



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 17 March 2003

**Interinstitutional File:
2000/0238 (CNS)**

7214/03

LIMITE

ASILE 14

PUBLIC

OUTCOME OF PROCEEDINGS

of : Asylum Working Party

on : 27-28 January, 12 February and 6-7 March 2003

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

At its meetings on 27-28 January, 12 February and 6-7 March 2003, the Asylum Working Party examined the above proposal.

Delegations will find in section II below the text of the proposal with delegations comments in the footnotes.

Changes to 10279/1/02 ASILE 33 REV 1 (Articles 1 to 20 and 35) are in bold.

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 person¹ which can be understood as a request for international protection from a Member State under the Geneva Convention.² 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;³
- (c) “Applicant” or “applicant for asylum” means a person who has made an application for asylum in respect of which a final decision has not yet been taken;⁴
- (d) A final decision is a decision [...] which is **no longer subject to a remedy**;⁵
- (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;⁶
- (f) “Refugee” means a person who fulfils the requirements of Article 1(A) 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 **E** : refer to "a third country national or a stateless person" instead of "a person".

² **NL** : delete the words "under the Geneva Convention".

³ **FIN** : delete the words "unless the person concerned explicitly requests another kind of protection that can be applied for separately".

⁴ **A/FIN** : specify whether minors or other dependants are covered by this provision.

Cion : this question is resolved in Article 5.

E : distinguish between persons who obtained refugee status and persons who did not.

⁵ **D/F** : avoid the inclusion of appeals before higher bodies such as Constitutional Courts or "Conseils d'Etat".

E : refer to the moment when the person is no longer covered by the "non-refoulement" principle.

IRL : a definition of decision would be needed.

⁶ **D** : only authorities dealing with the substance of claims should be covered. Exclude border authorities.

FIN/IRL : reservations linked to the expressions "quasi-judicial or administrative body". Determination at first instance could be distributed between different bodies.

S : reservation linked to other definitions.

- (g) “Refugee Status” means the **recognition** by a Member State of a 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, or 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) “Detention” means the confinement of an applicant for asylum by a Member State within a **particular place**, where **the applicant is deprived of his or her freedom of movement**;¹
- (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 territory of the Member State” means to remain at the border, the airport [...], port **and railway** transit zones or in the territory of the Member State in which the application for asylum has been made or is being examined.²

¹ **A/D/I** : exclude airport transit areas.

P : scrutiny reservation linked to claims at the border and airport transit areas.

² **F/FIN/P** : this definition is superfluous and could be deleted.

Article 3

Scope¹

1. This Directive shall apply to all applications for asylum made at the border, at airport, port, **and railway** transit zones or in the territory of **the** Member States.²
2. This Directive shall not apply **in cases of** requests for diplomatic or territorial asylum submitted to [...] representations of Member States.
3. Member States may decide to apply [...] this Directive **in** procedures for deciding on applications for kinds of protection other than that emanating from the Geneva Convention for persons who are found not to be refugees.

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.

¹ **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.

² **A** : scrutiny reservation linked to Article 35 (cases of border procedures).

CHAPTER II
Basic principles and guarantees

Article 5
Access to the procedure¹

1. Member States shall ensure that applications for asylum are neither rejected nor excluded² from examination on the sole ground that they have not been made as soon as possible.³
2. Member States may require that applications for asylum be made in person.⁴
3. Member States shall ensure that each adult **having legal capacity** has the right to make a [...] application for asylum on his/**her** own behalf.

[...] Member States may determine, **in national legislation**

- (a) the cases in which a minor can [...] make an application on his/**her** own behalf; [...]⁵
- (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).

¹ **FIN** : this Article should be entitled "Treatment of applications".

² **IRL** : read "not excluded" instead of "neither rejected nor excluded".

³ **D** : scrutiny reservation.

⁴ **A/B** : specify that the asylum seeker must be present when submitting his/her claim and should not be allowed to do it through representatives.

⁵ **D/FIN/I/P** : specify the cases where a minor might submit an asylum application (D : minors aged between 16 and 18 years old).

4. Member States may provide **in national legislation** that an application may be made by an applicant on behalf of his/her dependants, including minors.¹ In **such** cases Member States shall ensure that dependant adults and dependant minors not covered by point (a) of paragraph 3 consent to the **lodging** of the application on their behalf, failing which the dependants shall have an opportunity to make an application on their own behalf. **Member States may lay down the age under which such consent can be assumed to have been given.**

Where a dependant² files an application on his/her own behalf after **having** consented to the making of an application on his/her behalf, the subsequent application may be rejected on the **same grounds** as the **first** application made on his/her behalf.³

5. **Without prejudice to Council Directive 2001/55/EC on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof,**⁴ Member States shall ensure that
- a) **the processing of an application for asylum as provided for in this Directive shall start as soon as the application is made with a Member State;**
 - b) **where formalities are required in order to start processing, they shall be completed as soon as possible.**

¹ **E/I/P** : refer only to minors, not to "other dependants".

² **L** : extend this provision to non-dependants.

³ **FIN** : delete this paragraph. These questions should be left to national law.

⁴ OJ L 212, 7.8.2001, p. 12.

6. Member States shall ensure that:

- (a) all relevant authorities likely to be addressed by the applicant at the border or in the territory of the Member State have instructions for dealing with applications for asylum, including the instruction to forward the applications and all relevant information to the competent authority for examination;
- (b) the personnel of those authorities have received the necessary training to recognise an application for asylum and to proceed further in accordance with those instructions.

