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ASILE 34

OUTCOME OF PROCEEDINGS

of:	Asylum Working Party
on:	16 May 2001
No. prev.doc. :	9125/01 ASILE 30
No. Cion prop. :	11622/00 ASILE 46 (COM(2000) 578 final)
Subject :	Proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status

I

At its meeting on 18 and 19 June 2001, the Asylum Working Party continued its reading of the above proposal.

Delegations will find enclosed under II the text of Articles 1 to 23 with the comments made by delegations shown in footnotes.

II

Draft
COUNCIL DIRECTIVE

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

CHAPTER I
Scope and definitions

Article 1

The purpose of this Directive is to establish minimum standards[1] on procedures in Member States for granting and withdrawing refugee status.

Article 2

For the purposes of this Directive:

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

[1] **D, E, F and A** : the proposal is too detailed and does not take sufficient account of the mandate of Article 63(1) (d) EC and of the principle of subsidiarity.
NL : on the contrary, welcomed the proposal and, recalling the Tampere conclusions, believed that a certain degree of ambition was needed for the harmonisation of this subject.
D : the concept of "minimum standards" should be better defined. The proposal provides for too detailed rules in some aspects on the one hand and leaves several "grey zones" on the other hand.

(b) "Application for asylum" means a request whereby a person asks for protection from a Member State and which can be understood to be on the grounds that he is a refugee within the meaning of Article 1(A) of the Geneva Convention. Any application for 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; [1]

(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. A final decision is a decision in respect of which all possible remedies under this Directive have been exhausted; [2]

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[1] **D, GR, E, F, IRL, NL, A, FIN and UK** : want a more precise wording such as : *"application for refugee status under the Geneva Convention"* or *"application introduced by a person invoking one of the protection motives of the Geneva Convention"*. A clearer distinction should be made between asylum and other forms of protection. They oppose the automatic assumption that any application for protection is an application for asylum. In this context :

- D recalled that certain situations were not covered by the text. It wanted a distinction to be made between political persecution and humanitarian protection for other reasons (e.g. health reasons),
- E entered a reservation and stated that if the aim of the proposal was to cover other forms of protection, that should be specified in the text,
- F wanted other forms of protection which give rise to similar rights on asylum (e.g. "constitutional asylum" in France) to be covered,
- IRL entered a reservation,
- A suggested referring, in the second sentence, to *"any request for protection due to persecution"*. It wondered also about the treatment of family members (in connection with Article 4(4)),
- FIN preferred the deletion of the second sentence and recalled that some persons asking for protection may not want to be considered as asylum seekers.

[2] **B, D, F, FIN and UK** : want a more detailed and clearer wording referring to the *"final decision"*.

- **D and FIN** preferred to refer to a legal decision which can be executed.
- **D** also asked to refer in the second sentence to *"all possible appeals under national law"* instead of *"all possible remedies under this Directive"*.

In this context, **NL** asked to add, in the second sentence *"or which cannot be challenged"*.
S was satisfied with the wording proposed by the Commission.

(d) "Determining authority" means any judicial, quasi-judicial or administrative body in a Member State responsible for examining the admissibility and/or substance of applications for asylum and competent to take decisions in first instance in these cases. Any authority responsible for controlling the entry into the territory cannot be considered as a determining authority; [1]

(e) "Reviewing body" means any judicial, quasi-judicial or administrative body in a Member State which is independent of and different from the relevant determining authority in that Member State and responsible for review of the decisions of this determining authority on facts and points of law; [2]

(f) "Appellate Court" means a judicial body in a Member State independent of the government of the Member State in question and responsible for further appeal against the decision of any reviewing body;

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[1] **D, E, F, IRL, A, P and UK** : expressed concerns given the legal, administrative and judicial organisation in their countries and the risk of having to introduce constitutional amendements if such a text were adopted.
- D recalled that in its country the first instance in these cases could not be a Court of Law. It also stated that frontiers authorities should be allowed to refuse entry in the territory of persons coming from third countries.
- E considered that the objective to be pursued should be to indicate that the authorities examining the admissibility and/or substance of applications and those deciding on possible expulsion should not be the same. It also stated that it is in any case for governments to take the decision, this decision being subject to judicial review if an appeal is lodged.
- F asked to replace in the second sentence the word *"authority"* by *"service"* in order to avoid legal problems.
- IRL entered a reservation and P a scrutiny reservation linked to the judicial organisation of their countries.
- A stated that a better solution would be to establish that at least two instances should exist and leave the details to national legislation.
- UK suggested replacing the second sentence by the words : *"Anyone taking such decisions must be specifically trained for that purpose"*.

[2] **D** : scrutiny reservation linked to its national judicial organisation.
A : the second instance must always be a judicial body.

