



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 15 May 2003

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

9329/03

LIMITE

ASILE 30

PUBLIC

PRESIDENCY NOTE

to : Delegations

No. prev.doc. : 8801/03 ASILE 27 ADD 1

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 meeting on 13 May 2003, the Strategic Committee on Immigration, Frontiers and Asylum examined the above proposal.

Delegations will find in section II below the text of Articles 1 to 22 as it results from the Committee's works, with delegations comments in the footnotes. A number of drafting suggestions from the Presidency are also included with a view to meeting delegations concerns relating several provisions where an agreement has not yet been reached.

Changes to 8801/03 ASILE 27 ADD 1 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 third country national or stateless person which can be understood as a request for international protection from a Member State under the Geneva Convention.¹ Any application for international protection is presumed to be an application for asylum, unless the person concerned explicitly requests another kind of protection that can be applied for separately;²
- (c) "Applicant" or "applicant for asylum" means a third country national or stateless person who has made an application for asylum in respect of which a final decision has not yet been taken;
- (d) A final decision is a decision whether the third country national or stateless person qualifies as a Refugee by virtue of Council Directive .../ ... [*Proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection*] and which is no longer subject to an appeal within the framework of Chapter IV;³
- (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,⁴ subject to Annex I;
- (f) "Refugee" means a third country national or a stateless person who fulfils the requirements of

¹ **NL** : delete the words "under the Geneva Convention".

² **The Chair** suggests to add following Recital to the Preamble:

"The Directive does not apply to citizens of the Union applying for asylum within the European Union. Citizens of the Union enjoy the right to move and reside freely within the territory of the Member States. The application of limitations and conditions of this freedom by a Member State is subject to guarantees against any abuse, including procedural guarantees on access to effective judicial review, as set out in the relevant Community provisions on the rights of citizens of the Union and their family members to move and reside freely within the territory of the Member States, as well as in the provisions on the European arrest warrant and on expulsion procedures between Member States."

Cion : reservation.

³ **NL** : reservation.

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

⁴ **The Chair** suggested that the issue of another authority entitled to consider which State is responsible for examining the application for asylum will be considered in connection with Chapter III.

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*] ;

- (g) "Refugee Status" means the recognition by a Member State of a third country national or stateless person as a refugee;
- (h) "Unaccompanied minor" means a [...] ¹ person below the age of eighteen who arrives in the territory of the Member States unaccompanied by an adult responsible for him/her whether by law or by custom, and for as long as he/she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he/she has entered the territory of the Member States;
- (i) "Representative" means a person acting on behalf of an organisation representing an unaccompanied minor as legal guardian, a [...] person acting on behalf of a national organisation which is responsible for the care and well-being of minors, or any other appropriate representation appointed to ensure his/her best interests;
- (j) "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. ²

S : reservation linked to Annex I.

¹ **NL** : scrutiny reservation on the deletion of "unmarried".

² **A/D/P** : add "This does not include cases where the applicant remains at restricted areas of airports and border crossing points."

UK : scrutiny reservation.

NL : opposed to this addition.

- (k) "Withdrawal of refugee status" means the decision by a competent authority to revoke, end or refuse to renew the refugee status of a person in accordance with Council Directive .../...[*Proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection*];
- (l) (deleted)
- (m) "Remain in the Member State" means to remain in the territory, including at the border, or in transit zones of the Member State in which the application for asylum has been made or is being examined.

Article 3

Scope¹

1. This Directive shall apply to all applications for asylum made in the territory, including at the border, or in the transit zones of the Member States and to the withdrawal of refugee status.²
2. This Directive shall not apply in cases of requests for diplomatic or territorial asylum submitted to representations of Member States.
3. Member States may decide to apply this Directive in procedures for deciding on applications for kinds of international protection other than that emanating from the Geneva Convention.

¹ **F/FIN/NL/S** : Member States should be obliged to apply the provisions of this Directive to all persons in need of international protection and not only to those requesting protection under the Geneva Convention.

² **A** : scrutiny reservation linked to Article 35A.
D : scrutiny reservation linked to Articles 36 and 35A.

Article 4
More favourable provisions

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

CHAPTER II
Basic principles and guarantees

Article 5
Access to the procedure

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

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

4. Member States may determine, in national legislation
 - (a) the cases in which a minor can make an application on his/her own behalf;
 - (b) the cases in which the application of an unaccompanied minor has to be lodged by a representative as provided for in Article 15(1)(a).
 - (c) the cases in which the lodging of an application for asylum is deemed to constitute also the lodging of an application for asylum for any unmarried minor of the applicant.
5. Member States shall ensure that authorities likely to be addressed by the applicant are instructed to forward the application to the competent authority.