Article 6

Right to stay pending the examination of the application

1. Applicants for asylum shall be allowed to remain in the territory of the Member State 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
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 **B/D/E/I/P** : refer to the "non-refoulement" principle instead of saying that the asylum seeker shall be allowed to remain in the territory.

D : refer to decisions on substance made by the determining authority.

FIN : add "if it is an enforceable decision".

IRL : scrutiny reservation linked to the definitions of "determining authority" and "final decision".

² **FIN** : this paragraph could be deleted.

Article 7

Requirements for the examination of applications

1. 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**¹ information from **or by** 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 appropriate² knowledge with respect to relevant standards applicable in the field of asylum and refugee law.³
2. Members States shall ensure that the authorities referred to in Chapter IV are given access to the general information referred to in § 1(b), necessary for the fulfilment of their task.⁴

¹ **E** : refer only to "various sources".

² **UK** : delete "the appropriate".

³ **IRL** : sub-paragraph c) should be deleted for reasons of subsidiarity.

⁴ **FIN** : this paragraph could be deleted.

P : add a new paragraph stating that in cases under Article 5(4), decisions shall be taken on an individual basis.

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

¹ NL : scrutiny reservation.

Article 9
Guarantees for applicants for asylum¹

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 of the procedure to be followed and of their rights and obligations during the procedure, in a language which they may reasonably be supposed to understand.² 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 16 and 20 (1);³
 - (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 if the determining authority calls upon the applicant to be interviewed **as referred to in Articles 10 and 11**. 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;⁴
 - (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;

¹ **D** : establish an obligation for the applicant to provide information to the authorities.

² **IRL** : say "where possible" or "where practical and reasonable".

³ **E** : add that the applicant must cooperate in these proceedings.

⁴ **A/E/IRL/P** : in order to avoid abuse, specify in which cases the interpreter's services shall be paid for out of public funds.

A/E/P : add that there is no obligation for the authorities to translate all documents submitted by the applicant.

Cion : whenever the authorities want the applicant to provide an explanation, the interpreter must be paid for by the authorities.

FIN/L : specify that for security reasons and in order to ensure the applicant's safety, interpreters must be always chosen by the authorities.

- (d) They must be notified¹ 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 notify the decision to him/**her** instead of to the applicant for asylum;
- (e) They must be informed **about** 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. The information provided shall include information on how to challenge a negative decision.²

2. [...]

With respect to the procedures provided for in Chapter IV, Member States shall ensure that all applicants for asylum [...] also enjoy the guarantees listed in paragraph 1(b), (c) and (d).³

¹ **B/FIN** : take into account cases where the applicant disappears. Notification or communication should be possible to a fictional domicile previously agreed.
D : say "communicated or notified" in order to avoid possible legal complications.

² **F** : this sentence is redundant given the provisions of Article 8.

³ **I** : this second sub-paragraph should be a new paragraph 3.

Article 10

Persons invited to a personal interview¹

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, however, provide that minors below a certain age need not be interviewed.

Member States may also give the opportunity of a personal interview to each adult among the dependants referred to in Article 5(4) before a decision is taken by the determining authority. If they are not given this opportunity, they shall be informed in private of the possibility of providing information to the competent authorities on the application for asylum before a decision is taken by the determining authority.

2. The personal interview may be omitted where, on the basis of an individual assessment :
 - (a) the determining authority is able to take a positive decision on the basis of evidence available; **or**
 - (b) the competent authority is of the opinion that the applicant is unfit or unable to be interviewed **owing to enduring** circumstances² beyond his/**her** control. When in doubt, Member States may require a medical or psychological certificate; **or**
 - (c) the competent authority cannot provide an interpreter in accordance with point (b) of Article 11(3) within a reasonable **period of time**; **or**³

¹ E/I : scrutiny reservations.

² A/IRL : be more specific, "enduring circumstances" is too vague.

³ FIN/I/NL : delete this sub-paragraph, which could cause prejudice to the applicant.

- (d) the competent authority is not able to conduct the interview because the applicant, without good reasons,¹ **has** not complied with invitations to appear; **or**²
- (e) **the competent authority is not able to prepare the interview because the applicant has not complied with requests to submit information essential to his/her application, without timely providing good reasons.**
3. In the cases referred to in **the** second subparagraph of paragraph 1 and in paragraph 2, **sub-paragraph** (b) [...], the applicant must be offered the opportunity, before a decision is taken by the determining authority, to make comments **instead** of a personal interview, where appropriate with the assistance of a legal adviser or other counsellor **admitted as such under national law** and/or, in the case of a minor, a representative.³

If the applicant cannot have an interview because the competent authority is not able to provide an interpreter in accordance with **paragraph 2, subparagraph (c)**, Member States shall either

- (a) provide free of charge, assistance by a legal adviser or other counsellor **admitted as such under national law** and/or, in the case of an unaccompanied minor, a representative, and shall provide them with an opportunity, before a decision is taken by the determining authority, to make comments on behalf of the applicant **instead** of a personal interview; **or**⁴
- (b) **provide the applicant the opportunity to submit written comments in a language in which he/she is able to communicate in, and, insofar as it is reasonable, to pay for the translation of these comments; or**

¹ F : delete "without good reasons".

² B : establish in a new paragraph a rule concerning cases where the applicant does not appear at the interview and in which circumstances the administration may consider a new invitation.
A/FIN : scrutiny reservations.

³ NL : for minors, a representative would suffice, without the need for a legal counsellor as well.

