



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 1 April 2003**

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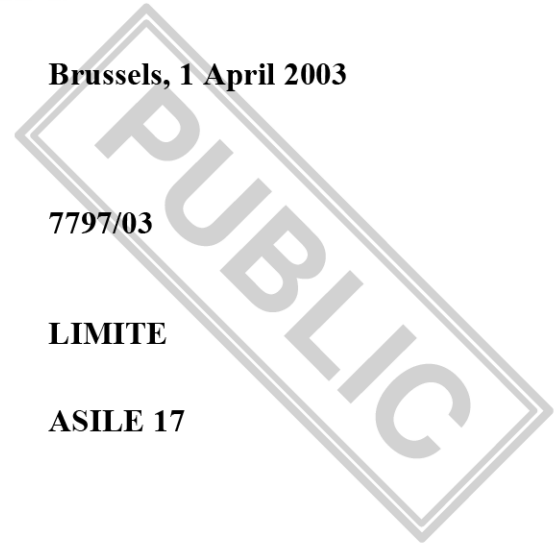
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**7797/03**

**LIMITE**

**ASILE 17**



**OUTCOME OF PROCEEDINGS**

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of : Asylum Working Party

on : 24-25 March 2003

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No. prev.doc. : 7214/03 ASILE 14

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

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

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**I**

At its meeting on 24-25 March 2003, the Asylum Working Party examined the above proposal.

Delegations will find in section II below the text of Articles 1 to 22 with delegations comments in the footnotes.

Changes to 7214/03 ASILE 14 are in bold.

It is recalled that alternative texts submitted by delegations are set out in 7254/03 ASILE 15 + ADD 1.

## **II**

Amended proposal for a

### **COUNCIL DIRECTIVE**

#### **On minimum standards on procedures in Member States for granting and withdrawing refugee status<sup>1</sup>**

##### **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;

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<sup>1</sup> **NL/UK** : parliamentary scrutiny reservations.

- (b) "Application for asylum" means an application made by a person<sup>1</sup> which can be understood as a request for international protection from a Member State under the Geneva Convention.<sup>2</sup> 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 person who has made an application for asylum in respect of which a final decision has not yet been taken;<sup>3</sup>
- (d) A final decision is a decision which is no longer subject to **an appeal within the framework of Chapter IV**;
- (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;<sup>4</sup>
- (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*] ;

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<sup>1</sup> **E** : refer to "a third country national or a stateless person" instead of "person".

**Cion** : opposed to this suggestion.

<sup>2</sup> **NL** : delete the words "under the Geneva Convention".

<sup>3</sup> **A/FIN** : scrutiny reservations linked to applications lodged by minors.

<sup>4</sup> **IRL**, supported by **S** : read

"Determining authority" means any quasi-judicial or administrative body in a Member State which is responsible for the examination of an application for asylum at first instance and is competent to make a determination as to whether the applicant concerned comes within the definition of a "refugee".

**A/D** : scrutiny reservation linked to application at the border.

**IRL** : add the following definition of determination :

"Determination" means a decision or a recommendation of the determining authority which follows the examination of an application for asylum at first instance and which can be the subject of an appeal under the provisions of Chapter IV of this Directive.

- (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 **is** in the territory of the Member States **and who is** 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;<sup>1</sup>
- (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;<sup>2</sup>
- (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, at the border, or in transit zones** of the Member State in which the application for asylum has been made or is being examined.<sup>3</sup>

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<sup>1</sup> **FIN** : scrutiny reservation. Refer to the fact that the unaccompanied minor is not married.

<sup>2</sup> **P**, supported by **A/D/E/I/UK**, add "This does not include cases where the applicant remains at restricted areas of airports and border crossing points."

**NL** : opposed to this addition.

<sup>3</sup> **E/F/FIN/P** : scrutiny reservations.

### **Article 3**

#### **Scope<sup>1</sup>**

1. This Directive shall apply to all applications for asylum made **in the territory**, at the border, [...] **or in the** transit zones of the Member States **and to the withdrawal of refugee status.**<sup>2</sup>
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 **international** protection other than that emanating from the Geneva Convention [...].

### **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.

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<sup>1</sup> **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.

<sup>2</sup> **A** : scrutiny reservation linked to Article 35.

**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.
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 in national legislation<sup>1</sup> that an application may be made by an applicant on behalf of his/her dependants, including minors. In such cases Member States shall ensure that dependant adults and dependant minors [...] consent to the lodging of the application on their behalf,<sup>2</sup> 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.<sup>3</sup>

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<sup>1</sup> **NL** : scrutiny reservation. Refer also to policy ruling.

<sup>2</sup> **P** : replace it by "consent is presumed whenever a Member State carries out an interview with the dependent adult according to Article 10".

<sup>3</sup> **FIN** : this paragraph could be deleted.

