



**COUNCIL OF
THE EUROPEAN UNION**

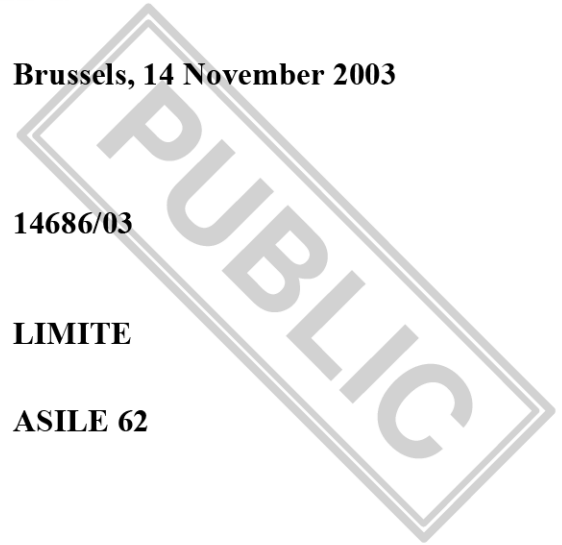
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NOTE

from : Presidency

to : Strategic Committee on Immigration, Frontiers and Asylum

on : 18 November 2003

No. prev.doc. : 14330/03 ASILE 60

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

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

I

Delegations will find attached the text of the above-mentioned proposal as it results from the work of the Asylum Working Party meeting on 13 and 14 November 2003, including some drafting changes suggested by the Presidency.

Changes to 14330/03 ASILE 60 are in bold. Delegations comments are set out in the footnotes (concerning footnotes to Articles 1 to 22, changes to 10235/03 ASILE 35 are also in bold).

The Strategic Committee is invited to examine the following provisions :

- Article 33 (cases of subsequent applications),
- Articles 38 and 39 (appeals procedures),
- Safe third countries (former Articles 27, 28 and Annex II and Article 35A. New Presidency compromise suggestions are set out in the addendum to this note).

II

Amended proposal for a

COUNCIL DIRECTIVE

**On minimum standards on procedures in Member States for granting and withdrawing
refugee status¹**

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;

¹ NL/UK : parliamentary scrutiny reservations.

- (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.¹ 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 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*] and which is no longer subject to an appeal within the framework of Chapter V;²
- (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(A)³ of the Geneva Convention as set out in 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 NL : delete the words "under the Geneva Convention".

² B : reservation.

³ UK, supported by E : read sub-paragraph (f) as follows :

"(f) "Refugee" has the same meaning as Article 2(c) 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*]".

D/Cion : scrutiny reservations on the UK suggestion.

- (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 .../...*[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]*;
- (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

Scope¹

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
2. This Directive shall not apply in cases of requests for diplomatic or territorial asylum submitted to representations of Member States.³
3. Member States may decide to apply this Directive in procedures for deciding on applications for kinds of international protection other than that emanating from the Geneva Convention.

¹ **F/FIN/NL/S** : Member States should be obliged to apply the provisions of this Directive to all persons in need of international protection and not only to those requesting protection under the Geneva Convention. **In order to resolve this issue, NL supported by S, suggested the following alternative wording of paragraph 3 :**

"Member States which employ or introduce a procedure in which asylum applications are regarded not only as applications on the basis of the Geneva Convention, but also as applications for other kinds of international protection, shall apply this Directive throughout their procedure. Other Member States may decide to apply this Directive in procedures for deciding on applications for kinds of international protection other than that emanating from the Geneva Convention."

F/FIN/P : scrutiny reservations on the NL suggestion.

A/D/IRL : reservations on the NL suggestion.

E : instead of referring to "other kinds of international protection", NL text should refer to "subsidiary protection".

² **A/D** : scrutiny reservations linked to Article 35A.

³ **UK** : scrutiny reservation. It will submit an alternative text.

Article 3A
Responsible authorities¹

- 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).**

- 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 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*];**

 - (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;**

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

[(f) establishing that an applicant is seeking to enter or has entered in the Member State from a neighbouring 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 the applicant are instructed 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.¹ 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.²

¹ E : scrutiny reservation linked to Article 2(d).