F/I : avoid giving the impression, by referring to paragraph 2(c), that a legal adviser could remedy the absence of an interpreter.

⁴ A/EL/I : delete this sub-paragraph.

- (c) **provide the applicant with a list of written questions in a language which he/she is reasonably supposed to understand, allow him/her to reply to the questions in a language in which he/she is able to communicate in, and to pay for the translation of the reply.**
4. The fact that no personal interview has taken place on a ground referred to in paragraph 1, **second sub-paragraph, or in paragraph 2 (b) and (c) and the competent authority did not receive any** comments [...] pursuant to paragraph 3, shall not prevent the determining authority from taking a decision on an application for asylum.

The absence of a personal interview on the grounds referred to in paragraph 2 **(b) and (c)** or, **where applicable, in paragraph 3**, shall not in itself adversely affect the decision of the determining authority.

The absence of a personal interview on the grounds referred to in paragraph 2(d) and (e) shall not in itself lead to the rejection of the application but may be taken into account when assessing the application.

Article 11
Requirements for a personal interview¹

1. A personal interview shall normally take place without the presence of family members.²
2. **Member States shall conduct the interview *in camera*, and where appropriate, in a secured environment.**
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) when appointing the person who conducts the interview and the interpreter, use their best endeavours 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 in advance and the competent authority is aware of such circumstances;³

¹ **I** : scrutiny reservation.

² **E** : say that interviews shall be individually organised.

IRL : refer to "adult family members".

I : add "unless the determining authority considers otherwise".

³ **E/I** : simplify this sub-paragraph by saying simply that the person who conducts the interview must have a proper technical background.

IRL : take into account the specific situation of vulnerable people by using the wording of Article 18(3) of the draft 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, which reads as follows :

"When implementing the provisions of this Chapter, Member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence."

- (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.**

Article 12

Status of the report of a personal interview in the procedure¹

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 on which the decision is or will be based.
3. Member States may request the applicant's approval on the contents of the **report** of the personal interview.

In such cases, Member States shall ensure that the applicant has the opportunity to request or propose corrections of mistranslations or misconceptions appearing in the **report**.

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.

¹ I : scrutiny reservation.

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 as such under national law**, on matters relating to their asylum applications at all stages of the procedure [...].¹
2. In the event of a negative decision by a determining authority, Member States shall ensure that legal assistance **and/or representation**, on request, be granted free of charge, subject to the provisions of this paragraph.²

Member States may **choose to grant free 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 there is a reasonable chance of a positive decision in review or appeal; and/or**
- (d) restrict **free** legal assistance [...] to legal advisers or other counsellors specifically designated by national law to assist and/or represent applicants for asylum.³

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.

¹ **B** : specify the consequences of new consultations in order to avoid abuses of procedure.

² **EL** : scrutiny reservation. Legal assistance free of charge should not be available in all phases of the procedure.

IRL : delete "be granted free of charge".

I : reservation. Legal assistance free of charge should be limited to proceedings before a Court of Justice.

³ **A** : delete "other counsellors".

Article 14

Scope of legal assistance and representation

1. Member States shall ensure that a legal adviser or other counsellor **admitted 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 IV,¹ **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 or the security of the organisations or persons providing the information. In these cases, access to the information or sources in question must be available to the authorities referred to in Chapter IV.

Member States shall ensure that the legal adviser or other counsellor who assists or represents an applicant for asylum has access to closed areas² for the purpose of visiting 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

¹ **B/EL/E/FIN/IRL/P/S/UK** : some limitations should be established concerning legal adviser's access to the file :
- conditions of such access should be fixed by the Member States (B/EL/E/I)
- add "unless compelling reasons of national security or public order prevent such access" (FIN/IRL/P/S/UK).

² **B/FIN** : specify which "closed areas" are considered (detention centres, airport, transit zones, etc.)

³ **E** : delete the second sentence of this subparagraph.

2. **Member States shall 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).¹**

Member States shall ensure that the legal adviser or other counsellor who assists or represents an applicant for asylum is informed in due time of the time and place of the applicant's personal interview as provided for in Articles 10, 11 and 12 and is allowed to attend it. However, the absence of the legal adviser or other counsellor shall not prevent the competent authority from conducting the personal interview with the applicant.

¹ **A/D/E/IRL** : legal advisers should be informed of the dates in which interviews are due to take place. The dates are to be fixed by the administration. Avoid possible abuse of procedures.
B : legal advisers access should be limited to certain interviews.
F/L/I : avoid giving a judicial character to the first steps of the procedures. The presence of legal advisers should not give rise to possible obstructions in the proceedings.
I : limit this access to legal advisers only.

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 ensure that : [...]
 - (a) **all unaccompanied minors are** granted, as soon as possible, a representative¹ who shall represent and/or assist them 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;**²
 - (b) 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 comments³.

¹ **D/FIN** : When dealing with asylum applications, Member States should have the possibility of treating minors of 16 and 17 years of age as adults.

FIN : enter a reference to the Convention on the Rights of the Child.

² OJ L 31, 6.2.2003, p. 18.

³ **IRL** : make clear who is in charge of the interview.

FIN : two officials should be present at interviews: one expert on asylum issues and another trained in the special needs of minors.

2. 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.
3. Member States **which** use medical examinations to determine the age of unaccompanied minors shall ensure that:¹
- (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.
 - (b) 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.

