treaty establishing the European Community. The effectiveness of the remedy, also with regard to the examination of the relevant facts, depends on the administrative and judicial system of each Member State seen as a whole.
- (28) In accordance with Article 64 of the Treaty establishing the European Community, this Directive does not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.
- (29) This Directive does not deal with procedures governed by Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member state responsible for examining an asylum application lodged in one of the Member States by a third country national.
- (30) The implementation of this Directive should be evaluated at regular intervals not exceeding two years.
- (31) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of the proposed action, namely to establish minimum standards on procedures in Member States for granting and withdrawing refugee status cannot be sufficiently attained by the Member States. They can therefore, by reason of the scale and effects of the action, be better achieved by the Community. This Directive confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose.
- (32) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom has notified, by letter of 24 January 2001, its wish to take part in the adoption and application of this Directive.

- (33) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Ireland has notified, by letter of 14 February 2001, its wish to take part in the adoption and application of this Directive.
- (34) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application,

HAS ADOPTED THIS DIRECTIVE,

## **CHAPTER I**

### **General provisions**

#### **Article 1**

##### **Purpose**

The purpose of this Directive is to establish minimum standards on procedures in Member States for granting and withdrawing refugee status.

#### **Article 2**

##### **Definitions**

For the purposes of this Directive:

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

- (b) "Application for asylum" means an application made by a third country national or stateless person which can be understood as a request for international protection from a Member State under the Geneva Convention. Any application for international protection is presumed to be an application for asylum, unless the person concerned explicitly requests another kind of protection that can be applied for separately;
- (c) "Applicant" or "applicant for asylum" means a third country national or stateless person who has made an application for asylum in respect of which a final decision has not yet been taken;
- (d) A final decision is a decision whether the third country national or stateless person be granted refugee status by virtue of Council Directive 2004/83/EC and which is no longer subject to a remedy within the framework of Chapter V irrespective of whether such remedy has the effect of allowing applicants to remain in the Member States concerned pending its outcome, subject to Annex III;
- (e) "Determining authority" means any quasi-judicial or administrative body in a Member State responsible for examining applications for asylum and competent to take decisions at first instance in such cases, subject to Annex I;
- (f) "Refugee" means a third country national or a stateless person who fulfils the requirements of Article 1 of the Geneva Convention as set out in Council Directive 2004/83/EC;

- (g) "Refugee Status" means the recognition by a Member State of a third country national or stateless person as a refugee;
- (h) "Unaccompanied minor" means a person below the age of eighteen who arrives in the territory of the Member States unaccompanied by an adult responsible for him/her whether by law or by custom, and for as long as he/she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he/she has entered the territory of the Member States;
- (i) "Representative" means a person acting on behalf of an organisation representing an unaccompanied minor as legal guardian, a person acting on behalf of a national organisation which is responsible for the care and well-being of minors, or any other appropriate representation appointed to ensure his/her best interests;
- (j) (deleted)
- (k) "Withdrawal of refugee status" means the decision by a competent authority to revoke, end or refuse to renew the refugee status of a person in accordance with Council Directive 2004/83/EC;
- (l) (deleted)
- (m) "Remain in the Member State" means to remain in the territory, including at the border or in transit zones of the Member State in which the application for asylum has been made or is being examined.

## **Article 3**

### **Scope**

1. This Directive shall apply to all applications for asylum made in the territory, including at the border, or in the transit zones of the Member States and to the withdrawal of refugee status.
2. This Directive shall not apply in cases of requests for diplomatic or territorial asylum submitted to representations of Member States.
3. Where Member States employ or introduce a procedure in which asylum applications are examined both as applications on the basis of the Geneva Convention, and as applications for other kinds of international protection as defined by Article 15 of Council Directive 2004/83/EC, they shall apply this Directive throughout their procedure.
4. Moreover, Member States may decide to apply this Directive in procedures for deciding on applications for any kind of international protection.

**Article 3A**  
**Responsible authorities**

1. Member States shall designate for all procedures a determining authority which will be responsible for an appropriate examination of the applications in accordance with the provisions of this Directive, in particular Articles 7(2) and 8.

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

2. However, Member States may provide that another authority is responsible in the following cases for the purpose of:
  - (a) processing cases in which it is considered to transfer the applicant to another State according to the rules establishing criteria and mechanisms for determining which state is responsible for considering an application for asylum, until such time as the transfer takes place or the requested State has refused to take charge or take over the applicant;
  - (b) taking a decision on the application in the light of national security provisions, provided a determining authority is consulted prior to this decision as to whether the applicant qualifies as a refugee by virtue of Council Directive 2004/83/EC;

- (c) conducting a preliminary examination pursuant to Article 33, provided this authority has access to the applicant's file regarding the previous application;
  - (d) processing cases in the framework of the procedures provided for in Article 35(1);
  - (e) refusing permission to enter in the framework of the procedure provided for in Article 35(2) to (5), subject to the conditions and as set out in these paragraphs;
  - (f) establishing that an applicant is seeking to enter or has entered in the Member State from a safe third country pursuant to Article 35A, subject to the conditions and as set out in this Article.
3. Member States shall ensure that where authorities are designated in accordance with paragraph 2, the personnel of such authorities have the appropriate knowledge or receive the necessary training to fulfil their obligations when implementing this Directive.