Article 6

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

1. Applicants shall be allowed to remain in the Member State, for the sole purpose of the procedure, until such time as the determining authority has made a decision in accordance with the procedures at first instance set out in Chapter III.¹ This right to remain shall not constitute an entitlement to a residence permit.
2. Member States can make an exception only where, in accordance with Articles 33 and 34, a subsequent application will not be further examined.

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

Article 7

Requirements for the examination of applications

1. Without prejudice to Article 29(3)(e), Member States shall ensure that applications for asylum are neither rejected nor excluded from examination on the sole ground that they have not been made as soon as possible.¹
2. Member States shall ensure that decisions by the determining authority on applications for asylum are taken after an appropriate examination. To that end, Member States shall ensure that
 - (a) applications are examined and decisions are taken individually, objectively and impartially;
 - (b) precise and up-to-date information is obtained from various sources, such as information from the United Nations High Commissioner for Refugees (UNHCR), as to the general situation prevailing in the countries of origin of applicants for asylum and, where necessary, in countries through which they have transited, and that such information is made available to the personnel responsible for examining applications and taking decisions;
 - (c) the personnel examining applications and taking the decisions have the knowledge with respect to relevant standards applicable in the field of asylum and refugee law.
3. The authorities referred to in Chapter IV shall, through the determining authority or the applicant or otherwise, have access to the general information referred to in paragraph 2(b), necessary for the fulfilment of their task.

¹ **D** : scrutiny reservation linked to Article 33(3)(b).

4. Member States may provide for rules concerning the translation of documents relevant for the examination of applications.
5. Member States shall ensure that authorities implementing this Directive are bound by the confidentiality principle, as defined in the national law, in relation to any information they obtain in the course of their work.¹

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.

¹ The location of this paragraph is still to be decided.

Article 9

Guarantees for applicants for asylum

1. With respect to the procedures provided for in Chapter III of this Directive, Member States shall ensure that all applicants for asylum enjoy the following guarantees:
 - (a) They must be informed of the procedure to be followed and of their rights and obligations during the procedure **and the possible consequences of not complying with their obligations**, 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.
 - (b) They must receive the services of an interpreter for submitting their case to the competent authorities whenever necessary. Member States shall consider it necessary to give these services at least when [...] the determining authority calls upon the applicant to be interviewed as referred to in Articles 10 and 11 and appropriate communication cannot be ensured without such services. In this case and in other cases where the competent authorities call upon the applicant, the services shall be paid for out of public funds;
 - (c) They must not be denied the opportunity to communicate with the UNHCR or with any other organisation working on behalf of the UNHCR in the territory of the Member State pursuant to an agreement with that Member State;

- (d) They must be given notice in reasonable time of the decision by the determining authority on their application for asylum. If a legal adviser or other counsellor is legally representing the applicant, Member States may choose to give notice of the decision to him/her instead of to the applicant for asylum;
 - (e) They must be informed about the result of the decision by the determining authority in a language that they may reasonably be supposed to understand when they are not assisted or represented by a legal adviser or other counsellor and when free legal assistance is not available. The information provided shall include information on how to challenge a negative decision.
2. With respect to the procedures provided for in Chapter IV, Member States shall ensure that all applicants for asylum also enjoy the guarantees listed in paragraph 1(b), (c) and (d).

Article 9A
Obligations of the applicants for asylum

1. Member States may impose upon applicants for asylum obligations to cooperate with the competent authorities insofar as these obligations are necessary for the processing of the application.

2. In particular, Member States may provide that
 - (a) applicants for asylum are required to report to the competent authorities or to appear there in person, either without delay or at a specified time;

 - (b) applicants for asylum have to hand over documents in their possession relevant to the examination of the application, such as their passports; and

 - (c) applicants for asylum are required to inform the competent authorities of their current place of residence or address and inform them of change of this place of residence or address as soon as possible. Member States may provide that the applicant shall have to accept any communication at the most recent place of residence or address which he/she indicated accordingly;

 - [...]

 - (d) the competent authorities may search the applicant and the items he/she carries with him/her;

 - (e) the competent authorities may take a photograph of the applicant; and

 - (f) the competent authorities may record the applicant's oral statements, provided he/she has previously been informed thereof.