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

¹ **A** : specify what kind of medical examinations are envisaged.
E : medical examination should not be compulsory. The minor should be informed that if he/she does not want to declare his/her age, he/she will be treated as an adult.
FIN/IRL : declaring one's age should be a precondition for the processing of any asylum application.
I : such medical examinations should be carried out, if needed, when the minor is found and before any asylum application is made.
NL : add a new subparagraph (c) stating that refusal to undergo a medical examination shall not prevent the determining authority from taking a decision on the application.

Article 16

Establishing the facts in the procedure

When starting to process the application, Member States shall inform the applicant for asylum about the time-frame , as well as the means at his/her disposal to fulfil his/her obligation of co-operation to assist the competent authorities in submitting the elements to substantiate his/her claim 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].

Article 17

Detention pending a decision by the determining authority

1. Without prejudice to Article 18, Member States shall not hold an applicant for asylum in detention for the sole reason that his/**her** application for asylum needs to be examined before a decision is taken by the determining authority.¹

However, Member States may [...] hold an applicant for asylum in detention during the examination of the application where such detention is, in accordance with a procedure laid down by national law or regulation, objectively necessary for an efficient examination of the application or where, on the basis of the personal conduct of the applicant, there is a strong likelihood of his/**her** absconding.²

¹ **B/E** : add that asylum seekers can be held in detention if they do not have a valid document allowing them to stay in the Member States.

² **EL** : detention of asylum seekers should be possible when an expulsion order has been delivered.

F : a distinction should be made between detention centres and waiting zones for illegal immigrants who may seek asylum.

IRL : add a possibility of detention for national security reasons.

I : take into account accommodation centres where asylum seekers are not detained, but where they are obliged to reside with the possibility of going outside. The concept of detention should be better defined.

NL : scrutiny reservation.

2. Member States may also hold an applicant for asylum in detention during the examination of his/her application if there are grounds **to believe** that the restriction on his/her freedom of movement is necessary for a quick decision to be made **or to decide at the border, port, airport and railway transit area on the entry to their territory of that applicant**. Detention for **these reasons** shall not exceed **three** weeks.¹

In the latter case, when a decision cannot be made within three weeks due to exceptional circumstances relating to the examination of the application, an extension of that time limit is possible in a procedure prescribed by national law.

3. Member States shall provide for the possibility of an initial judicial review and subsequent regular judicial reviews of the order for detention of applicants for asylum detained pursuant to paragraph 1.²

Member States shall ensure that the court called upon to review the order of detention is competent to review whether detention is in accordance with the provisions of this Article.

¹ **E** : avoid fixing any time-limit for detention.
FIN : say that detention should not exceed a strictly needed period and establish special rules for accompanied minors. Unaccompanied minors should only be detained in exceptional circumstances.
NL : scrutiny reservation linked to applications at the border.

² **A/B/F/UK** : scrutiny reservations.
A/F : clarify the expression "initial review".
B : specify whether this provision also concerns accelerated procedures.
UK : state that the possibility of a judicial review shall exist when the period of detention is longer.

Article 18

Detention after agreement to take charge under Council Regulation (EC) No 343/2003

1. Member States may hold the applicant in detention to prevent him/**her** from absconding or effecting an unauthorised stay, from the **time** at which another Member State has agreed to take charge of him/**her** or to take him/**her** back until the **time** the applicant is transferred to the other Member State in accordance with Council Regulation (EC) No 343/2003 of **18 February 2003** establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national.¹
2. Member States shall ensure that the **court** called upon to review the order is competent to examine the legality of the detention in accordance with the provisions of this Article.

Article 19

Procedure in case of withdrawal of the application²

1. 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, provided the information to do so is available, to reject the application on some other ground in accordance with this Directive.
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 file.³

¹ OJ L 50, 25.2.2003, p. 1.

FIN : in these cases, individual circumstances should be examined.

² **D/IRL** : simplify the text by referring to Article 33.

FIN/L : add a reference to the possible legitimate reasons for withdrawing an application.

P : scrutiny reservation.

³ **I** : this paragraph should appear under Article 20.

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, provided the information to do so is available, to reject the application on some other ground in accordance with this Directive.

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

- (a) He/she has not within a reasonable time complied with reporting duties or other obligations to communicate, has failed to respond to requests for information essential to his/her application under the terms of Articles **10(2) (e) and 16** or has not appeared for an personal interview as provided for in Articles 10, 11 and 12;
- (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.

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

¹ **A/B/L/NL/P** : scrutiny reservations.
L : abuse would be possible under such a provision.

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 shall ensure that **such a person is** 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
Data protection¹

1. Member States shall not disclose the information regarding individual applications for asylum to the authorities of the country of origin of the applicant for asylum.

2. Member States shall take appropriate measures to ensure that no information required for the purpose of examining the case of an individual applicant shall be obtained from the authorities of his/**her** country of origin in a manner that would result in the disclosure to those authorities of the fact of his having applied for asylum.

¹ **A/D/L** : scrutiny reservations. Some indications should be added concerning the practical implementation of this provision by the Member States.
IRL : add "Nothing in this Article should prevent the exchange of data between Member States within the framework of the Council Regulation (EC) N° 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national."

CHAPTER III
Procedures at first instance

Section I

Article 23

Purpose of accelerated procedures¹

1. Member States may adopt or retain an accelerated procedure for the purposes of
 - (a) processing applications for asylum considered to be inadmissible under Section II;
 - (b) processing applications for asylum considered to be manifestly unfounded under Section III;
 - (c) processing unfounded applications under Section IV;
 - (d) processing subsequent applications for asylum within the framework of the provisions set out in Section V;
 - (e) taking a decision on the entry of applicants for asylum into the territory of a Member State in accordance with Section VI.