#### **Article 4**

##### **More favourable provisions**

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

**CHAPTER II**  
**Basic principles and guarantees**

**Article 5**  
**Access to the procedure**

1. Member States may require that applications for asylum be made in person and/or at a designated place.
2. Member States shall ensure that each adult having legal capacity has the right to make an application for asylum on his/her own behalf.
3. Member States may provide that an application may be made by an applicant on behalf of his/her dependants. In such cases Member States shall ensure that dependant adults consent to the lodging of the application on their behalf, failing which they shall have an opportunity to make an application on their own behalf.

Consent shall be requested at the time the application is lodged or, at the latest, when the personal interview with the dependant adult is conducted.

4. Member States may determine, in national legislation
  - (a) the cases in which a minor can make an application on his/her own behalf;
  - (b) the cases in which the application of an unaccompanied minor has to be lodged by a representative as provided for in Article 15(1)(a);
  - (c) the cases in which the lodging of an application for asylum is deemed to constitute also the lodging of an application for asylum for any unmarried minor.
5. Member States shall ensure that authorities likely to be addressed by someone who wishes to make an asylum application are able to advise that person how and where he/she may make such an application and/or may require these authorities to forward the application to the competent authority.

## **Article 6**

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

1. Applicants shall be allowed to remain in the Member State, for the sole purpose of the procedure, until such time as the determining authority has made a decision in accordance with the procedures at first instance set out in Chapter III. This right to remain shall not constitute an entitlement to a residence permit.
2. Member States can make an exception only where, in accordance with Articles 33 and 34, a subsequent application will not be further examined or where they will surrender or extradite, as appropriate, a person either to another Member State pursuant to obligations in accordance with a European Arrest Warrant or otherwise, or to a third country, or to international criminal courts or tribunals.

## Article 7

### Requirements for the examination of applications

1. Without prejudice to Article 23(4)(i), Member States shall ensure that applications for asylum are neither rejected nor excluded from examination on the sole ground that they have not been made as soon as possible.
2. Member States shall ensure that decisions by the determining authority on applications for asylum are taken after an appropriate examination. To that end, Member States shall ensure that
  - (a) applications are examined and decisions are taken individually, objectively and impartially;
  - (b) precise and up-to-date information is obtained from various sources, such as information from the United Nations High Commissioner for Refugees (UNHCR), as to the general situation prevailing in the countries of origin of applicants for asylum and, where necessary, in countries through which they have transited, and that such information is made available to the personnel responsible for examining applications and taking decisions;
  - (c) the personnel examining applications and taking the decisions have the knowledge with respect to relevant standards applicable in the field of asylum and refugee law.
3. The authorities referred to in Chapter V shall, through the determining authority or the applicant or otherwise, have access to the general information referred to in paragraph 2(b), necessary for the fulfilment of their task.
4. Member States may provide for rules concerning the translation of documents relevant for the examination of applications.

## Article 8

### Requirements for a decision by the determining authority

1. Member States shall ensure that decisions on applications for asylum are given in writing.
2. Member States shall also ensure that, where an application is rejected, the reasons in fact and in law are stated in the decision and information on how to challenge a negative decision is given in writing.

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

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

3. For the purposes of Article 5(3), and whenever the application is based on the same grounds, Member States may take one single decision, covering all dependants.

## Article 9

### Guarantees for applicants for asylum

1. With respect to the procedures provided for in Chapter III of this Directive, Member States shall ensure that all applicants for asylum enjoy the following guarantees:
  - (a) they must be informed in a language which they may reasonably be supposed to understand of the procedure to be followed and of their rights and obligations during the procedure and the possible consequences of not complying with their obligations and not co-operating with the authorities. They must be informed about the time-frame, as well as the means at their disposal to fulfil the obligation to submit the elements as referred to in Article 4 of Council Directive 2004/83/EC. The information must be given in time to enable them to exercise the rights guaranteed in this Directive and to comply with the obligations described in Article 9A;
  - (b) they must receive the services of an interpreter for submitting their case to the competent authorities whenever necessary. Member States shall consider it necessary to give these services at least when the determining authority calls upon the applicant to be interviewed as referred to in Articles 10 and 11 and appropriate communication cannot be ensured without such services. In this case and in other cases where the competent authorities call upon the applicant, the services shall be paid for out of public funds;
  - (c) they must not be denied the opportunity to communicate with the UNHCR or with any other organisation working on behalf of the UNHCR in the territory of the Member State pursuant to an agreement with that Member State;
  - (d) they must be given notice in reasonable time of the decision by the determining authority on their application for asylum. If a legal adviser or other counsellor is legally representing the applicant, Member States may choose to give notice of the decision to him/her instead of to the applicant for asylum;

- (e) they must be informed about the result of the decision by the determining authority in a language that they may reasonably be supposed to understand when they are not assisted or represented by a legal adviser or other counsellor and when free legal assistance is not available. The information provided shall include information on how to challenge a negative decision in accordance with the provisions of Article 8(2).
2. With respect to the procedures provided for in Chapter V, Member States shall ensure that all applicants for asylum enjoy equivalent guarantees to the ones listed in paragraph 1(b), (c) and (d).