(g) "Decision" means a decision by a determining authority or reviewing body in a Member State on the admissibility or substance of an application for asylum; [1]

(h) "Refugee" means a person who[2] fulfils the requirements of Article 1(A) of the Geneva Convention; [3]

(i) "Refugee Status" means the status granted by a Member State to a person who is a refugee and is admitted as such to the territory of that Member State; [4]

(j) "Unaccompanied minor" means a person below the age of eighteen who arrives on the territory of the Member States unaccompanied by an adult responsible for him whether by law or by custom,[5] and for as long as he is not effectively taken into the care of such an adult;

(k) "Detention" means confinement of an applicant for asylum by a Member State within a restricted area, such as prisons, detention facilities or airport transit zones,[6] where his freedom of movement is substantially curtailed; [7]

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1 **D, F, A and FIN** : decisions by Appellate Courts should be either included in this definition or specifically excluded from the scope of the Directive, if that was the Commission's intention.

2 **NL** : add *"on the basis of a national decision"*.

3 **FIN** : distinction should be made between persons recognised as refugees by a Member State and persons considered as refugees in the region of origin by UNHCR.

4 **F** : specify that the status is granted by a Decision taken by a Member State confirming that the requirements of Article 1(A) of the Geneva Convention are fulfilled.

5 **A** : add *"of the relevant Member State"*.

6 **D and A** : delete the reference to airport transit zones.

7 **B** : add : *"or keeping in closed premises"*.

(l) "Withdrawal of refugee status" means the decision by a determining authority to withdraw the refugee status of a person on the basis of Article 1(C) of the Geneva Convention or Article 33(2) of the Geneva Convention; [1]

(m) "Cancellation of refugee status" means the decision by a determining authority to cancel the refugee status of a person on the grounds that circumstances have come to light that indicate that this person should never have been recognised as a refugee in the first place.

Article 3

1. This Directive shall apply to all persons who make an application for asylum at the border or on the territory of Member States without prejudice to the Protocol on asylum for nationals of Member States of the European Union. [2]

   The provisions of this Directive shall also apply where examination of an application for asylum takes place within the context of a procedure to decide on the right of the applicant legally to enter the territory of a Member State. [3]

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[1] **D, E, F, A, P and FIN** : revise the terms used in (l) and (m) in the different linguistic versions. They said that the terms *"withdrawal"* and *"cancellation"* of status could have different meanings in the national law of Member States.
D and A : cover cases of automatic withdrawal of refugee status (e.g. if the refugee asks for a passport in an embassy of his country of origin).
In order to solve this issue, **P** suggested saying *"the decision by the competent national authorities"* instead of *"the decision by a determining authority"*.
Furthermore, **A** wanted to add a reference to Article 1(F) of the Geneva Convention.
IRL : be sure that public policy reasons are included as a motive for withdrawing refugee status.

[2] **E** : say *"nationals from third countries and stateless persons"* instead of *"persons"* and no reference to the Protocol.
D and F : reference to the Protocol should be made only in the recitals.
D : a reference to territories pursuant to the Dublin Convention is needed.
In this context, **A** wanted to know whether the reference to the territory of the Member States should be considered in the context of Article 299 TEC or in the context of the Dublin Convention.

[3] **A** : an exceptional procedure for applications at the land borders is needed.

2. This Directive shall not apply to requests for **[...]** asylum submitted to **diplomatic or consulate** representations of Member States.

3. Member States may decide to apply the provisions of this Directive to 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. [1]

[1] **NL and S** : include clearly subsidiary protection.
FIN : add the protection of children.

CHAPTER II

Basic principles and guarantees

Article 4

1. The filing of an application for asylum shall not be subject to any prior formality. [1]

2. Member States shall ensure that the applicant for asylum has an effective opportunity to lodge an application as early as possible.

3. Member States shall ensure that all authorities likely to be addressed by the applicant at the border or on the territory of the Member State have instructions for dealing with applications for asylum, including the instruction to forward the applications to the competent authority for examination, together with all relevant information.

4. **Every person is entitled to make an individual application for asylum.** Where a person has made an application for asylum also on behalf of his dependants **in accordance with national law**, each adult among these persons shall be informed in private of his right to make a separate application for asylum.

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[1] **E, F and FIN** : delete this paragraph since it is superfluous and could be a source of possible problems in the future.
E recalled that applications must be presented in person (sending them by post would not be acceptable).
NL : applications and requests are different things, the first being subject to certain formalities.
Supported by **S, Cion** defended his Institution's proposal which differentiated between filing (paragraph 1) an application, where the physical presence of the asylum seeker is needed, and the lodging (paragraph 2) of the application, where the procedural rules start to apply.