2. Member States shall consider as regular procedures all other procedures under which applications for asylum are processed.

¹ **E/IRL/I/P** : explain the difference between normal procedure and accelerated procedures more clearly.
P : will present a text to that end.
E : read "simplified procedures" instead of "accelerated procedures".
FIN/IRL : the text of paragraph 1 should be clarified, particularly with regard to the differences between inadmissible, unfounded and manifestly unfounded applications.

Article 24

Time limits for an accelerated procedure¹

1. Member States shall ensure that the determining authority takes a decision in the accelerated procedure within three months after the application of the person concerned has been made.
2. The time limit referred to in paragraph 1 may be extended for three months for legitimate reasons.

An extension of the time limit in a particular case shall not be valid unless notice is served on the applicant or on the legal adviser or other counsellor who assists or represents him/**her**.²

3. Non-compliance with the time limits in paragraphs 1 and 2- shall result in the application for asylum being processed under the regular procedure, unless Member States determine³ that an applicant who is at the origin of non-compliance referred to in paragraphs 1 and 2, cannot invoke this consequence of non-compliance, in particular in case of a failure on his/**her** part to submit the information he/**she** is reasonably expected to provide under the terms of Article 16 or to appear for an personal interview as provided for in Articles 10, 11 and 12.⁴

¹ **A** : the time limit under (1) should be longer and (2) should be deleted.
D : more flexibility is needed concerning time limits under (1) and (2). In certain cases, more time would be needed taking into account that requirements such as those referred to in recital 15 have to be met.
E/F : time limits under (1) and (2) are too long for an accelerated procedure.
F : do not set time limits at all.
FIN : read "Member States shall endeavour" under (1) and delete (2).

² **EL/I/L/P** : the expression "legitimate reasons" should be explained.
I : say "reasons relating to the application" instead of "legitimate reasons".
EL : take into account that in cases of change of residence, serving notice could be difficult.
S : read "unless the applicant is informed" instead of "unless notice is served on the applicant".

³ **D** : say "Member States may determine".

⁴ **UK**, supported by **A/E/NL/P** : this paragraph should read as follows :
"Applications must be dealt with under the regular procedure if the process exceeds the time limits in paragraphs 1 and 2, unless the applicant is the cause of the delay".

4. Member States may determine that a decision is deemed to have been taken under the accelerated procedure in cases where it can be established after the expiry of the time limits referred to in paragraphs 1 and 2 that the applicant has, without reasonable cause and in bad faith, withheld information which, had it been known at that stage of the procedure, would have resulted in a decision in the accelerated procedure.¹

5. This Article shall not apply once one Member State calls upon another Member State to take charge of an applicant in accordance with Council Regulation (EC) N° 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national.²

¹ E/I/P : better specify how such a provision would work in practice.

² OJ L 50, 25.2.2003, p. 1.

L : add the following sub-paragraph :

"Where a Member State refuses to take charge of an applicant in accordance with the above-mentioned Council Regulation, the provisions of this Article shall apply from time a Member State has received a definitive refusal from the other Member State".

Section II

Article 25

Cases of inadmissible applications¹

Member States may reject a particular application for asylum as inadmissible if:²

- (a) another Member State, or Norway or Iceland,³ has acknowledged responsibility for examining the application, according to the criteria and mechanisms for determining which Member State is responsible for considering an application for asylum submitted by a national of a third country or stateless person in one of the Member States;
- (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) a country other than the country of origin of the applicant has made an extradition request and that country is either another Member State or a third country which can be considered a safe third country in accordance with the principles set out in Annex I, provided that extradition to this country is legal;

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

² F : differentiate more clearly between inadmissible applications and motives for exclusion.

³ I : make a more general reference, since other countries may accede to the Dublin Convention in the future.

- (e) an indictment by an International Criminal Court has been made.¹

Article 26

Application of the concept of first country of asylum

A country can be considered to be a first country of asylum for an applicant for asylum if he/she has been admitted to that country as a refugee or for other reasons justifying the granting of protection, and can still avail himself/**herself** of protection in that country that is in accordance with the relevant standards laid down in international law.²

-
- ¹ **D/E/F/FIN/I/P** : sub-paragraphs (d) and (e) are not consistent with (a), (b) and (c). There is a risk that they will complicate extradition proceedings. The reference to cases of exclusion should more clearly reflect the content of Article 1F of the Geneva Convention.
IRL : add cases of dependants under Article 5(4), second sub-paragraph - where a child has consented to be part of a main application and subsequently decides to make individual application it should be possible for the Member State to consider this application to be inadmissible. Add also a cross reference to Article 33 - cases where a repeat application is not allowed should be deemed inadmissible.
IRL/P : add cases where the applicant refuses to have his/her fingerprints taken for the purposes of the "Eurodac" Regulation.
NL : add cases of applicants who already have a residence permit in a Member State or who could easily obtain such a permit. Third country nationals legally resident should not be allowed to claim asylum.
- ² **E** : rules under Annex I are too broad and complicated. A country should be considered to be a first country of asylum when the applicant could have submitted an application there and where that country observes the "non-refoulement" principle and has procedures for processing asylum application.

Article 27

Designation of countries as safe third countries¹

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

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

Member States shall give specific grounds for the designation of countries as safe third countries and for any subsequent exclusion or addition of such a country.⁴

¹ **I** : scrutiny reservation.