**Article 9A**  
**Obligations of the applicants for asylum**

1. Member States may impose upon applicants for asylum obligations to cooperate with the competent authorities insofar as these obligations are necessary for the processing of the application.
  
2. In particular, Member States may provide that
  - (a) applicants for asylum are required to report to the competent authorities or to appear there in person, either without delay or at a specified time;
  - (b) applicants for asylum have to hand over documents in their possession relevant to the examination of the application, such as their passports; and
  - (c) applicants for asylum are required to inform the competent authorities of their current place of residence or address and inform them of change of this place of residence or address as soon as possible. Member States may provide that the applicant shall have to accept any communication at the most recent place of residence or address which he/she indicated accordingly;
  - (d) the competent authorities may search the applicant and the items he/she carries with him/her;
  - (e) the competent authorities may take a photograph of the applicant; and
  - (f) the competent authorities may record the applicant's oral statements, provided he/she has previously been informed thereof.

## Article 10

### Persons invited to a personal interview

1. Before a decision is taken by the determining authority, the applicant for asylum shall be given the opportunity of a personal interview on his/her application for asylum with a person competent under national law to conduct such an interview.

Member States may also give the opportunity of a personal interview to each adult among the dependants referred to in Article 5(3).

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

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

3. The personal interview may also be omitted, where it is not reasonably practicable, in particular where the competent authority is of the opinion that the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond his/her control. When in doubt, Member States may require a medical or psychological certificate.

Where the Member State does not provide the opportunity for a personal interview pursuant to this paragraph, or where applicable, to the dependant, reasonable efforts must be made to allow the applicant or the dependant to submit further information.

4. The absence of a personal interview in accordance with this Article shall not prevent the determining authority from taking a decision on an application for asylum.
5. The absence of a personal interview pursuant to paragraph 2(b) and (c) and paragraph 3 shall not adversely affect the decision of the determining authority.
6. Irrespective of Article 20 (1), Member States, when deciding on the application for asylum, may take into account the fact that the applicant failed to appear for the personal interview, unless he or she had good reasons for the failure to appear.

## Article 11

### Requirements for a personal interview

1. A personal interview shall normally take place without the presence of family members unless the determining authority considers it necessary for an appropriate examination to have other family members present.
2. A personal interview must take place under conditions which ensure appropriate confidentiality.
3. Member States shall take appropriate steps to ensure that personal interviews are conducted in conditions which allow applicants to present the grounds for their applications in a comprehensive manner. To that end, Member States shall
  - (a) ensure that the person who conducts the interview is sufficiently competent to take account of the personal or general circumstances surrounding the application, including the applicant's cultural origin or vulnerability, insofar as it is possible to do so, and
  - (b) select an interpreter who is able to ensure appropriate communication between the applicant and the person who conducts the interview. The communication need not necessarily take place in the language preferred by the applicant for asylum if there is another language which he/she may reasonably be supposed to understand and in which he/she is able to communicate in.
4. Member States may provide for rules concerning the presence of third parties at the personal interview.
5. This Article is also applicable to the meeting referred to in Article 10(2)(b).

## Article 12

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

1. Member States shall ensure that a written report is made of every personal interview, containing at least the essential information regarding the application, as presented by the applicant, in terms of Article 4(2) of Council Directive 2004/83/EC.
2. Member States shall ensure that applicants have timely access to the report of the personal interview. Where access is only granted after the decision of the determining authority, Member States shall ensure that access is possible as soon as necessary for allowing an appeal to be prepared and lodged in due time.
3. Member states may request the applicant's approval on the contents of the report of the personal interview.

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

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

4. This Article is also applicable to the meeting referred to in Article 10(2)(b).

## Article 13

### Right to legal assistance and representation

1. Member States shall allow applicants for asylum at their own cost the opportunity to consult in an effective manner a legal adviser or other counsellor, admitted or permitted as such under national law, on matters relating to their asylum applications.
2. In the event of a negative decision by a determining authority, Member States shall ensure that free legal assistance and/or representation be granted on request subject to the provisions of paragraph 3.
3. Member States may provide in their national legislation that free legal assistance and/or representation be granted :
  - (a) only for the procedures before a court or tribunal in accordance with Chapter V and not to any onward appeals or reviews provided for under national law, including a rehearing of an appeal following an onward appeal or review; and/or
  - (b) only to those who lack sufficient resources; and/or
  - (c) only to legal advisers or other counsellors specifically designated by national law to assist and/or represent applicants for asylum; and/or
  - (d) only if the appeal or review is likely to succeed.