Article 5

Applicants for asylum shall be allowed to remain at the border or on the territory of the Member State in which the application for asylum has been made or is being examined as long as it has not been decided on. [1]

Article 6

Member States shall ensure that decisions on applications for asylum are taken individually, objectively and impartially. [2]

Article 7

With respect to all procedures provided for in this Directive, Member States shall ensure that all applicants for asylum enjoy the following guarantees:

(a) They must be informed, prior to examination of their application for asylum, of the procedure to be followed and of their rights and obligations during the procedure, in a language which they **can be reasonably expected to** understand.

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[1] **D and A** : clarify whether the decision mentioned by the proposal must come from the determining authority and whether derogations to this principle are possible.
FIN : add *"by the first instance"* at the end of this Article .
Cion : this provision should be discussed in connection with Article 33.

[2] **F** : the reference to objectivity and impartiality would imply the risk of provoking all kinds of appeal. It suggested, therefore, the following text :
"Member States shall ensure that decisions on applications for asylum are taken within the framework of individual procedures".

(b) They must be given the services of an interpreter, whenever necessary, for submitting their case to the competent authorities. These services must be paid for out of public funds, if the interpreter is called upon by the competent authorities. [1]

(c) They must be given the opportunity to communicate with United Nations High Commissioner for Refugees (UNHCR) or with other organisations that are working on behalf of UNHCR at all stages of the procedure. [2]

(d) They must be communicated decisions on applications for asylum in writing. If an application is rejected, the reasons for the decision in fact and in law shall be stated and information given on the possibility for review of the decision and, where applicable, on how to file an appeal and the relevant time-limits.

(e) In the event of an adverse decision, they must be informed of the main purport of the decision and the possibility for review of the decision and, where applicable, of how to request an appeal and the relevant time-limits, in a language which they understand.

(f) In the event of a positive decision, they must be informed of the decision and of any mandatory steps, if any, they should take as a result of this decision, in a language which they understand. [3]

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[1] **D, F, A and UK** : specify that Member States can restrict the paid services of an interpreter to the first interview with the asylum seeker.
F considered that interpretation by phone or videoconference should be allowed under this provision.
UK said that it would present a text to this end for a future meeting.

[2] **D** : scrutiny reservation. It asked to express more precisely that contacts with UNHCR and NGOs would be possible during the interview process. Delays and abuses in procedures under second or third instances should be avoided.

[3] **D, E, F, A and UK** : translations of all decisions would imply a considerable burden and great costs for Member States. They suggested providing for only brief summaries explaining the outcome of the procedure to be translated.

Article 8

1. Before a decision is taken by the determining authority[1], the applicant[2] for asylum must be given the opportunity of a personal interview[3] on the admissibility and/or substance of his application for asylum with an official[4] competent under national law.

2. At the end of a personal interview as referred to in paragraph 1, the official must at least read out a transcript to the interviewee in order to be able to request his agreement with its contents.[5]

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1 **D** : say *"first instance determining authority"* in order to make clear that this provision does not address judicial procedures.

2 **FIN** : take into account the applicant's age when hearing him/her.

3 **D, E and UK** : interview is not needed in all cases. In view of documents presented by the applicant a positive answer may be given by the determining authority.
UK : circumstances where an interview is not appropriate, as foreseen in paragraph 5, must be reflected in paragraph 1.

4 **L** : recalls that officials may not necessarily be *"fonctionnaires de l'Etat"*.

5 **E and IRL** : a summary of the facts must be produced but not necessarily a transcript of the interview.
P, S and UK : not necessary to read out a transcript, better say that the applicant needs to know what is on the form and have the possibility to comment.
UK : make it clear that this provision applies only if the applicant is requested under national law to agree with the description of his statements, as said in the explanatory memorandum to the proposal. It wanted also to merge paragraphs (2) and (6).
FIN : say that the transcript or summary must be read out and interpreted.
F : with this provision the first phase of the procedure risks being too formal and almost of judicial character. It therefore suggested deleting this paragraph.
D : specify the consequences in case the applicant does not agree with the transcript or summary of the interview.

3. Where a person has made an application for asylum also on behalf of his dependants[1], each adult among these persons must be given the opportunity to express his opinion in private and to be interviewed on the admissibility and/or substance of the application.[2]

4. A personal interview on the substance of the application for asylum shall normally take place without the presence of family members.

5. Member States may permit the competent authorities to refrain from conducting a personal interview on the substance of the application for asylum in the case of persons who are not capable of attending this interview for psychological[3] or medical reasons and[4] minors below an age stipulated by national law or regulation, as long as this does not negatively affect the decision by the determining authority. In these cases, each person must be given the opportunity to be represented[5] by a legal guardian, counsellor or adviser as appropriate.

6. In the regular procedure[6] referred to in Articles 24, 25 and 26, hereinafter "the regular procedure", each applicant for asylum must be given an opportunity, within a reasonable time-limit,[7] to consult the transcript of a personal interview on the substance of his application for asylum and to make comments on it.[8]

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1 **E** : categories falling under the concept *"dependants"* should be specified.