Article 10

Persons invited to a personal interview

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

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

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

2. The personal interview may be omitted where :
 - (a) the determining authority is able to take a positive decision on the basis of evidence available; or
 - (b) the determining authority is able to reject the application as inadmissible pursuant to Article 25(1); or
 - (c) the competent authority has already had a meeting with the applicant for the purpose of assisting him/her with filling his/her application and submitting the essential information regarding the application, in terms of Article 7(2) of Council Directive .../... *[Proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection]*.

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

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

4. The absence of a personal interview in accordance with this Article shall not prevent the determining authority from taking a decision on an application for asylum.
5. The absence of a personal interview pursuant to paragraph 2(b) and(c) and paragraph 3 shall not adversely affect the decision of the determining authority.

[...]

Article 11

Requirements for a personal interview

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

Article 12

Status of the report of a personal interview in the procedure

1. Member States shall ensure that a written report is made of every personal interview, containing at least the essential information regarding the application, as presented by the applicant, in terms of Article 7(2) of *Council Directive .../...[Proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection]*.
2. Member States shall ensure that applicants have timely access to the report of the personal interview. Where access is only granted after the decision of the determining authority, Member States shall ensure that access is possible **as soon as necessary for an appeal to be prepared and lodged in due time.**
3. Member states may request the applicant's approval on the contents of the report of the personal interview.

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

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

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

Article 13

Right to legal assistance and representation

1. Member States shall allow applicants for asylum the opportunity to consult in an effective manner a legal adviser or other counsellor, admitted as such under national law, on matters relating to their asylum applications.
2. In the event of a negative decision by a determining authority, Member States shall ensure that free legal assistance and/or representation be granted on request, subject to the provisions of this paragraph.¹

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

- (a) only for the appeal procedures; and/or²
- (b) only to those who lack sufficient resources; and/or
- (c) only if the appeal or review is likely to succeed³, provided this is assessed by an authority independent from the determining authority in a procedure prescribed by law;⁴ and/or
- (d) only to legal advisers or other counsellors specifically designated by national law to assist and/or represent applicants for asylum.

¹ **EL** : reservation. Free legal assistance should not be available in all phases of the procedure.
F : limit the granting of free legal assistance to persons having entered legally the territory of the Member States.

² **NL** : scrutiny reservation.

³ **NL/Cion** : scrutiny reservations.

⁴ **S** : reservation.

UK : scrutiny reservation. The words " provided this is assessed by an authority independent from the determining authority in a procedure prescribed by law" should be deleted.

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

Member States may demand to be reimbursed wholly or partially for any expenses granted if and when the applicant's financial situation has improved considerably or if the decision to grant such benefits was taken on the basis of false information supplied by the applicant.

Article 14

Scope of legal assistance and representation

1. Member States shall ensure that a legal adviser or other counsellor admitted 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, insofar as the information is relevant to the examination of the application.

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

2. Member States shall ensure that the legal adviser or other counsellor who assists or represents an applicant for asylum has access to closed areas, **such as detention facilities and transit zones**, for the purpose of consulting that applicant. Member States may only limit the possibility to visit applicants in closed areas [...] where such limitation is, by virtue of national legislation, objectively necessary for the security, public order or administrative management of the area or to ensure an efficient examination of the application, provided that access by the legal adviser or other counsellor is not thereby severely limited or rendered impossible.
3. Member States may provide rules covering the presence of legal advisers or other counsellors at all interviews in the procedure, without prejudice to this Article or to Article 15(1)(b).
4. Member States may provide that the applicant is allowed to bring with him/her to the personal interview the legal adviser or other counsellor, admitted as such under national law.

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

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

Article 15
Guarantees for unaccompanied minors¹

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

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

¹ **D** : restrict to unaccompanied minors who, under national law, are unable to represent themselves.

2. Member States may refrain from appointing a representative where the unaccompanied minor
 - (a) will in all likelihood reach the age of maturity before a decision at first instance is taken;
or
 - (b) can avail himself, free of charge, of a legal adviser or other counsellor, admitted as such under national law to fulfil the tasks assigned above to the representative.

3. Member States shall ensure that:
 - (a) if an unaccompanied minor has a personal interview on his/her application for asylum as referred to in Articles 10, 11 and 12, that interview is conducted by a person who has the necessary knowledge of the special needs of minors;
 - (b) an official who has the necessary knowledge of the special needs of minors prepares the decision by the determining authority on the application of an unaccompanied minor.