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

4. Rules concerning the modalities for filing and processing such requests may be provided by Member States.
5. Moreover, Member States may
  - (a) impose monetary and/or time limits on the provision of free legal assistance and /or representation provided that such limits do not arbitrarily restrict access to legal assistance and/or representation.
  - (b) provide that, as regards fees and other costs, the treatment shall not be more favourable than the treatment generally accorded to their nationals in matters pertaining to legal assistance.
6. Member States may demand to be reimbursed wholly or partially for any expenses granted if and when the applicant's financial situation has improved considerably or if the decision to grant such benefits was taken on the basis of false information supplied by the applicant.

## Article 14

### Scope of legal assistance and representation

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

Member States may make an exception where disclosure of information or sources would jeopardise national security, the security of the organisations or persons providing the information or the security of the person(s) to whom the information relates or where the investigative interests relating to the examination of applications of asylum by the competent authorities of the Member States or the international relations of the Member States would be compromised. In these cases, access to the information or sources in question must be available to the authorities referred to in Chapter V, except where such access is precluded in national security cases.

2. Member States shall ensure that the legal adviser or other counsellor who assists or represents an applicant for asylum has access to closed areas, such as detention facilities and transit zones, for the purpose of consulting that applicant. Member States may only limit the possibility to visit applicants in closed areas where such limitation is, by virtue of national legislation, objectively necessary for the security, public order or administrative management of the area or to ensure an efficient examination of the application, provided that access by the legal adviser or other counsellor is not thereby severely limited or rendered impossible.

3. Member States may provide rules covering the presence of legal advisers or other counsellors at all interviews in the procedure, without prejudice to this Article or to Article 15(1)(b).
4. Member States may provide that the applicant is allowed to bring with him/her to the personal interview the legal adviser or other counsellor, admitted as such under national law.

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

The absence of the legal adviser or other counsellor shall not prevent the competent authority from conducting the personal interview with the applicant.

## Article 15

### Guarantees for unaccompanied minors

1. With respect to all procedures provided for in this Directive and without prejudice to the provisions of Articles 10 and 12, Member States shall :
  - (a) as soon as possible take measures to ensure that a representative represents and/or assists the unaccompanied minor with respect to the examination of the application. This representative can also be the representative referred to in Article 19 of Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers;
  - (b) ensure that the representative is given the opportunity to inform the unaccompanied minor about the meaning and possible consequences of the personal interview and, where appropriate, how to prepare himself/herself for the personal interview. Member States shall allow the representative to be present at that interview and to ask questions or make comments, within the framework set by the person who conducts the interview.

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

2. Member States may refrain from appointing a representative where the unaccompanied minor:
  - (a) will in all likelihood reach the age of maturity before a decision at first instance is taken;  
or
  - (b) can avail himself, free of charge, of a legal adviser or other counsellor, admitted as such under national law to fulfil the tasks assigned above to the representative; or
  - (c) is married or has been married.
3. Member States may, in accordance with laws and regulations in force at the time of the adoption of this Directive, also refrain from appointing a representative where the unaccompanied minor is 16 years old or older, unless he/she is unable to pursue his/her application without a representative.
4. Member States shall ensure that:
  - (a) if an unaccompanied minor has a personal interview on his/her application for asylum as referred to in Articles 10, 11 and 12, that interview is conducted by a person who has the necessary knowledge of the special needs of minors;
  - (b) an official who has the necessary knowledge of the special needs of minors prepares the decision by the determining authority on the application of an unaccompanied minor.

5. Member States may use medical examinations to determine the age of unaccompanied minors within the framework of the examination of an application for asylum.

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

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

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

6. The best interests of the child shall be a primary consideration for Member States when implementing the provisions of this Article.

## **Article 16**

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## **Article 17**

### **Detention**

1. Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum.
2. Where an applicant for asylum is held in detention, Member States shall ensure that there is the possibility of speedy judicial review.

## **Article 18**

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## **Article 19**

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

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

## Article 20

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

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

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

- (a) he/she has failed to respond to requests to provide information essential to his/her application in terms of Article 4 of Council Directive 2004/83/EC or has not appeared for an personal interview as provided for in Articles 10, 11 and 12, unless the applicant demonstrates within a reasonable time that his failure was due to circumstances beyond his control;
- (b) he/she has absconded or left without authorisation the place where he/she lived or was held, without contacting the competent authority within a reasonable time or he/she has not within a reasonable time complied with reporting duties or other obligations to communicate.