2 **D and A** : add *"as far as this possibility exists under national law"*.
FIN and UK : this paragraph is superfluous and contradictory with Article 4(4) and should be deleted.
S : this paragraph is necessary in order to ensure that all persons involved are interviewed and not only heads of family.

3 **FIN** : delete the word *"psychological"* which is covered by *"medical"*.

4 **F** : in order to preserve coherence between the linguistic versions, in the French version the word *"et"* should be replaced by *"ou"*.

5 **B, E and UK** : the last sentence needs clarification as the ones to be interviewed are the applicants and not their advisers or representatives.
UK : suggested *"to consult a legal counsellor or adviser as appropriate"*.

6 **NL** : add the cases of accelerated procedure.
P : opposed such suggestion, fearing that it would result in delaying accelerated procedures.

7 **IRL** : the meaning of the expression *"reasonable time limit"* should be clarified.

8 **F and A** : this paragraph should be deleted.
UK : this paragraph should be simplified and merged with paragraph (2).

7. Member States shall ensure that an official and an interpreter of a sex chosen by the interviewee[1] is involved in the personal interview on the substance of the application for asylum if there are reasons to believe[2] that the person concerned finds it otherwise difficult to present the grounds for his application in a comprehensive manner owing to the experiences he has undergone or to his cultural origin.

Article 9

1. Member States shall ensure that all applicants for asylum have the opportunity to contact in an effective manner[3] organisations or persons[4] that provide legal assistance at all stages of the procedure.

2. In closed areas designated for the examination of applications for asylum, Member States may regulate the access of organisations providing legal assistance,[5] provided such rules either serve the legitimate purpose of ensuring the quality of legal assistance or are objectively necessary to ensure an efficient examination in accordance with the national rules pertaining to the procedure in these areas and do not render access impossible.[6]

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1 **D, E, F, IRL, L, NL, A, P FIN, S and UK** : objected to the possibility that officials and/or interpreters could be chosen by the interviewee. They recalled difficulties in finding interpreters for some languages and the limited staff in charge of such interviews. They also feared the possibility of such a provision being a source of abuse in specific cases.
UK : say *"where possible"* or *"where reasonably practical"*.
NL : say
"Member States shall ensure as far as possible *that an official and an interpreter of a sex chosen by the interviewee [applicant] is involved in the personal interview on the substance of the application for asylum if there are reasons to believe that the person concerned finds it otherwise difficult to present the grounds for his application in a comprehensive manner owing to the experiences he has undergone or to his cultural origin. Only if a female or male official or interpreter is not available or if the request of the interviewee [applicant] will cause substantial delay of the procedure, is deviation from this principle permitted".*

2 **UK** : say *"if there are reasons known to the authorities prior to the interview to believe that..."*.

3 **UK** : say *"consult"* instead of *"contact in an effective manner"*.

4 **D** : specify that an applicant may be represented by a person or an organisation but not by several organisations at the same time.
UK : specify that such organisations must provide advice free of charge to applicants.

5 **F** : the French version should refer to *"assistance juridique"* instead of *"assistance judiciaire"*.

6 **F** : simplify the drafting of this paragraph and exclude explicitly from the scope of this proposal asylum applications at the borders.

3. In the regular procedure, the applicant's legal adviser or counsellor shall have the opportunity to be present during the personal interview on the substance of the application for asylum. Member States shall provide for rules on the presence of legal advisers or counsellors at all other interviews in the asylum procedure,[1] without prejudice to this paragraph and Articles 8(5) and 10(1)(b).

4. Member States shall ensure that all applicants for asylum have the right to a legal adviser or counsellor to assist them after an adverse decision by a determining authority.[2] The assistance must be given free of charge at this stage of the procedure if the applicant has no adequate means to pay for it himself.[3]

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[1] **F, I and UK** : suggested *"legal advisers or counsellors shall be invited to be present"* at interviews, in order to avoid this rule being used in an abusive manner in order to delay procedures.
S : convocations to interviews shall be sent to both the applicant and his/her legal advice.

[2] **A:** have *"refugee advisers"* who accompany the whole procedure, but not lawyers.
D, S : the legal counselling should intervene before a decision is taken.
F : measures should be foreseen for cases of abuse or manifestly unfounded applications.

[3] **D :** the assistance should be free of charge only if there are some prospects of success.
IRL : the expression *"adequate means"* should be clarified.
L : there is a contradiction between paragraph 1 and paragraph 4 of the article.
UK : suggested *"reasonable assistance will be provided free of charge"*.
I : the article should be divided in three different parts:
- at the moment of the application;
- during the proceedings and the presentation of evidence;
- at the appeal stage.