² **UK, supported by E : add a new paragraph to allow Member States to extradite or surrender a person without determining the asylum application, while respecting the European Arrest Warrant or requests by the International Criminal Court.**

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.¹
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.

¹ **D** : scrutiny reservation linked to Article 33A.

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. They shall also ensure that if 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.¹
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.

¹

NL : add :

"Member States may choose not to state the reasons for the rejection in the decision where the applicant is granted a status which offers the same rights and benefits as 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].

In these cases, Member States shall ensure that the reasons for the rejection are stated in the applicant's file."

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 cooperating 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 7 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 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 Articles 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.
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 determining authority is able to reject the application as inadmissible pursuant to Article 25(2); or
 - (c) 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 7(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].¹*

¹ **F : add the following sub-paragraph :**
"(d) the determining authority considers the application as unfounded in the cases mentioned in Article 23(4)(b) and in the cases where the circumstances mentioned in Article 23(4)(a), (c), (g) and (h) 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)(c).

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 7(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]*.
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)(c).

Article 13

Right to legal assistance and representation

1. Member States shall allow applicants for asylum 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.¹
2. In the event of a negative decision by a determining authority, Member States shall ensure² that free legal assistance and/or representation be granted on request, **under the same conditions as the ones provided for with respect to the nationals of the Member States concerned**, subject to the provisions of this paragraph.³

Member States may choose to grant this legal assistance and/or representation

- (a) only for the appeal procedures; and/or
- (b) only to those who lack sufficient resources; and/or
- (c) only if the appeal or review is likely to succeed; and/or
- (d) only to legal advisers or other counsellors specifically designated by national law to assist and/or represent applicants for asylum.

Member States shall ensure that legal assistance and/or representation granted under sub-paragraph (c) is not arbitrarily restricted.

¹ **UK : add : "This does not constitute an obligation on Member States to pay for assistance."**

Cion : in order to resolve UK problem, a Recital could be added to the Preamble explaining the system of legal assistance provided for in this Article.

² **A : add : "subject to their availability under national law."**

³ **A/EL/NL : scrutiny reservations.**

F : reservation.

**D/F : limit the granting of free legal assistance to persons having entered legally the territory of the Member States. To this end, F suggested to add the following sub-paragraph :
"(e) only to those who usually reside or have legally entered in the territory of the Member States, unless the applicant's situation is worth special consideration."**

¹Member States may further provide that, as regards the reimbursement of fees and other cost, the treatment shall not be more favourable than the treatment generally accorded to their nationals in matters pertaining to legal assistance.

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.

¹ **UK, supported by A : start this sub-paragraph with the following sentence : "Member States shall be entitled to set limits (whether by reference to time, cost or otherwise) on the amount of such assistance or representation when granted," (rest unchanged).**

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.¹

3. 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.

¹ **D : add the following sub-paragraph :**
"(d) is 16 years old or elder".
S : reservation on the D adding.

4. 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 minors, 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.

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

Article 16

(deleted)

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

(deleted)

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 application¹

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 .../... [*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*].

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 7 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 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.

¹ NL : reservation linked to Article 3.

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 jeopardize 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 instance¹

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.²

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

² **F** : scrutiny reservation linked to the final drafting of Chapter II.

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:¹
- (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 .../... [*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
 - (b) the applicant clearly does not qualify as a refugee or for refugee status in a Member State 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*]; 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; or²
 - (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

¹ A : scrutiny reservation linked to the deletion of former paragraph 5, Article 39.

F : scrutiny reservation linked to the final drafting of Chapter II.

² F, supported by A : read this sub-paragraph as follows :

"(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; 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 .../... [*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 ¹
- (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 7(1) and (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*] 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**²
- (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 [...] ³ 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

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.⁴

¹ F : linguistic reservation.

² S : scrutiny reservation.

The following Recital will be added to the Preamble :

"Whereas the notion of public order may cover a conviction for committing a serious crime."

³ D : reinsert the word "final".

⁴ F : add the following sub-paragraph :

"(c) procedures for the purpose of processing cases, within the framework of the provisions of Section III."

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 inadmissible, 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 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;

- (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 .../... [*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*];
- (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).**¹
- (f) the applicant has lodged a subsequent application after a final decision and he/she does not submit new elements or findings, having occurred after the 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*];²
- (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.