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

2. Member States shall ensure that the applicant who reports again to the competent authority after a decision to discontinue as referred to in paragraph 1 is taken, is entitled to request that his/her case be re-opened, unless the request is examined in accordance with Articles 33 and 34.

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

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

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

**Article 21**  
**The role of UNHCR**

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

## Article 22

### Collection of information on individual cases

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

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

**CHAPTER III**  
**Procedures at first instance**

**Section I**

**Article 23**  
**Examination procedure**

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

Member States shall ensure that, when no decision can be taken within six months,

- (a) the applicant concerned shall either be informed of the delay or
  - (b) receive, upon his/her request, information on the time-frame within which the decision on his/her application is to be expected. Such information shall not constitute an obligation for the Member State towards the applicant concerned to take a decision within that time frame.
3. Member States may prioritise or accelerate any examination in accordance with the basic principles and guarantees of Chapter II including where the application is likely to be well-founded or where the applicant has special needs.

4. Moreover, Member States may lay down that an examination procedure in accordance with the basic principles and guarantees of Chapter II be prioritised or accelerated if:
- (a) the applicant in submitting his/her application and presenting the fact, has only raised issues that are not relevant or of minimal relevance to the examination of whether he/she qualifies as a refugee by virtue of Council Directive 2004/83/EC; or
  - (b) the applicant clearly does not qualify as a refugee or for refugee status in a Member State under Council Directive 2004/83/EC; or
  - (c) 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, 30A and 30B of this Directive, or
    - because the country which is not a Member State is considered to be a safe third country for the applicant, without prejudice to Article 29(1); or
  - (d) the applicant has misled the authorities by presenting false information or documents or by withholding relevant information or documents with respect to his/her identity and/or nationality that could have had a negative impact on the decision; or
  - (e) the applicant has filed another application for asylum stating other personal data; or

- (f) the applicant has not produced information to establish with a reasonable degree of certainty his/her identity or nationality, or, it is likely that, in bad faith, he/she has destroyed or disposed of an identity or travel document that would have helped establish his/her identity or nationality; or
- (g) the applicant has made inconsistent, contradictory, unlikely or insufficient representations which make his/her claim clearly unconvincing in relation to his/her having being the object of persecution under Council Directive 2004/83/EC; or
- (h) 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; or
- (i) the applicant has failed without reasonable cause to make his/her application earlier, having had opportunity to do so; or
- (j) the applicant is making an application merely in order to delay or frustrate the enforcement of an earlier or imminent decision which would result in his/her removal; or
- (k) the applicant failed without good reasons to comply with obligations referred to in Articles 4(1) and (2) of Council Directive 2004/83/EC or in Articles 9A(2)(a) and (b) and 20(1) of this Directive; or

- (l) the applicant entered the territory of the Member State unlawfully or prolonged his/her stay unlawfully and, without good reason, has either not presented himself/herself to the authorities and/or filed an application for asylum as soon as possible given the circumstances of his/her entry; or
- (m) the applicant is a danger to the national security or the public order of the Member State; or the applicant has enforceably been expelled for serious reasons of public security and public order under national law; or
- (n) the applicant refuses to comply with an obligation to have his/her fingerprints taken in accordance with relevant Community and/or national legislation; or
- (o) the application was made by an unmarried minor to whom Article 5(4)(c) applies after the application of the parents or parent responsible for the minor has been rejected by a decision and no relevant new elements were raised with respect to his/her particular circumstances or to the situation in his/her country of origin.

**Article 24**  
**Specific procedures**

1. 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 processing cases considered within the framework set out in Section V.
  
2. Member States may also provide a derogation in respect of Section VI.

## **Section II**

### **Article 25**

#### **Cases of inadmissible applications**

1. In addition to cases in which an application is not examined in accordance with the provisions of Council Regulation 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national, Member States are not required to examine whether the applicant qualifies as a refugee in accordance with Council Directive 2004/83/EC where an application is considered inadmissible pursuant to the present Article.
2. Member States may consider an application for asylum as inadmissible pursuant to this Article if:
  - (a) another Member State has granted refugee status;
  - (b) a country which is not a Member State is considered as a first country of asylum for the applicant, pursuant to Article 26;
  - (c) a country which is not a Member State is considered as a safe third country for the applicant, pursuant to Article 27;

- (d) the applicant is allowed to remain in the Member State concerned on some other ground and as result of this he/she has been granted a status equivalent to the rights and benefits of the refugee status by virtue of Council Directive 2004/83/EC;
- (e) the applicant is allowed to remain in the territory of the Member State concerned on some other grounds which protect him/her against refoulement pending the outcome of a procedure for the determination of a status pursuant to (d);
- (f) the applicant has lodged an identical application after a final decision;
- (g) 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.

## Article 26

### Application of the concept of first country of asylum

A country can be considered to be a first country of asylum for a particular applicant for asylum if

- (a) he/she has been recognised in that country as a refugee and he/she can still avail himself/herself of that protection, or
- (b) he/she enjoys otherwise sufficient protection in that country, including benefiting from the principle of non-refoulement,

provided that he/she will be re-admitted to that country.