Article 10

1. With respect to all procedures provided for in this Directive, Member States shall ensure that all unaccompanied minors[1] enjoy the following guarantees:

   (a) A legal guardian or adviser must be appointed as soon as possible to assist and represent them with respect to the examination of the application; [2]

   (b) The appointed legal guardian or adviser must be given the opportunity to help prepare them for the personal interview on the admissibility and/or the substance of the application for asylum. Member States shall allow the legal guardian or adviser of an unaccompanied minor to be present at the personal interview and to ask questions or make comments. [3]

2. Member States shall ensure that the personal interview on the admissibility and/or the substance of the application for asylum of an unaccompanied minor is conducted by an official trained with regard to the special needs of unaccompanied minors.[4]

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1 **S**: reference should also be made to *"accompanied minors"*.

2 **E**: reference should be made to the Convention on the Rights of the Child. First, it should be decided, in the best interests of the child, if he should be allowed to apply for asylum. Then, the Member States services should try to find the parents.
NL, FIN : problems with the terms *"legal/guardian, adviser"*; **FIN** prefers *"representative"*.

3 **UK :** the child has a social welfare officer appointed but he does not deal with the asylum procedure. Both roles should not be imposed on the same person.
E : the child's representative should ratify the decision.
F : the child should be allowed to express himself unaccompanied.

4 **D :** suggested *"people dealing with unaccompanied minors should be properly trained"*; questioned the link with Article 14(d) which seems superfluous and repetitive.
E, L, P : difficulties in finding a *"trained official"* for each case.
UK : avoids interviewing the minor, unless absolutely necessary. Suggested beginning the paragraph with *"Without prejudice to Article 8(5)..."*.

3. Member States shall ensure that:

(a) The competent organisations that carry out medical examinations to determine the age of unaccompanied minors shall use methods that are safe and respect human dignity;

(b) Unaccompanied minors are informed prior to the examination of their application for asylum, and in a language which they 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, including the consequences of refusal on the part of the unaccompanied minor to undergo the examination.[1]

[1] **D :** reservation on the compulsory nature of this measure.

Article 11

1. Member States shall not hold an applicant for asylum in detention for the sole reason that his application for asylum needs to be examined.[1] However, Member States may hold an applicant for asylum in detention for the purpose of taking a decision in the following cases, in accordance with a procedure prescribed by national law and only for as long as is necessary:

   (a) to ascertain or verify his identity or nationality; [2]

   (b) to determine his identity or nationality when he has destroyed or disposed of his travel and/or identity documents or used fraudulent documents upon arrival in the Member State in order to mislead the authorities;[3]

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[1] **UK** : the first sentence seems to contradict the rest of the provision; delete it and draft the introduction of this paragraph as follows :
"Member States may hold an applicant for asylum in detention only for the purpose ... " (rest unchanged).
S : opposed the UK suggestion on grounds that it is important to state that a person must not be detained for the sole reason that he is an applicant for asylum.
D and A : the text should be aligned with the definition of detention under Article 2(k).
In this context, they recalled, supported by **FIN**, their wish to exclude airport transit zones.
FIN : specify the meaning of *"detention"* (isolation, restriction of movement, etc).
NL : add reasons of public order, as well as a reference to the fact that concerning detention, the principle of proportionality must apply (in order to avoid abuse).
Cases under (a), (b) and (c) should include a reference to documents relating to travel routes by the applicant before reaching the territory of the Member State.
Cion : did not agree with the last NL remark considering that such a reference would be too wide and open to abuse.
E : refer, in the Spanish version, to *"detención"*, instead of to *"retención"*.

[2] **F** : such a reason for detention is too broad and vague and cannot be accepted.

[3] **I** : add *"or if he declares that he has lost his identity documents"*.
F : make clear that these are cases where the applicant has voluntarily concealed his identity.
S : this reason for detention is too wide. The applicant should not be detained if he can demonstrate his identity, even if he destroyed his documents.
FIN : this subparagraph is superfluous since already covered by subparagraph (a).
A : exclude applications at the border.

(c) to determine the elements on which his application for asylum is based which in other circumstances could be lost; [1]

(d) in the context of a procedure, to decide on his right to enter the territory. [2]

2. Member States shall provide by law for the possibility of an initial review and subsequent regular reviews of the order for detention of applicants for asylum detained pursuant to paragraph 1. [3]

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[1] **B, F and P** : specify these reasons in order to clarify their scope.
I, supported by **L and UK** : add cases where a person is arrested for residing illegally in a Member State and submits an asylum application in order to avoid expulsion.
I suggested adding the following subparagraph :
"when the authorities find the applicant is staying illegally in the territory and he has evaded border controls and has made an application for asylum in the context of a procedure to deport him from the territory prior to the application for asylum"
In this context, it also suggested modifying Article 28(1)(c) as follows :
"(c) a person has made an application for asylum subsequent to a rejection/deportation procedure, ~~or at the last stage of a procedure to deport him~~ ***and could have*** *done it earlier,".*
GR supported the I suggestion concerning Art. 28(1)(c).
UK suggested it would be simple to say *"right to enter or remain on the territory"* in (d).