¹ D/NL : scrutiny reservations.

² Cion : this sub-paragraph should be deleted as it is already inserted under Article 39(2)(e).

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 by that country or by UNHCR 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, where he/she can benefit 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 Annex II.

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 Annex II.²

¹ **D** : scrutiny reservation.

E : add cases concerning certain communities which may be sure in some countries which have not ratified the Geneva Convention.

FIN : scrutiny reservation.

UK : scrutiny reservation concerning Articles 27 and 28 and Annex II.

² **E** : read : "in accordance with the criteria set out in Article 28."

UK : This paragraph should read :

"1. A Member State may consider or designate a country as a safe third country where it fulfils one or both of the following criteria :

- (a) observes the standards laid down in international law for the protection of refugees with respect to the principle of non-refoulement;
- (b) observes basic standards laid down in international human rights law relevant to the prohibition of the removal of persons."

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 28.¹
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 entry into force of this Directive, as well as any subsequent relevant amendments.

¹ **A/D/NL** : 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. **NL** : such a mechanism should be flexible.

F/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. **F** : could also envisage a common list in another context.

UK : this paragraph should read :

- "2. Member States may retain or introduce legislation that allows for the designation by law or regulation of countries as safe third countries
- (a) where a Member State does not designate a country as safe by Parliamentary Act or national legislation, it shall consider whether the two above criteria will be observed in relation to the particular applicant before considering the country as safe for that applicant;
 - (b) where a Member State designates a country as safe in its legislation on the basis of one of the above criteria, it shall consider whether the other criteria will be observed in relation to the particular applicant before considering it as safe for that applicant;
 - (c) where a Member State designates a country as safe in its legislation on the basis of both the above criteria, there needs to be no individual examination other than that provided for in Article 28."

UK : add the following new paragraph before paragraph 3 :

"Member States may also designate part of a country as safe or designate a country, or part of a country as safe for a specified group of persons."

Article 28

Application of the safe third country concept¹

1. A country that is a safe third country in accordance with Annex II² can only be considered as a safe third country for a particular applicant for asylum if:³
 - (a) the applicant has⁴ an opportunity to avail himself/herself of the effective⁵ protection of the authorities of that country; and⁶
 - (b) this particular applicant will be admitted or re-admitted to this country.⁷

¹ **D** : scrutiny reservation.

E : add the following paragraph at the beginning of this Article :

"Member States may consider that an applicant for asylum comes from a safe third country if he/she has the right to obtain asylum or he/she could have requested protection in this country.

In any case, the applicant cannot be exposed in this third country to any danger for his/her life or freedom, neither be subjected to inhuman or degrading treatment and, as granted in the Geneva Convention, it must have an effective protection against refoulement to the persecuting country."

(**E** : Annex II should be deleted).

² **E** : delete "that is a safe country in accordance with Annex II".

³ **A/D** : scrutiny reservations linked to Article 35A.

S : reservation. An individual examination of the application must be ensured in all cases.

UK : this paragraph should read :

"1. A country that is a safe third country may be considered as a safe third country for an applicant if he/she :

- (a) has an opportunity to avail himself/herself of protection in that country; or
- (b) is admissible to it."

UK : add the new following new paragraph before paragraph 2 :

"Member States may assume that the applicant has an opportunity to avail himself/herself of the protection of the authorities of a country if he/she has travelled through that country."

⁴ **D** : read "has had" instead of "has".

⁵ **S** : delete "effective".

⁶ **A/IRL/NL/UK** : add "or".

Cion, supported by **B/D/F/FIN/S**, opposed to such an adding.

⁷ **Cion**, supported by **IRL/UK** : add the following paragraph :

"Member States need not examine whether the country is a safe third country in the particular circumstances of the applicant, where the Member State has designated the third country as a safe third country by parliamentary act or by national legislation in accordance with Article 27 paragraph 2."

B/D/NL/S : scrutiny reservations on this suggestion. **S** : an individual examination of the application must be ensured in all cases.

2. Member States may assume that the applicant has an opportunity to avail himself/herself of the protection of the authorities of a country if he/she has travelled through that country and he/she has had an effective opportunity to apply for asylum.¹
3. When implementing a decision based solely on this concept, Member States shall :
 - (a) inform the applicant accordingly; and
 - (b) provide him/her with a document in the language of the third country informing the authorities of that country that the application has not been examined in substance.