In applying the concept of first country of asylum to the particular circumstances of an applicant for asylum, Member States may take into account the content of Article 27(1).

## Article 27

### The safe third country concept

1. Member States may apply the safe third country concept only where the competent authorities are satisfied that a person seeking asylum will be treated in accordance with the following principles in the third country concerned:
  - (a) life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion; and
  - (b) the principle of non-refoulement in accordance with the Geneva Convention is respected; and
  - (c) the prohibition on removal in breach of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law is respected; and
  - (d) the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention.
2. The application of the safe third country concept shall be subject to rules laid down in national legislation, including:
  - (a) rules requiring a connection between the person seeking asylum and the third country concerned based on which it would be reasonable for that person to go to that country;

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

### **Article 28**

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### **Section III**

#### **Article 29**

#### **Cases of unfounded applications**

1. Without prejudice to Articles 19 and 20, Member States may only consider an application for asylum as unfounded if the determining authority has established that the applicant does not qualify for refugee status pursuant to Council Directive 2004/83/EC.
2. In the cases mentioned in Article 23(4)(b) and in cases of unfounded applications for asylum in which any of the circumstances listed in Article 23(4)(a) and (c) to (o) apply, Member States may also consider an application, if it is so defined in the national legislation, as manifestly unfounded.

## Article 30

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

1. The Council shall, acting by a qualified majority on a proposal from the Commission and after consultation of the European Parliament, adopt a minimum common list of third countries that shall be regarded by Member States as safe countries of origin in accordance with Annex II.
2. The Council may, acting by a qualified majority on a proposal from the Commission and after consultation of the European Parliament, amend the minimum common list by adding or removing third countries, in accordance with Annex II. The Commission shall examine any request made by the Council or by a Member State that it submit a proposal to amend the minimum common list.
3. When making its proposal under paragraphs 1 or 2, the Commission shall make use of information from the Member States, its own information and, where necessary, information from UNHCR, the Council of Europe and other relevant international organisations.
4. Where the Council requests the Commission to submit a proposal for removing a third country from the minimum common list, the obligation of Member States pursuant to Article 30B(2) shall be suspended with regard to this third country as of the day following the Council decision requesting such a submission.
5. Where a Member State requests the Commission to submit a proposal to the Council for removing a third country from the minimum common list, that Member State shall notify the Council in writing of the request made to the Commission. The obligation of this Member State pursuant to Article 30B(2) shall be suspended with regard to the third country as of the day following the notification of the request to the Council.

6. The European Parliament shall be informed of the suspensions under paragraphs 4 and 5.
7. The suspensions under paragraphs 4 and 5 shall end after three months, unless the Commission makes a proposal, before the end of this period, to withdraw the third country from the minimum common list. The suspensions shall end in any case where the Council rejects, a proposal by the Commission to withdraw the third country from the list.
8. Upon request by the Council, the Commission shall report to the Council and the European Parliament on whether the situation of a country on the minimum common list is still in conformity with Annex II. When presenting its report to the Council and the European Parliament, the Commission may make such recommendations or proposals as it deems appropriate.

## **Article 30A**

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

1. Without prejudice to Article 30, Member States may retain or introduce legislation that allows, in accordance with Annex II, for the national designation of third countries other than those appearing on the minimum common list, as safe countries of origin for the purpose of examining applications for asylum. This may include designation of part of a country as safe where the conditions in Annex II are fulfilled in relation to that part.
  
2. By derogation to paragraph 1, Member States may retain legislation in force at the time of adoption of this Directive that allows for the national designation of third countries, other than those appearing on the minimum common list, as safe countries of origin for the purposes of examining applications for asylum where they are satisfied that persons in the third countries concerned are generally neither subject to:
  - (a) persecution as defined in Article 9 of Council Directive 2004/83/EC; nor
  
  - (b) torture or inhuman or degrading treatment or punishment.

3. Member States may also retain legislation in force at the time of the adoption of this Directive that allows for the national designation of part of a country as safe or a country or part of a country as safe for a specified group of persons in that country where the conditions in paragraph 2 are fulfilled in relation to that part or group.
4. In assessing whether a country is a safe country of origin in accordance with paragraphs 2 and 3, Member States shall have regard to the legal situation, the application of the law and the general political circumstances in the third country concerned.
5. The assessment of whether a country is a safe country of origin in accordance with this Article shall be based on a range of sources of information, including in particular information from other Member States, the UNHCR, the Council of Europe and other relevant international organisations.
6. Member States shall notify to the Commission the countries that are designated as safe countries of origin in accordance with the provisions of this Article.