[2] **F** : reservation. Asylum applications at the border should be excluded from the scope of this Directive. **A and P** shared in this view.
E, L, NL and UK : detention in view of transfers following the provisions of the Dublin Convention (the new EC instrument which will substitute it) should be added.
B : add a new reason in order to facilitate expulsions of applicants whose applications are manifestly unfounded.
It suggested adding the following subparagraph :
"to come to a conclusion about an appeal relating to an application whose examination is in hand but which is manifestly unfounded under the terms of a decision for the determining authority".
FIN : add case of detention where a deportation order has been issued.

[3] **F** : delete the words *"by law"*.
GR : scrutiny reservation on that expression.
S : clarify the expression "regular review" (e.g. by specifying concrete time-periods).
FIN : recalled that a possibility of review must exist concerning any detention.

Article 12

Member States shall take appropriate measures to ensure that all competent authorities are adequately provided with staff and equipment so that they can discharge their duties as laid down in this Directive. [1]

Article 13

1. Member States shall take appropriate measures to ensure that determining authorities [2] are fully qualified in the field of asylum and refugee matters. To that end, each Member State shall ensure that its determining authorities have: [3]

   (a) at their disposal specialised personnel with the necessary knowledge and experience in the field of asylum and refugee matters;

   (b) access to precise and up-to-date information from various sources, including information from UNHCR, concerning the situation prevailing in the countries of origin of asylum applicants for asylum and [4] in transit countries;

   (c) the right to ask advice, whenever necessary, from experts on particular issues, for example, a medical or cultural issue. [5]

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1 **E, GR, F and P** : provisions under Art. 12 to 14 are not really needed and seem to refer to rules on vocational training and not to measures under Art. 63 TEC.
F : asked for the opinion of the Council Legal Service concerning the legal basis as well as the quality of the drafting of these Articles.
IRL : the different material possibilities of Member States, need of interpreters of certain languages, etc, may complicate the implementation of these provisions.

2 **D, FIN and S** : the provisions of paragraph (1) should also apply to the bodies referred to in Article 2(e) and (f).

3 **F** : this paragraph is over precise and drafted more in the form of a resolution than of a binding legal instrument.

4 **NL** : say *"and insofar as it is needed, in transit countries"*. Guarantees concerning confidential information as foreseen in paragraph 2 should also apply here.

5 **NL** : the notion of experts on cultural issues should be clarified.
F : if experts are needed, those quoted by the proposal as examples are not the more relevant.

2. Upon request of their reviewing bodies, Member States shall grant them the same treatment as determining authorities with respect to access to the part of the information mentioned at paragraph 1(b) that is considered public information. Member States may decide to grant them access to the part of the information mentioned at paragraph 1(b) that is considered confidential information, if they abide by the same rules as the determining authorities with respect to the confidentiality of this information. [1]

Article 14 [2]

1. Member States shall ensure that:

(a) personnel likely to come into contact with persons at the stage where they may make an application for asylum, such as border officials and immigration officers, have received the necessary basic training to recognise an application for asylum and how to proceed further in accordance with the instructions referred to in Article 4(3);

(b) personnel interviewing applicants for asylum have received the necessary basic training for this purpose;

(c) personnel interviewing persons in a particularly vulnerable position and minors [3] have received the necessary basic training with regard to the special needs of these persons;

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[1] **D, F and A** : confidential information cannot be used in judicial procedures since all information used at the process must be circulated to the parties involved.

[2] **F** : these provisions fall within rules on vocational training and are not covered by Article 63 TEC.
D : these provisions should also apply to review bodies. In order to avoid problems with the legal basis, it suggested referring to *"necessary knowledge"* instead of *"necessary basic training"*.
E : instead of having such a detailed measure, better say just that a specialised body is necessary, as established by the UN.
L : since this provision establishes clear obligations, the resulting penalties in case of non-compliance should also be specified.

[3] **NL** : quoting specialised training for persons interviewing minors could lead to very specific forms of protection.

(d) personnel examining applications for asylum have received the necessary basic training with respect to international refugee law, national asylum law, relevant international human rights law, this Directive and the assessment of applications for asylum from persons with special needs, including unaccompanied minors;

(e) personnel responsible for orders of detention have received the necessary basic training with respect to national asylum law, relevant international human rights law, this Directive and national rules for detention.

2. Upon request of their reviewing bodies, Member States shall grant their personnel the same treatment as the personnel of determining authorities with respect to the training mentioned at paragraph 1(c), where necessary, and (d).

Article 15 [1]

1. Member States shall take appropriate measures to ensure that information regarding individual applications for asylum is kept confidential.

2. Member States shall not disclose or share the information referred to in paragraph 1 with the authorities of the country of origin of the applicant for asylum.