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

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

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

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

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

Article 16

Establishing the facts in the procedure

(deleted)

Article 17
Detention¹

1. Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum.
2. Member States may hold an applicant for asylum who is present at the border or in a transit zone in detention, or may otherwise deprive **an** applicant of his/her liberty, to prevent his/her effecting an unauthorised entry into the Member State.²
3. ³Member States may also hold an applicant for asylum in detention where it is necessary to prevent the frustration of action to be taken with a view to deportation. Member States may consider it necessary to detain the applicant for this purpose where⁴
 - (a) on the basis of the personal circumstances of the applicant, such as his/her unwillingness to cooperate in establishing his/her identity, there is a risk of his/her absconding during the examination of the application at first instance or until the court **or tribunal**⁵ has ruled whether or not the applicant may remain in the Member State in accordance with Article 40(2); and/or

¹ **D** : reservation linked to Constitutional Court ruling.

A/D/P : exclude applicability of this Article to applications at the border.

B : concerning applications at the border, there should be a possibility of restricting the applicant's freedom of movement.

² **FIN/IRL/S** : reservations. Add the possibility of detaining someone in order to establish his/her identity.

³ **FIN** : suggests starting (3) with "on the basis of the personal circumstances of the applicant".

⁴ **NL/S** : reservations.

⁵ **EL** : reservation related to the notion of courts in Chapter IV.

- (b) it is considered to transfer the applicant to another State according to the rules establishing criteria and mechanisms for determining which State is responsible for considering an application for asylum until such time as the transfer takes place or the requested State has refused to take charge over **or take back** the applicant;¹and/or
- (c) one of the situations as described in Article 29 (3) (e) and (g) is applicable.

[...]

4. Member States shall ensure that there is the possibility of speedy² judicial review pursuant to paragraphs 2 and 3.
5. This Article is without prejudice to the possibility for Member States to hold a person in detention for reasons not related to the fact that he is an applicant in accordance with a procedure described by law.
6. Member States shall ensure that accompanied minors are not held in detention without **one of their** their parents and that unaccompanied minors are held in detention only under exceptional circumstances.³

Article 18

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

(deleted)

¹ **FIN** : the personal circumstances of the applicant should be taken into account.

² **IRL/UK** : delete "speedy".

³ **The Chair** suggests to add the following Recital to the Preamble :
"Detention of minors shall be used only as a measure of last resort and for the shortest appropriate period of time".

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.
2. Member States may also decide that the determining authority can decide to discontinue the examination without taking a decision. In this case, Member States shall ensure that the determining authority shall enter a notice in the applicant's file.

Article 20

Procedure in case of implicit withdrawal or abandonment of the application¹

1. When there is reasonable cause to consider that an applicant for asylum has implicitly withdrawn or abandoned his/her application for asylum, Member States shall ensure that the determining authority takes a decision either to discontinue the examination or, on the assumption that there are no grounds to consider that he/she could qualify as a refugee² 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*] **to reject the application.**

¹ UK : scrutiny reservation linked to Articles 33 and 34.

² NL : reservation linked to Article 3.

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

- (a) he/she has failed to respond to requests to provide information essential to his/her application in terms of Article 7 of Council Directive .../... [*Proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection*] or has not appeared for an personal interview as provided for in Articles 10, 11 and 12;
- (b) he/she has absconded or left without authorisation the place where he/she lived or was held, without contacting the competent authority within a reasonable time or he/she has not within a reasonable time complied with reporting duties or other obligations to communicate.

Before a decision is taken pursuant to (a), the competent authorities shall **remind** the applicant [...] of the possible consequences of his/her non compliance.¹

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

2. Member States shall ensure that the applicant who reports again to the competent authority after a decision to discontinue as referred to in paragraph 1 is taken, is entitled to request that his/her case be re-opened, unless the request is examined in accordance with Articles 33 and 34.²

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

¹ **B/F/FIN** : scrutiny reservations.

² **UK** : scrutiny reservation relating to Articles 33 and 34.

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

Article 21

The role of UNHCR

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

Article 22

Collection of information on individual cases

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

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

DEFINITION OF "DETERMINING AUTHORITY"

When implementing the provision of this Directive, Ireland may, insofar as the provisions of section 17(1) of the Refugee Act 1996 (as amended) continues to apply, consider that:

- “*determining authority*” provided for in Article 2(e) of this Directive shall, insofar as the examination of whether an applicant should or, as the case may be, should not be declared to be a refugee is concerned, mean the Office of the Refugee Applications Commissioner; and
- “*decisions at first instance*” provided for in Article 2(e) of this Directive shall include recommendations of the Refugee Applications Commissioner as to whether an applicant should or, as the case may be, should not be declared to be a refugee.

Ireland will notify the European Commission of any amendments to the provisions of section 17(1) of the Refugee Act 1996 (as amended) in order that the Commission can, if considered necessary, make arrangements to reflect such amendments in this Directive.