## **Article 30B**

### **Application of the safe country of origin concept**

1. A third country designated as a safe country of origin either in accordance with the provisions of Article 30 or 30A can, after an individual examination of the application, be considered as a safe country of origin for a particular applicant for asylum only if:
  - (a) he/she has the nationality of that country or,
  - (b) he/she is a stateless person and was formerly habitually resident in that country;and he/she has not submitted any serious grounds for considering the country not to be a safe country of origin in his/her particular circumstances in terms of his/her qualification as a refugee in accordance with Council Directive 2004/83/EC.
2. Member States shall, in accordance with paragraph 1, consider the application for asylum as unfounded where the third country is designated as safe pursuant to Article 30.
3. Member States shall lay down in national legislation further rules and modalities for the application of the safe country of origin concept.

## **Article 31**

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## **Section IV**

### **Article 32**

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### **Article 33**

#### **Cases of subsequent applications**

1. Where a person who has applied for asylum in a Member State makes further representations or a subsequent application in the same Member State, that Member State may examine these further representations or the elements of the subsequent application in the framework of the examination of the previous application or in the framework of the examination of the decision under review or appeal insofar as the competent authorities can take into account and consider all the elements underlying the further representations or subsequent application within this framework.
2. Moreover, Member States may apply a specific procedure as referred to in paragraph 3, 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 the previous application. Member States may also decide to apply this procedure only after a final decision has been taken.
3. 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 decision referred to in paragraph 2(b) 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 2004/83/EC have arisen or have been presented by the applicant.

4. If, following the preliminary examination referred to in paragraph 3, new elements or findings arise or are presented by the applicant which significantly add to the likelihood of the applicant qualifying as a refugee by virtue of Council Directive 2004/83/EC, the application shall be further examined in conformity with Chapter II.
5. Member States may, in accordance with national legislation, further examine a subsequent application where there are other reasons according to which a procedure has to be reopened.
6. Member States may decide to further examine the application only if the applicant concerned was, through no fault of his/her own, incapable of asserting the situations set forth in paragraphs 3, 4 and 5 in the previous procedure, in particular by exercising his/her right to an effective remedy pursuant to Article 38.
7. 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 3 will consist of examining whether there are facts relating to the dependant's situation justifying a separate application.

### **Article 33A**

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.

**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:
  - (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.

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;
  - (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.

## **Section V**

### **Article 35**

#### **Cases of border procedures**

1. Member States may provide for procedures, in accordance with the basic principles and guarantees of Chapter II, in order to decide, at the border or transit zones of the Member State, on the applications made at such locations.
2. However, when procedures as set out in paragraph 1 do not exist, Member States may maintain, subject to the provisions of this Article and in accordance with the laws or regulations in force 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 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.

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

- shall be allowed to remain at the border or transit zones of the Member State, without prejudice to 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 10 to 12; and
- can consult a legal adviser or counsellor admitted or permitted 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), unless Article 15(2) or (3) applies.

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

4. Member States shall ensure that a decision in the framework of the procedures provided for in paragraph 2 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.
  
5. In the event of particular types of arrivals or arrivals involving a large number of third country nationals or stateless persons lodging applications for asylum at the border or in a transit zone, which makes it practically impossible to apply there the provisions of paragraph 1 or the specific procedure set out in paragraphs 2 and 3, those procedures may also be applied where and for as long as these third country nationals or stateless persons are accommodated normally at locations in proximity to the border or transit zone.

## Section VI

### Article 35A

1. Member States may provide that no, or no full, examination of the asylum application and of the safety of the applicant in his/her particular circumstances as described in Chapter II takes place in cases where a competent authority has established, on the basis of the facts, that the applicant for asylum is seeking to enter or has entered illegally into its territory from a safe third country according to paragraph 2.
2. A third country can only be considered as a safe third country for the purpose of paragraph 1 where:
  - (a) it has ratified and observes the provisions of the Geneva Convention without any geographical limitations; and
  - (b) it has in place an asylum procedure prescribed by law; and
  - (c) it has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms and it observes its provisions, including the standards relating to effective remedies; and
  - (d) it has been so designated by the Council in accordance with paragraph 3.
3. The Council shall, acting by qualified majority on the proposal of the Commission and after consultation of the European Parliament, adopt or amend a common list of third countries that shall be regarded as safe third countries for the purposes of paragraph 1.

4. Member States concerned shall lay down in national law the modalities for implementing the provisions of paragraph 1 and the consequences of decisions pursuant to those provisions in accordance with the principle of non-refoulement under the Geneva Convention including providing for exceptions from the application of this Article for humanitarian or political reasons or for reasons of public international law.
5. When implementing a decision solely based on this Article, Member States concerned shall:
  - (a) inform the applicant accordingly; and
  - (b) provide him/her with a document informing the authorities of the third country, in the language of that country, that the application has not been examined in substance.
6. Where the safe third country does not readmit the applicant for asylum in question, Member States shall ensure that access to a procedure is given in accordance with the basic principles and guarantees described in Chapter II.
7. Member States which have designated third countries as safe countries in accordance with national legislation in force at the date of the adoption of this Directive and on the basis of the criteria in paragraph 2(a) to (c), may apply paragraph 1 to these third countries until such time as the Council has adopted the common list pursuant to paragraph 3.