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

4. This Article does not affect UNHCR's access to information in the exercise of its mandate under the Geneva Convention in accordance with Article 17 of this Directive.

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[1] **UK** : wondered about the compatibility of this provision with the Protocol on asylum for nationals of Member States of the EU.
Paragraph (3) of this Article should suffice. The other paragraphs could be deleted.
D and F : the scope of confidentiality should be specified in this context and in particular in the framework of appeals before a review body.
D : asked whether confidentiality referred only to recent information.
F : paragraph (1) should start saying :
"Subject to the national provisions relating to the standards of publicity of procedures within review bodies..." (rest unchanged).
NL : add measures relating to guarantees concerning exchange of information between Member States. It should also be specified that when asking for information from a third country, no data should be communicated to the country of origin of the asylum seeker.
S : a possibility must be established for the asylum seeker of lifting the obligation of confidentiality.

Article 16

1. In the event of a voluntary withdrawal of the application for asylum by the applicant, the determining authority [1] shall enter a notice in the file discontinuing [2] the examination of the application.

2. If an applicant for asylum has disappeared,[3] the determining authority may discontinue the examination of the application if, without reasonable cause, the applicant has not complied with reporting duties or requests to provide information or to appear for an personal interview for at least 30 working days. [4]

3. If the applicant places himself at the disposal of the authorities for the purpose of the examination of his application for asylum after the examination of the application has been discontinued pursuant to paragraphs 1 or 2, his request may be considered a new application for asylum. [5]

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1 **E** : refer to the *"competent authority"* instead of the *"determining authority"*.

2 **E, F and A** : a distinction between discontinuation and suspension should be introduced here as well as in paragraph (3). Discontinuation means that the case should be later considered as a new application.
NL, FIN : specify whether this provision refers also to voluntary renunciation.

3 **D and F** : avoid using the word "disappeared" but refer to cases where the applicant does not appear before the determining authority.

4 **GR, F, IRL, NL and UK** : a 30 working days time-period is not needed in all cases and could lead to delaying tactics.
D and A : an overall fixed time-period would be preferable to a time-period based on working days.
D : after such time-period has passed without the appearance of the applicant, the application should be considered as withdrawn.

5 **D, GR, IRL, A and P** : a stricter rule is necessary in order to avoid abuse.
GR : add "unless he can prove that his non appearance was due to circumstances outside his control".
E and F : in order to ensure true harmonisation, a distinction between suspension and discontinuation is necessary as in paragraph (1).

Article 17

Member States shall take appropriate measures to enable UNHCR or other organisations that are working on behalf of UNHCR:

(a) to have access to applicants for asylum, including those in detention and in airport 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;

(c) to be able to make representations,[1] 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.

[1] **B, D, L, NL, A and FIN** : say "intervene" instead of "make representations" given that UNHCR or other organisations are not a party to these procedures.

CHAPTER III [1]

Admissibility

Article 18 [2]

Member States may dismiss [3] a particular application for asylum as inadmissible if:

(a) another Member State is responsible 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 [4] in one of the Member States;

(b) pursuant to Article 20, a third country is considered as a first country of asylum for the applicant; [5]

(c) pursuant to Articles 21 and 22, a third country is considered as a safe third country for the applicant. [6]

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1 **E** : reservation concerning the two-procedure system (regular and accelerated) since it will not be absolutely clear when one or the other must be used.
P : scrutiny reservation for the same reasons.
D : scrutiny reservation concerning this Chapter and its Annexes.

2 **E, NL, I and P** : inadmissibility should refer only to the accelerated procedure and relate to applications being unacceptable or manifestly unfounded and applications which are not the responsibility of the Member State where they were presented.

3 **A and S** : say "reject" instead of "dismiss", since all applications should be examined.

4 **F** : definitions of the terms "national of a third country" and "stateless person" are needed in Article 2.

5 **F** : reservation concerning subparagraphs (b) and (c) : an individual examination of every application must take place.
UK : the situation of Norway and Iceland concerning subparagraphs (b) and (c) should be clarified.

6 **NL** : add inadmissibility in cases where agreements on safe return with third countries exist as well as in cases where the applicant has a residence in a safe third country.
FIN : UNHCR conclusions concerning safe third country should be taken into account. Subparagraphs (b) and (c) could be merged.

Article 19

When a Member State requests another Member State to take the responsibility for examining a particular application for asylum, the requesting Member State shall inform the applicant as soon as possible of the request, its content and the relevant time-limits in a language which he understands.[1]

Article 20

A country can be considered as a first country of asylum for an applicant for asylum if he has been admitted to that country as a refugee or for other reasons justifying the granting of protection, and can still avail himself of this protection**.** [2]

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[1] **D, F, NL, FIN and UK** : such a provision should be included in the future EC instrument replacing the Dublin Convention and not in the present Directive.
UK : same reservations as concerning Article 7(f) : translations of all decisions would imply a considerable burden and great costs for Member States.