¹ A/NL/UK : scrutiny reservations.

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 .../... [*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. 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 and may apply rules under Article 39(3)(b).

Article 30
Safe countries of origin

1. A third country can be designated as a safe country of origin for the purpose of examining applications for asylum only in accordance with Annex III.

2. A third country that is designated as a safe country of origin in accordance with the criteria set out in Annex III 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 was formerly habitually resident in that country;

and the applicant has not submitted any 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]*.

3. Without prejudice to Article 30B, Member States shall, in accordance with paragraph 2, consider the application for asylum as unfounded where the third country is designated by the Council as safe pursuant to Article 30A.

Article 30A

Minimum common list of third countries as safe countries of origin¹

1. The Council may, 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 III. When making its proposal, 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.
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 III. 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. 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 30(3) shall be suspended with regard to this third country as of the day following the Council decision requesting such a submission.
4. 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 30(3) shall be suspended with regard to the third country as of the day following the notification of the request to the Council.

¹ **The Chair** recalls that following the JHA Council meeting on 2 October 2003, the Commission was charged to draft a first minimum common list of safe countries of origin to be attached to this Directive. Consequently, if such a list is agreed, some drafting changes to this Article will be needed.

5. The European Parliament shall be informed of the suspensions under paragraphs 3 and 4.
6. The suspensions under paragraphs 3 and 4 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.
7. 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 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 30B

National designation of third countries as safe countries of origin

1. Without prejudice to Article 30A, Member States may retain or introduce legislation 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 purpose of examining applications for asylum.
2. Member States shall assess whether a third country can be designated by them as a safe country of origin in accordance with Annex III on the basis of 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.
3. Member States which, at the date of entry into force of this Directive, have in force laws or regulations designating third 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.
4. Member States shall notify to the Commission as soon as possible any introduction of laws or regulations designating third countries as safe countries of origin after the entry into force of this Directive, as well as any subsequent relevant amendments.¹

Article 31

(deleted)

¹ **UK** : add the following paragraph :
"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."

Section IV

Article 32

(deleted)

Article 33

Cases of subsequent applications¹

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 subsequent application in the framework of the examination of the previous application, 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. 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 1(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 .../... *[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 or have been presented by the applicant.

¹ S : scrutiny reservation linked to its reservation to Article 38(1)(c).

3. If, following the preliminary examination referred to in paragraph 2, 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 .../... [*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, in accordance with national legislation, further examine a subsequent application where there are other reasons according to which a procedure has to be reopened.
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 2, 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 2 will consist of examining whether there are facts relating to the dependant's situation justifying a separate application.

Article 33A

(deleted)¹

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".

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;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 UK : scrutiny reservation linked to the final drafting of Chapter V.

Section V

Article 35

Cases of border procedures¹

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.

¹ **UK** : parliamentary scrutiny reservation concerning this Article.

A/D : reservations linked to Article 35A.

The following Recital will be added to the Preamble :

"Whereas border procedures mainly apply to those applicants which do not meet the conditions for entry into the territory of the Member States."

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) 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 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, 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.

Article 35A¹

1. Member States may **maintain in accordance with the laws in force at the time of adoption of this Directive** ² procedures which forsake an examination as described in Chapter II 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 in the Member State from a neighbouring safe third country.

2. A third country can only be considered as a safe third country for the purpose of paragraph 1 if it
 - (a) observes the provisions in the Geneva Convention or the Protocol to the Geneva Convention with respect to the principle of non-refoulement and the rights of persons who are recognised and admitted as refugees; and
 - (b) has in place an asylum procedure prescribed by law; and
 - (c) observes the standards laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms, including the standards relating to effective remedies; and³has been so designated by an act of parliament or with the consent of parliament by national legislation.⁴

3. Where the third state 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.

¹ **F/S** : reservations.

² **A/D** : reservations.

³ **D** : add the following cases to paragraph 2 :

- when it is obvious that the person was safe from persecution in another third country;
- when the applicant poses a threat to the general public, because he has non-appealably been punished with imprisonment of at least three years in the Member State on account of a particularly serious criminal offence and where his leaving the Member State did not take place more than three years ago.