**A** : the reference to consent should be deleted.

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).
  - (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 minor and unmarried child of the applicant.**
5. Where a dependant 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.<sup>1</sup>
6. **Member States shall ensure that authorities likely to be addressed by the applicant are instructed to forward the application to the competent authority.**

[...]

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<sup>1</sup> L : specify at which moment of the procedure the dependant may lodge a new separate application. Abuse must be avoided.

## 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 until such time as the determining authority has made a decision in accordance with the procedures at first instance set out in Chapter III.<sup>1</sup>
2. Member States can make an exception only where, in accordance with Articles 33 and 34, a subsequent application will not be further examined.<sup>2</sup>

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<sup>1</sup> **A/B/D/E/F/I/L/P/UK** : refer to the "non-refoulement" principle instead of saying that the asylum seeker shall be allowed to remain in the territory.

**IRL/NL/S** : cannot agree with the above-mentioned delegations.

**A** : scrutiny reservation linked to border procedures.

**FIN** : scrutiny reservation linked to Chapter III.

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

<sup>2</sup> **FIN** : this paragraph could be deleted.

## Article 7

### Requirements for the examination of applications

1. **Member States shall ensure that applications for asylum are neither rejected nor excluded from examination on the sole ground that they have not been made as soon as possible.**
  
2. Member States shall ensure that decisions by the determining authority on applications for asylum are taken after an appropriate examination. To that end, Member States shall ensure that
  - (a) applications are examined and decisions are taken individually, objectively and impartially;
  
  - (b) precise and up-to-date information is obtained from various sources, such as information from [...] the United Nations High Commissioner for Refugees (UNHCR), as to the general situation prevailing in the countries of origin of applicants for asylum and, where necessary, in countries through which they have transited, and that such information is made available to the personnel responsible for examining applications and taking decisions;
  
  - (c) the personnel examining applications and taking the decisions have the [...] knowledge with respect to relevant standards applicable in the field of asylum and refugee law.
  
3. Member 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.

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

**Article 9**  
**Guarantees for applicants for asylum<sup>1</sup>**

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. **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** and 20 (1);<sup>2</sup>
  - (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;<sup>3</sup>

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<sup>1</sup> **E** : scrutiny reservation linked to Article 10.

<sup>2</sup> **E** : add that the applicant must cooperate in these proceedings.

<sup>3</sup> **P**, supported by **F** : read

"They must receive the services of an interpreter for submitting their case to the competent authorities whenever reasonable. Member States shall consider it reasonable to give these services if the determining authority calls upon the applicant to be interviewed, or whenever the translation of relevant documents for the case is needed, before a decision is taken on the application. [...]. The payment of those services by public funds shall be ruled by Member States, according to reasonable criteria."

- (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;<sup>1</sup>
  - (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 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.<sup>2</sup>
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).

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<sup>1</sup> **FIN** : go back to a positive wording.

<sup>2</sup> **F** : this sentence is redundant given the provision of Article 8.

**UK** : this subparagraph should be deleted.

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

**1. 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 address and inform them of change of address as soon as possible. Member States may provide that the applicant shall have to accept any [...] communication at the most recent address which he/she indicated accordingly.**

**2. Member States may further provide that**

- (a) the competent authorities may search the applicant and the items he/she carries with him/her, if there are indications [...] that he/she is hiding his documents;**
- (b) the competent authorities may take a photograph of the applicant;**
- (c) 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 **it is not reasonably practicable, in particular where:**
  - (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 circumstances beyond his/her control. When in doubt, Member States may require a medical or psychological certificate.

[...]

3. **Where the Member State is unable to offer a personal interview to the applicant pursuant to paragraph 2, or where applicable, to the dependant, all reasonable efforts must be made to allow the applicant to submit further information.**
  
4. **The absence of a personal interview in itself will neither adversely affect the decision nor prevent the determining authority from taking the decision.**

**Article 11**  
**Requirements for a personal interview<sup>1</sup>**

1. A personal interview shall normally take place without the presence of family members.<sup>2</sup>
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) when appointing the person who conducts the interview and the interpreter, [...] 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;]<sup>3</sup>
  - (b) select an interpreter who is **impartial and** 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 allow third parties to be present at the personal interview, provided the applicant consents thereto.**

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<sup>1</sup> **I** : scrutiny reservation.

<sup>2</sup> **IRL** : refer to "adult family members".

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

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

## 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 on which the decision is or will be based.<sup>1</sup>
3. Member States may request the applicant's approval on the contents of the report of the personal interview.<sup>2</sup>

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.<sup>3</sup>

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.

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<sup>1</sup> **B/E/F** : scrutiny reservations.

<sup>2</sup> **B** : scrutiny reservation.

<sup>3</sup> **L** : the applicant should not be allowed to substantially reformulate his statements.