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

³ **A/I/L** : designation of safe third countries should be done in a common basis, leading to a single list, otherwise, there would be a risk of secondary movements between Member States. A mechanism allowing adjourning of the list should be established.
F : should any list of safe third countries be set out, it should be a common list.

P : reservation concerning the establishment of a contact committee by the Commission on the basis of the Legislative financial statement to the proposal (point 5.2). Such a committee should be envisaged in the Directive itself following comitology rules.

⁴ **IRL/NL/UK** : this sub-paragraph is superfluous, since these criteria are established in Annex I.

Article 28

Application of the safe third country concept

1. A country that is a safe third country in accordance with the principles set out in Annex I can only be considered as a safe third country for a particular applicant for asylum if, notwithstanding any list:¹
 - (a) the applicant has either a connection or close links² with the country or has had³ an opportunity to avail himself/herself of the protection of the authorities of that country;⁴
 - (b) there are grounds for considering that this particular applicant will be admitted or re-admitted to this country and⁵
 - (c) there are no grounds for considering that the country is not a safe third country in his/her particular circumstances.⁶
2. When implementing a decision based on this Article, Member States shall⁷ provide the applicant 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.⁸

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

² **A/B/F** : in order to avoid interpretation problems, set out objective criteria as in the UNHCR handbook (e.g. duration of the stay in a safe third country).

³ **UK** : delete "had".

⁴ **A** : add "or".

⁵ **A** : read "or" instead of "and".

⁶ **A/D/IRL** : when there is a presumption that the country is safe, a case by case consideration should be avoided.
B : this principle should be inserted in Annex I in a more clear and developed way.

⁷ **E** : read "may" instead of "shall"(concerning the language in which the document must be established).

⁸ **NL** : add that the applicant must be also informed in written about this fact, and not only the third country in question.

Section III

Article 29¹

Cases of manifestly unfounded applications

Member States may reject an application for asylum as manifestly unfounded if the determining authority has established that:

- (a) the applicant in submitting his/**her** application and presenting the facts, has only raised issues that are obviously not relevant to the Geneva Convention;²
- (b) the applicant is from a safe country of origin within the meaning of Articles 30 and 31 of this Directive;³

¹ **A/D/P** : Articles 29 and 32 could be merged.

A : scrutiny reservation.

IRL : should Article 29 and 22 be merged, its heading could read :

"Member States may process an application for asylum under the accelerated procedure , and may reject the application as unfounded or manifestly unfounded, where the determining authority has established that..."

In any case, the following additional grounds should be added:

- "- the applicant made statements or provided information in support of the application of such a false, contradictory, misleading or incomplete nature as to lead to the conclusion that the application is abusive,
- the applicant did not make an application as soon as reasonably practicable after arriving in the State,
- the applicant had lodged a prior application for asylum in another country (whether or not that application had been granted or rejected), or
- the applicant is a national of or has a right of residence in another state party to the Geneva Convention and that state does not normally give rise to well-founded claims of persecution."

FIN : a clearer differentiation between Articles 29 and 32 should be made.

S : in all these cases, an examination of the substance of the claim would be needed.

E : cases to be treated following a simplified procedure should be put together in a single Article.

² **IRL** : this ground would be difficult to apply in practice.

³ **F** : in cases under (b), an examination of the substance of the claim would be needed.

- (c) the applicant is prima facie excluded from refugee status by virtue of Council Directive .../.... [*Proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection*].¹

Article 30

Designation of countries as safe countries of origin²

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

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

Member States shall give specific grounds for the designation of countries as safe countries of origin and for any subsequent exclusion or addition of a country as a safe country of origin.

¹ **F** : in certain cases, the examination of the claim would be needed. This ground must be clarified and has no place in this Article.

I : these are grounds of inadmissibility.

² **I** : scrutiny reservation.

EL/I/L : a common list of safe third countries should be established in order to set up an effective functioning of this principle.

FIN/NL/S/UK : opposed to the setting up of an obligatory common list of safe third countries.

Article 31

Application of the safe country of origin concept

A country that is a safe country of origin in accordance with the principles set out in Annex II can only be considered as a safe country of origin for a particular applicant for asylum if he/**she** has the nationality of that country or, if he/**she** is a stateless person,¹ it is his/**her** country of former habitual residence, and if there are no grounds for² considering the country not to be a safe country of origin in his/**her** particular circumstances.

¹ **UK** : add "or if he/she is formally habitually resident in that country".

² **D** : read "for thinking that he/she will be politically persecuted".

Section IV

Article 32

Other cases under the accelerated procedure

Member States may process an application for asylum under the accelerated procedure where:¹

- (a) the applicant has without good reason, misled the authorities with respect to his/**her** identity and/or nationality, by presenting false information or by withholding relevant information that could have had a negative impact on the decision;
- (b) the applicant has not produced information to establish with a reasonable degree of certainty his/her identity or nationality, and there are serious reasons for considering that he/she has, in bad faith, destroyed or disposed of an identity or travel document that would have helped establish his/her identity or nationality;²
- (c) the applicant has made deliberately false or misleading representations of a substantial nature in relation to the evidence produced in support of his/her application for asylum;
- (d) the applicant has submitted a subsequent application raising no relevant new facts with respect to his/her particular circumstances or to the situation in his/**her** country of origin;
- (e) the applicant has failed without reasonable cause to make his/her application earlier, having had ample opportunity to do so, and is making an application merely in order to delay or frustrate the enforcement of an earlier or imminent decision which would result in his/her removal;

¹ **E** : linguistic scrutiny reservation.