⁴ **P** : read : "has been so designated in accordance with national legislation".

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 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 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 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.

[...]

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 decision¹ 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 13(1), sub-paragraphs (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/her recognition as a refugee.

¹ UK : scrutiny reservation linked to the final drafting of Chapter V.

CHAPTER V
Appeals procedures¹

Article 38
The right to an effective remedy

1. Member States shall ensure that applicants for asylum have the right to an effective remedy, [...] ² before a court or tribunal against the following : ³
 - (a) a decision taken on their application for asylum made in the territory of the Member State, including at its border or in its transit zones as described in Article 35(1); 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; ⁵
 - (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.

¹ **A/IRL** : scrutiny reservation on the entire Chapter.

EL/UK : reservations on the entire Chapter.

P : linguistic reservation on the entire Chapter.

² **P** : scrutiny reservation on the deletion of "including".

³ **EL** : scrutiny reservation on paragraph 1.

D : scrutiny reservation on this paragraph linked to the final drafting of Article 35A.

The following Recital will be added to the Preamble :

"It reflects a basic principle of Community law that the decisions taken on an application for asylum must be subject to an effective remedy before a court or tribunal in the meaning of Article 234 TEC. The effectiveness of the remedy depends on the administrative and judicial system of each Member State seen as a whole."

⁴ **UK** : inadmissible applications should not be included under the scope in sub-paragraph (a).

⁵ **S/UK** : reservations. An important number of appeals could be involved, the application of this sub-paragraph should be limited.

2. Member States shall ensure that the effective remedy referred to in paragraph 1 includes the possibility of an examination on both relevant facts and points of law. If the relevant facts have been the subject of an independent [...] review, Member States may provide that the examination of facts by a court or tribunal may be limited to at least an examination of the reasonableness of the decision under review, ensuring that it does not proceed from a manifest error of the appraisal of facts.¹

3. Where an applicant has been granted a status which offers the same rights and benefits as 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*], Member States may provide the effective remedy only from the moment the person is no longer entitled to that status.

¹ **EL** : scrutiny reservation.
A : delete the words "If the relevant facts have been the subject of an independent review".
NL/UK : would prefer the deletion of paragraph 2. (NL could also accept the solution wanted by A).
In order to resolve this issue, **the Chair** suggested to delete the second sentence of paragraph 2 and to modify the draft Recital re Article 38 (currently in footnote to paragraph 1) as follows :
"It reflects a basic principle of Community law that the decisions taken on an application for asylum must be subject to an effective remedy before a court or tribunal in the meaning of Article 234 TEC. 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."

Article 39

Right to remain during review and appeal procedures¹

1. When an applicant for asylum lodges an appeal or requests a review according to Article 38, Member States:
 - (a) shall allow him/her to remain in the Member State concerned pending its outcome; or
 - (b) shall ensure that a court or tribunal has the competence to rule upon request of the applicant for asylum lodging an appeal or requesting a review whether or not he/she may remain in the Member State concerned pending its outcome.

2. In applying the provisions mentioned in paragraph 1(a), Member States may derogate from it, by virtue of national legislation, in the following cases:
 - (a) where the application for asylum is considered to be inadmissible; or
 - (b) where the application is considered to be unfounded pursuant to Article 29(1) and any of the cases listed in Article 23(4) apply; or
 - (c) where the application for asylum is considered to be unfounded pursuant to Article 29(1) and has been rejected within four weeks **following its submission; 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/IRL/NL/UK/Cion** : scrutiny reservations.
S : reservation. Appeals should always have a suspensive effect.

- (e) where the applicant has lodged a subsequent application after a final decision and he/she does not submit new elements or findings, having accrued 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*]; or¹
- (f) where the application is rejected or entry is refused within the framework of the procedures provided for under Article 35; or
- (g) where the review has not been requested or the appeal has not been lodged within the time limits provided for in national law; or
- (h) where the applicant for asylum has been or is detained with a view to deportation in accordance with Article 5 ECHR; or²

provided that the applicant has the right to request a court or tribunal of the Member State concerned to decide that he or she be allowed to remain.³

[...]⁴

¹ **A/UK** : scrutiny reservations. (UK scrutiny reservation is linked to Article 38(1)(c)).