## **CHAPTER IV**

### **Procedures for the withdrawal of refugee status**

#### **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 new elements or findings arise indicating that 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 withdraw the refugee status of a third country national or stateless person in accordance with Article 14 of Council Directive 2004/83/EC, 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 or in a written statement, reasons as to why his/her refugee status should not be withdrawn.

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

- (c) the competent authority is able to obtain precise and up to date information from various sources, such as, where appropriate, 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 jeopardise the physical integrity of the person and his/her dependants, or the liberty and security of his/her family members still living in the country of origin.
2. Member States shall ensure that the decision of the competent authority to withdraw the refugee status is given in writing. The reasons in fact and in law shall be stated in the decision and information on how to challenge the decision shall be given in writing.
  3. Once the competent authority has taken the decision to withdraw the refugee 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 11(1), sub-paragraphs (a), (b), (c) and (d) of Council Directive 2004/83/EC or if the refugee has unequivocally renounced his/her recognition as a refugee.

**CHAPTER V**  
**Appeals procedures**

**Article 38**  
**The right to an effective remedy**

1. Member States shall ensure that applicants for asylum have the right to an effective remedy before a court or tribunal, against the following:
  - (a) a decision taken on their application for asylum, including a decision:
    - (i) to consider an application inadmissible pursuant to Article 25(2),
    - (ii) at the border or in the transit zones of a Member State as described in Article 35(1);
    - (iii) not to conduct an examination pursuant to Article 35A;
  - (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 (2);
  - (e) a decision for the withdrawal of the refugee status pursuant to Article 37.
2. Member States shall provide for time limits and other necessary rules for the applicant to exercise his/her right to an effective remedy pursuant to paragraph 1.
3. Member States shall, where appropriate, provide for rules in accordance with their international obligations dealing with:

- (a) the question of whether the remedy pursuant to paragraph 1 shall have the effect of allowing applicants to remain in the Member State concerned pending its outcome; and
  - (b) the possibility of legal remedy or protective measures where the remedy pursuant to paragraph 1 does not have the effect of allowing applicants to remain in the Member State concerned pending its outcome. Member States may also provide for an ex officio remedy; and
  - (c) the grounds of challenge to a decision under Article 25(2)(c) in accordance with the methodology applied under Article 27(2)(b) and (c).
4. Member States may lay down time limits for the court or tribunal pursuant to paragraph 1 to examine the decision of the determining authority.

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

### **Article 39**

(deleted)

### **Article 40**

(deleted)

**CHAPTER VI**  
**General and final provisions**

**Article 40A**

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

**Article 41**  
**Confidentiality**

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

## **Article 42**

### **Report**

No later than two years after the date specified in Article 43, 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 43**

### **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]. Concerning Article 13, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [36 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 43A**

### **Transition**

Member States shall apply the laws, regulations and administrative provisions set out in Article 43 to applications for asylum lodged after [date mentioned in Article 43] and to procedures for the withdrawal of refugee status started after [date mentioned in Article 43].

## **Article 44**

### **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 45**

### **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*

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**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).

**DESIGNATION OF SAFE COUNTRIES OF ORIGIN FOR THE PURPOSES OF ARTICLES 30 AND 30A(1)**

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

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

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

**DEFINITION OF “APPLICANT” OR “APPLICANT FOR ASYLUM”**

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

The “appellant” shall be entitled to the same guarantees as an “applicant” or an “applicant for asylum” as set out in the Directive for the purposes of exercising his/her right to an effective remedy in Chapter V.

Spain will notify the European Commission of any relevant amendments to the above mentioned Act.

Draft statements to the Council minutes

1. Re Article 3

"**The Council** is of the view that the Member States which apply the provisions of Article 3(3) of the Directive can, where they suspend an examination of an application for asylum in accordance with Article 17 of Council Directive 2001/55/EC (on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof), also suspend the examination of the application for other kinds of international protection covered by the procedure referred to in Article 3(3) until such time as that suspension no longer applies."

2. Re Article 27

"In adopting this Directive **the Council** recognises, having regard to the differing legal and constitutional traditions, that the rights of individuals are safeguarded in Member States according to their varying administrative, judicial and legal systems."

3. Re Article 30

"**The Council** invites the Commission to submit, as soon as this Directive has entered into force, a proposal allowing the Council to adopt a minimum common list of third countries that shall be regarded by Member States as safe countries of origin."

4. Re Annex II to the Directive

"**The Council** stresses its support for the abolition of the death penalty, as expressed in Protocols No. 6 and 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms. However, the Council recognises that ceasing to impose and execute the death penalty is a significant step towards abolishing the death penalty and encourages countries to continue their progress towards this end."