NL : scrutiny reservation. These cases relate to attempts to block the correct operation of the system (will submit an alternative text).

² **UK** : delete the words "and there is good reason to believe that he/she has, in bad faith, destroyed or disposed of an identity or travel document that would have helped establish his/her identity or nationality."

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

- (f) the applicant failed to comply with obligations referred to in Articles 16 and 20(1) of this Directive;
- (g) the applicant entered the territory of the Member State unlawfully or prolonged his/her stay unlawfully and, without good reason, has not presented himself/herself to the authorities as soon as possible given the circumstances of his/her entry;
- (h) the applicant is a danger to the security of the Member State or constitutes a danger to the community of that Member State, having been convicted by a final judgement of a particularly serious crime.¹

The application can only be rejected if the determining authority has established that the applicant has no well-founded fear of being persecuted by virtue of Council Directive .../...
.... [*Proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection*].

¹ I : this is a case of inadmissibility.

Section V

Article 33

Cases of subsequent applications¹

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

¹ **FIN/S** : scrutiny reservations.
S : while fully accepting that in certain circumstances new facts must be considered before expelling an applicant, cases of never-ending procedures must be avoided.
E : differentiate more clearly between cases where a new file must be opened and cases where a revision of an existing file is needed.
L : add :
"Member States may consider as inadmissible any claim from an applicant to whom refugee status was denied by a final decision, unless the applicant submits new elements proving that serious indications exist of a well-founded fear of persecution within the meaning of the Geneva Convention. These new elements must refer to new facts or situations which occurred after the negative final decision was delivered."

² **B** : delete "final".

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

2. A subsequent application for asylum shall first be subject to a preliminary examination as to whether, after the withdrawal of the previous application or after the final decision on this application has been reached,
- (a) the personal circumstances of the applicant¹ or his/her legal situation has changed or
 - (b) there is new information² indicating that a decision more favourable to the applicant could be taken or could have been taken or³
 - (c) the decision on a former application for asylum was taken on an incorrect or false basis or⁴
 - (d) there are other reasons under national law to further examine that subsequent application.

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

¹ **UK** : add "which are relevant to the application".

² **UK** : add "based on significant new facts".

³ **IRL** : (a) and (b) could be merged as follows :
"the personal circumstances of the applicant have changed up to a point that a decision more favourable to the applicant could be taken."

⁴ **F** : delete sub-paragraph (c) which contradicts the final sub-paragraph under (2).

IRL/UK : this is a ground for appeal, not for entering a new claim.

Article 34
Procedural rules¹

1. Member States shall ensure that applicants for asylum whose application is subject to a preliminary examination pursuant to Article 33 enjoy the guarantees listed in Article 9.²
2. Member States may lay down in national law rules on the preliminary examination pursuant to Article 33. Those rules may inter alia:
 - (a) oblige the applicant concerned to indicate facts and substantiate evidence which justify a new procedure;
 - (b) require submission of the new information by the applicant concerned within a time limit after which it has been obtained by him or her;
 - (c) permit the preliminary examination to be conducted on the sole basis of written submissions without a personal interview.

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

¹ **FIN** : scrutiny reservation.

² **D** : it is not necessary to refer again here to the guarantees under Article 9 (2), first sub-paragraph.

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

3. Member States shall ensure that

- (a) the determining authority which has taken the decision on the previous application is responsible for the preliminary examination;
- (b) the applicant is informed in an appropriate manner of the outcome of the preliminary examination and, in case the application will not be further examined, of the reasons and of the possibilities of challenging it;¹
- (c) if one of the situations referred to in Article 33(2) applies, the determining authority shall further examine the subsequent application in conformity with the provisions of Chapter II as soon as possible.

¹ **IRL** : reservations on (a) and (b), linked to its decision-making structure. Appeals should not be possible in the framework of preliminary decisions.
Cion : right to appeal or review is a basic right which must always be respected.
D : make clear that such appeals refer to the substance of the decision, not to an expulsion order.
UK : scrutiny reservation.

Section VI

Article 35

Cases of border procedures¹

1. Subject to the provisions of this Article, Member States may maintain,² in accordance with laws or regulations in force at the time of adoption of this Directive, procedures **derogating from the basic principles and guarantees described in Chapter II** in order to decide at the border on the entry to their territory of applicants for asylum who have arrived and made an application for asylum **at the border. These laws or regulations shall ensure in particular that the persons concerned:**³
 - **must be immediately informed of their rights and obligations, as described in Article 9 (1) (a); and**
 - **have access, if necessary, to the services of an interpreter, as described in Article 9(1) (b); and**
 - **can consult a legal adviser or counsellor admitted as such under national law, as described in Articles 13(1); and**
 - **are interviewed in relation to their application for asylum by persons with appropriate knowledge of the relevant standards applicable in the field of asylum and refugee law, as described in Articles 10 to 11; and**
 - **have a representative appointed in the case of unaccompanied minors, as described in Article 15(1).**

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

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

² **P** : read "may maintain or introduce".

³ **FIN** : scrutiny reservation.

These laws and regulations may lay down that the persons concerned can be confined within a designated restricted area from which they are free to leave at any time for a destination outside the territory of the European Union.

The persons concerned have the right to appeal before a court against the decisions confining or holding them within the designated area.