² **The Chair** suggested the following alternative text :

"(h) where, at the time of his/her request of review or appeal, the applicant for asylum is detained with a view to deportation."

NL : scrutiny reservation on this suggestion.

³ **D** : add the following : "In cases under Article 39(2)(d) an expulsion may take place before a decision by a court has been obtained." Also add the following paragraph :

"Member States may also derogate in the cases of Article 35A".

⁴ **Cion** : opposed to the deletion of former paragraph 4. It considered necessary to add some drafting covering cases under Article 9(1)(e).

A/Cion : scrutiny reservations on the deletion of former paragraph 5. At least two derogations should be inserted under paragraph 3 regarding "Dublin" cases and repeated appeals.

Article 40

Time limits and scope of the examination in review or appeal

1. Member States shall provide for:
 - (a) time limits for giving notice of appeal or judicial review and, where applicable, for requesting an administrative review **if this is provided for with respect to the nationals of the Member States;**¹
 - (b) all other necessary rules for lodging an appeal or requesting a judicial review and, where applicable, for requesting an administrative review;
 - (c) 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.
2. Member States may lay down in national legislation 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.
3. Member States may lay down time limits for the court or tribunal to examine the decision of the determining authority.

¹ **FIN** : read :
"(a) time limits for lodging an appeal or requesting a judicial review and, where applicable, for requesting an administrative review".

CHAPTER VI
General and final provisions¹

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.

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."

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] 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(1) to applications for asylum lodged as from [date mentioned in Article 43(1)] and to procedures for the withdrawal of refugee status started as from [date mentioned in Article 43(1)].¹

¹ D/E : scrutiny reservations.

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

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 THIRD COUNTRIES¹

In considering whether a country is a safe third country with regard to those foreign nationals or stateless persons to which the designation would apply, regard shall be had to whether it

- (a) observes the standards laid down in international law for the protection of refugees and
- (b) observes basic standards laid down in international human rights law relevant to the prohibition of the removal of refugees and persons seeking asylum.

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

A safe third country is any country that has ratified the Geneva Convention and observes the provisions of that Convention with respect to the² rights of persons who are recognised and admitted as refugees.

¹ **D** : wanted an introduction similar to the one which appears under Annex III. The Chair will provide a text in this sense for the next meeting of the Asylum Working Party.

E : this Annex should be deleted (see its draft suggestion to Article 28).

UK : add cases where part of a country may be considered as a safe third country.

² **UK** : read : "principle of non-refoulement" (rest deleted).

Notwithstanding the above, a country that has not ratified the Geneva Convention may still be considered a safe third country if¹

- (a) it observes in practice the standards laid down in the Geneva Convention with respect to the² rights of persons in need of international protection within the meaning of this Convention; or
- (b) 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.

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

A safe third country is any country that has ratified the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter referred to as ‘European Convention’) or³ the 1966 International Covenant on Civil and Political Rights (hereafter referred to as ‘International Covenant’) or the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter referred to as ‘Convention against Torture’), observes the standards laid down therein with respect to the right to life, freedom from torture and cruel, inhuman or degrading treatment, and provides effective remedies against foreign nationals or stateless persons from being removed in breach of Article 3 of the European Convention or Article 7 of the International Covenant or Article 3 of the Convention against Torture.

¹ **D** : reservation linked to Article 35A.

FIN : This sub-paragraph could be deleted.

² **UK** : read "principle of non-refoulement" (rest deleted).

³ **D** : reservation linked to Article 35A.

Notwithstanding the above, a country that has not ratified the European Convention or the International Covenant or the Convention against Torture may still be considered to be a safe third country if it observes in practice the standards laid down in International Human Rights Law with respect to the right to life, freedom from torture and cruel, inhuman or degrading treatment, and provides effective remedies against foreign nationals or stateless persons from being removed in breach of Article 3 of the European Convention or Article 7 of the International Covenant or Article 3 of the Convention against Torture.¹

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◦ ◦

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.

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.

¹ **D** : scrutiny reservation.

DESIGNATION OF SAFE COUNTRIES OF ORIGIN¹

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 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.

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.

¹ S : parliamentary scrutiny reservation.
UK : scrutiny reservation.