[2] **F** : reservation for the reasons explained concerning Article 18 (All applications should be examined, even if the applicant comes from a first country of asylum).
FIN : provisions concerning first country of asylum and safe third country should be merged. Criteria under Annex I could also be used in relation with Article 20.
D : specify whether the person really obtained real protection in another country.
I : scrutiny reservation. Reference should be made to the fact that the person resided in another country.
S : a more detailed terminology should be used. The reference to someone having been a refugee in another country is not sufficient.
L : cases of persons already having refugee status in a Member State and seeking asylum in another Member State should be dealt with here.

Article 21 [1]

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. Member States may retain or introduce legislation that allows for the designation by law or regulation of safe third countries. This legislation shall be without prejudice to Article 22.

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 wish to retain these laws or regulations, shall notify them to the Commission within six months of the adoption of this Directive and 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.

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[1] **E, F, P, I, NL and S** : applications must always be examined on a case by case basis. A possibility of establishing a list of safe third countries should not be rejected in the first place, but political and procedural problems could arise when modifying this list. Applicants could also invoke that a particular country is not safe for them.
GR, IRL, A and UK : support the system proposed by the Commission, but **A** expressed reservations concerning Annex I and **GR** recalled that applications must always be examined on a case by case basis.
D : doubts concerning the functioning of the proposed system.
F, NL, P : doubts concerning the nature and competences of the Contact Committee foreseen by the Commission in the explanatory memorandum and the Financial Statement (but not in the proposal itself).
Cion : such a Committee would have an informal status.

Article 22

A country that is a safe third country in accordance with the principles set out in Annex I can be considered as a safe third country for a particular applicant for asylum only if, notwithstanding any list:

(a) the applicant has a connection or close links with the country or has had the opportunity during a previous stay in that country to avail himself of the protection of its authorities; [1]

(b) there are grounds for considering that this particular applicant will be re-admitted to its territory; and [2]

(c) there are no grounds for considering that the country is not a safe third country in his particular circumstances. [3]

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[1] **D and NL** : safety standard is too low.
NL : an objective notion of safety should be established. *"Close links*" is too vague an expression to be reason for transfer.
FIN : do not refer to previous situations but to present ones in order to avoid legal problems and to ensure the safety of the person.
UK : scope should be clarified. Drafting is too wide and looks more like a general resolution that a binding legal instrument.

[2] **FIN** : this subparagraph should be modified in order to obtain guarantees concerning the safety of the person.

[3] **D** : as in subparagraph (a), proposed safety standard is too low.

Article 23 [1]

1. If a personal interview on the admissibility of the application for asylum with regard to Article 18(b) or (c) is conducted with an applicant, Member States shall ensure that the competent authorities conduct this personal interview within 40 working days after the application of the person concerned has been made.

2. Member States shall ensure that the determining authority takes a decision dismissing an application for asylum as inadmissible by virtue of Article 18(b) or (c) within 25 working days following the personal interview. [2]

3. If no personal interview with the applicant has been conducted, the time-limit for taking a decision shall be 65 working days. [3]

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[1] **B** : reservation concerning the mandatory character of the proposed time-periods.
FIN : problems also with the time-periods which will be difficult to respect.
D : time-periods should not be fixed in working days.
GR : paragraphs (1) to (4) should be moved to Article 18 and paragraph (5) to Article 22.
E and P : causes of inadmissibility and unfounded applications should be placed in the same Chapter. Recalled their doubts concerning the functioning and relationship between regular and accelerated procedures.
NL : proposed time-periods are too long. Reference should be made to cases under Article 18(a) (Dublin Convention) and to their applicable time-periods.
L : *"taking a decision"* implies two stages (1) the signature of the decision and (2) the communication to the applicant. The date of the communication is relevant concerning appeals. The text should be clarified in this sense.
A : proposed text and time-periods could lead to abuse.

[2] **D** : this provision is too inflexible and difficult to apply in practice.

[3] **NL** : a personal interview should always be conducted taking into account the relevance of the decision to be taken. The only exception should be when circumstances make such an interview materially impossible.
E : on the other hand, stated that the applicant should be allowed to forego a personal interview.
A : specify that it is not the applicant who can choose between the regular and the accelerated procedure.

4. Non-compliance with the time-limits in this Article shall result in the application for asylum being processed under the regular procedure. [1]

5. When implementing a decision based on Article 22, Member States may 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. [2]

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[1] **IRL** : cases when regular or accelerated procedures apply should be better specified.
A : specify that it is not the applicant who can choose between the regular and the accelerated procedure.
NL : specify that non-compliance with time-periods may be due to the applicant. In these cases inadmissibility should apply.

[2] **E** : scrutiny reservation concerning the obligation of providing such a document in the language of the third country.