**P** : establish a time-limit for the possibility of requesting these corrections.

## 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 [...].
2. In the event of a negative decision by a determining authority, Member States shall ensure that **free** legal assistance and/or representation, on request, be granted [...], subject to the provisions of this paragraph.<sup>1</sup>

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

- (a) only for the appeal procedures; and/or<sup>2</sup>
- (b) only to those who lack sufficient resources; and/or<sup>3</sup>
- (c) only if there is a reasonable chance of a positive decision in review or appeal;<sup>4</sup> 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 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.

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<sup>1</sup> **EL** : scrutiny reservation. Free legal assistance should not be available in all phases of the procedure.

**IRL** : delete "free" legal assistance.

<sup>2</sup> **FIN/NL/S** : scrutiny reservations.

<sup>3</sup> **S** : scrutiny reservation.

<sup>4</sup> **FIN/NL/S/Cion** : scrutiny reservations.

## 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,<sup>1</sup> 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 **or where the investigative interests relating to the examination of the competent authorities 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 IV.<sup>2</sup>

Member States shall ensure that the legal adviser or other counsellor who assists or represents an applicant for asylum has access to closed areas<sup>3</sup> 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.<sup>4</sup>

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<sup>1</sup> **B/EL/E/FIN/IRL/P/UK** : some limitations should be established concerning legal adviser's access to the file.

<sup>2</sup> **FIN/S** : scrutiny reservations.

<sup>3</sup> **B/FIN** : specify which "closed areas" are considered (detention centres, airports, transit zones, etc).

<sup>4</sup> **E** : delete the second sentence of this sub-paragraph.

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).
3. **The applicant may 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.**

## 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 :<sup>1</sup>
  - (a) all unaccompanied minors<sup>2</sup> are granted, as soon as possible, a representative who shall represent and/or assist them with respect to the examination of the application.<sup>3</sup> 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;<sup>4</sup>
  - (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 comments.<sup>5</sup>

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<sup>1</sup> **E/FIN** : scrutiny reservations.

<sup>2</sup> **D** : add "who, under national law, are unable to represent themselves".

<sup>3</sup> **A** : Member States should have the possibility of requesting the presence of minor.

<sup>4</sup> **UK** : remove reference to reception conditions Directive.

<sup>5</sup> **S** : there should be a possibility for the minor to dispense the legal representative.

**UK** : this sub-paragraph is too vague and already covered by Article 13.

2. <sup>1</sup>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 **within the framework of the examination of an application for asylum** shall ensure that: <sup>2</sup>
- (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.

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<sup>1</sup> **D**, supported by **P** : add "Whenever possible" (rest unchanged).

<sup>2</sup> **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.

**IRL** : declaring one's age should be a precondition for the processing of any asylum application.

## Article 16

### Establishing the facts in the procedure

(deleted)

## Article 17

### Detention pending a decision by the determining authority<sup>1</sup>

1. [...] Member States shall not hold a **person** in detention for the sole reason that **he/she is an applicant for asylum.**

[...] Member States may hold an applicant for asylum in detention **where**

- (a) **it is objectively necessary for an efficient examination [...] or a quick decision; and/or**
- (b) **on the basis of the personal conduct of the applicant, there is a strong likelihood of his/her absconding during the examination of the application at first instance or until the court has ruled whether or not the applicant may remain in the Member State in accordance with Article 40(2); and/or**
- (c) **it is necessary to facilitate the transfer of the applicant to another Member State, or Norway or Iceland, according to the criteria and mechanisms for determining which Member State is responsible for considering an application for asylum submitted by a third country national or stateless person in one of the Member States**<sup>2</sup>

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<sup>1</sup> **IRL** : scrutiny reservation.

<sup>2</sup> The following recital will be added to the Preamble:  
"Should another country decide to conclude an Agreement with the European Community concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in this country, such Agreement should extend to the relating subjects covered by this Directive."

2. **Detention of the applicant pursuant to paragraph 1 shall in total not exceed three months.**
3. **Member States shall ensure that the detention pursuant to paragraph 1 is subject to judicial review.**
4. **This Article is without prejudice to the possibility for Member States to hold an applicant for asylum under national law for reasons relating to national security or public order or in the course of a procedure to remove an applicant after a negative decision.**

#### **Article 18**

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

(deleted)

#### **Article 19**

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

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 **to reject the application, provided the information to do so is available.**
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.

## Article 20

### Procedure in case of implicit withdrawal or abandonment of the application<sup>1</sup>

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, provided the information to do so is available.**<sup>2</sup>

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 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;
- (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.

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<sup>1</sup> L : abuse would be possible under such a provision.

<sup>2</sup> IRL/UK : delete "provided the information to do so is available".

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 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**  
**Data protection**

1. Member States shall not disclose the information regarding individual applications for asylum, **or the fact that an application has been made**, 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.
-