2. This procedure may also be applicable to applicants for asylum arriving in airport, port **and** railway transit zones.
3. (deleted)
4. Member States shall ensure that a decision to refuse entry to the territory of a Member State for a reason arising from the application¹ for asylum is taken within **three** weeks,² subject to an extension of the time limit **in a procedure prescribed by national law.**³
5. Non-compliance with the time limits provided for in this paragraph shall result in the applicant for asylum being granted entry to the territory of the Member State in order for his/**her** application to be processed in accordance with the other provisions of this Directive. Member States shall ensure that applicants for asylum, who are refused entry in accordance with this procedure, enjoy the guarantees referred to in Chapter IV.
6. The refusal of entry into the territory can not override the decision on the application for asylum, unless it is based upon a rejection of the application for asylum after an examination on the basis of the facts of the case by authorities competent in the field of asylum and refugee law.

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

² D : refer to three weeks, with possibility of judicial review.

³ B : scrutiny reservation.

P : opposed to the need of the agreement of a judicial body concerning the extension of the time limit.

Section VII

Article 36

Withdrawal [...] of refugee status

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

Article 37

Procedural rules

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

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

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

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

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

² **IRL** : scrutiny reservation.

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

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

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

CHAPTER IV
Appeals procedures¹

Article 38

The right to an effective remedy before a court of law²

1. Member States shall ensure that applicants for asylum have the right to an effective remedy of a decision taken on their application for asylum before a court of law.³
2. Member States shall ensure that the effective remedy referred to in paragraph 1 includes the possibility of an examination on both facts and points of law.⁴
3. Member States shall ensure that:
 - (a) a refusal to re-open the examination of an application after its discontinuation pursuant to Articles 19 and 20, and⁵
 - (b) an extension of the time limit pursuant to Article 24 can also be subjected to examination through appeal proceedings before a court of law.⁶

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

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

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

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

The Working Party asked for a written opinion of the Council Legal Service regarding this question.

³ **S** : reservation. Add the possibility of not having appeals when security threats appear.

⁴ **B** : the above-mentioned Council conclusions should be faithfully quoted here. A Directive on minimum standards should not oblige Member States to modify their administrative structures.

⁵ **IRL/I/UK** : delete this sub-paragraph.

EL : scrutiny reservation.

⁶ **E/IRL/I/UK** : delete this sub-paragraph.

D : reservation linked to Article 24.

EL : scrutiny reservation.

Article 39

Review and appeal proceedings against decisions taken under the regular procedure¹

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

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

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

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

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

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

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

⁴ **UK** : delete "or acting on its own motion".

⁵ **E** : scrutiny reservation.

Article 40

Review and appeal proceedings against decisions taken in the accelerated procedure

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

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

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

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

IRL/P : scrutiny reservations.

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

UK : delete "or acting on its own motion".

³ **FIN/NL** : this provision goes too far and is difficult to accept.

⁴ **NL** : refer to Article 25 under (a), (d) and (e) only.

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

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

Article 41

Time limits and scope of the examination in review or appeal

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

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

L : add a possibility for Member States to lay down time limits for appeal bodies in the context of accelerated procedures.

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

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

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

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

CHAPTER V

General and final provisions

Article 42

Non-discrimination¹

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

Article 43

Penalties²

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

Article 44

Report

No later than two years after the date specified in Article 45, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose any amendments that are necessary. Member States shall send the Commission all the information that is appropriate for drawing up this report. After presenting the report, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States at least every two years.

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

² **D/E/F** : delete this Article.

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

Article 45
Transposal

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

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

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

Article 46
Entry into force

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

Article 47
Addressees

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

Done at Brussels,

For the Council
The President

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

PRINCIPLES WITH RESPECT TO THE DESIGNATION OF SAFE THIRD COUNTRIES¹

I. Requirements for designation

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

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

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

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

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

² **NL/UK** : delete "by law".

- Applicants for asylum are not denied the opportunity to communicate with the UNHCR or other organisations that are working on behalf of the UNHCR pursuant to an agreement with this country.
- There is provision for appeal to a higher administrative authority or to a court of law against the decision on each application for asylum or there is an effective possibility to have the decision reviewed.
- The UNHCR or other organisations working on behalf of the UNHCR pursuant to an agreement with this country have, in general, access to asylum applicants and to the authorities to request information regarding individual applications, the course of the procedure and the decisions taken and, in the exercise of their supervisory responsibilities under Article 35 of the Geneva Convention, can make representations to these authorities regarding individual applications for asylum.

2) Notwithstanding the above, a country that has not ratified the Geneva Convention may still be considered a safe third country if:

- it consistently observes the principle of non-refoulement as laid down in the OAU Convention governing the specific aspects of refugee problems in Africa of 10 September 1969 and has in place with respect to the persons who request asylum for this purpose a procedure that is in accordance with the above-mentioned principles; or
- it has followed the conclusions of the 19–22 November 1984 Cartagena Declaration of Refugees to ensure that national laws and regulations reflect the principles and criteria of the Geneva Convention and that a minimum standard of treatment for refugees is established; or¹
- it nonetheless consistently observes in practice the standards laid down in the Geneva Convention with respect to the rights of persons in need of international protection within the meaning of this Convention and has in place with respect to the persons who wish to be so protected a procedure which is in accordance with the above-mentioned principles; or

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

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

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

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

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

II. Procedure for designation

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

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

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

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

PRINCIPLES¹ WITH RESPECT TO THE DESIGNATION OF SAFE COUNTRIES OF ORIGIN

I. Requirements for designation

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

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

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

² F : delete "consistently".

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

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

⁴ NL : this paragraph could be deleted.

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

⁶ E : this paragraph could be deleted.

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

II. Procedure for designation

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

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

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