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OUTCOME OF PROCEEDINGS

of:	Asylum Working Party
on:	8-9 June 2010
No Cion proposal:	14959/09 ASILE 82 CODEC 1231 + ADD1, 2, 3, 4
No prev. doc.:	10279/10 ASILE 45 CODEC 483
Subject:	Directive of the European Parliament and of the Council on minimum standards on procedures in Member States for granting and withdrawing international protection (recast)

At its meeting on 8-9 June 2010, the Asylum Working Party examined document 10279/10 containing compromise suggestions drafted by the Presidency. The result of this examination is set out below with delegations' comments in the footnotes.

↓ 2005/85/EC

⇒ new

2009/0165 (COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT
AND OF THE COUNCIL**

**on minimum standards on procedures in Member States for granting and withdrawing
~~refugee status~~ ⇒ international protection ⇐**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular point (1) (d)
⇒ and point (2) (a) ⇐ of the first paragraph of Article 63 thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Economic and Social Committee²,

Having regard to the opinion of the Committee of the Regions³,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁴,

Whereas:

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

³ OJ C [...], [...], p. [...].

⁴ OJ C [...], [...], p. [...].

↓ new

- (1) A number of substantive changes are to be made to Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures for granting and withdrawing refugee status⁵. In the interests of clarity, that Directive should be recast.

↓ 2005/85/EC recital 1

- (2) A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of establishing progressively an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Community.

↓ 2005/85/EC recital 2

- (3) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention of 28 July 1951 relating to the status of refugees, as amended by the New York Protocol of 31 January 1967 (Geneva Convention), thus affirming the principle of non-refoulement and ensuring that nobody is sent back to persecution.

↓ 2005/85/EC recital 3

- (4) The Tampere Conclusions provide that a Common European Asylum System should include, in the short term, common standards for fair and efficient asylum procedures in the Member States and, in the longer term, Community rules leading to a common asylum procedure in the European Community.

⁵ OJ L 326, 13.12.2005, p. 13.

↓ 2005/85/EC recital 4 (adapted)

- (5) ~~The~~ Directive 2005/85/EC ~~minimum standards laid down in this Directive on procedures in Member States for granting or withdrawing refugee status are therefore~~ was a first measure on asylum procedures.
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↓ new

- (6) The first phase in the creation of a Common European Asylum System has now been achieved. The European Council of 4 November 2004 adopted the Hague Programme, which sets the objectives to be implemented in the area of freedom, security and justice in the period 2005-2010. In this respect the Hague Programme invited the European Commission to conclude the evaluation of the first phase legal instruments and to submit the second-phase instruments and measures to the Council and the European Parliament, with a view to their adoption before 2010. In accordance with the Hague programme, the objective to be pursued for the creation of the Common European Asylum System is the establishment of a common asylum procedure and a uniform status valid throughout the Union.
- (7) In the European Pact on Immigration and Asylum, adopted on 16 October 2008, the European Council noted that considerable disparities remain between one Member State and another concerning the grant of protection and called for new initiatives, including a proposal for establishing a single asylum procedure comprising common guarantees, to complete the establishment of a Common European Asylum System, provided for in the Hague Programme.
- (8) The resources of the European Refugee Fund and of the European Asylum Support Office should be mobilised to provide adequate support to the Member States' efforts relating to the implementation of the standards set in the second phase of the Common European Asylum System, in particular to those Member States which are faced with specific and disproportionate pressures on their asylum systems, due in particular to their geographical or demographic situation.

- (9) In order to ensure a comprehensive and efficient evaluation of the international protection needs of applicants within the meaning of Directive [.../.../EC] [on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted (the Qualification Directive)] the Community framework on procedures for granting international protection should be based on the concept of a single asylum procedure.
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↓ 2005/85/EC recital 5

⇒ new

- (10) The main objective of this Directive is to ⇒ develop further minimum standards for procedures in Member States for granting and withdrawing international protection with a view to establishing a common asylum procedure in the Community ⇐ ~~introduce a minimum framework in the Community on procedures for granting and withdrawing refugee status.~~
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↓ 2005/85/EC recital 6

⇒ new

- (11) The approximation of rules on the procedures for granting and withdrawing ⇒ international protection ⇐ ~~refugee status~~ should help to limit the secondary movements of applicants for ~~asylum~~ ⇒ international protection ⇐ between Member States, where such movement would be caused by differences in legal frameworks ⇒ , and create equivalent conditions for the application of Directive [.../.../EC] [the Qualification Directive] in Member States ⇐.
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↓ 2005/85/EC recital 7

⇒ new

- (12) It is in the very nature of minimum standards that Member States should have the power to introduce or maintain more favourable provisions for third country nationals or stateless persons who ask for international protection from a Member State, where such a request is

understood to be on the grounds that the person concerned is ⇒ in need of international protection ⇐ ~~a refugee~~ within the meaning of ⇒ Directive [..././EC] [the Qualification Directive] ⇐ ~~Article 1(A) of the Geneva Convention.~~

↓ 2005/85/EC recital 8

⇒ new

- (13) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. ⇒ In particular this Directive seeks to promote the application of Articles 1, 18, 19, 21, 24 and 47 of the Charter and has to be implemented accordingly. ⇐
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↓ 2005/85/EC recital 9

⇒ new

- (14) With respect to the treatment of persons falling within the scope of this Directive, Member States are bound by obligations under instruments of international law to which they are party ~~and which prohibit discrimination.~~
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↓ 2005/85/EC recital 10

⇒ new

- (15) It is essential that decisions on all applications for ~~asylum~~ ⇒ international protection ⇐ be taken on the basis of the facts and, in the first instance, by authorities whose personnel has the appropriate knowledge or receives the necessary training in the field of asylum and refugee matters.

↓ 2005/85/EC recital 11

⇒ new

- (16) It is in the interest of both Member States and applicants for ⇒ international protection ⇐ asylum to decide as soon as possible on applications for asylum. ⇒ international protection, without prejudice to an adequate and complete examination ⇐. ~~The organisation of the processing of applications for asylum should be left to the discretion of Member States, so that they may, in accordance with their national needs, prioritise or accelerate the processing of any application, taking into account the standards in this Directive.~~
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↓ 2005/85/EC recital 12

⇒ new

- (17) The notion of public order may ⇒ *inter alia* ⇐ cover a conviction for committing a serious crime.
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↓ 2005/85/EC recital 13

⇒ new

- (18) In the interests of a correct recognition of those persons in need of protection as refugees within the meaning of Article 1 of the Geneva Convention ⇒ or as persons eligible for subsidiary protection ⇐, every applicant should, ~~subject to certain exceptions,~~ have an effective access to procedures, the opportunity to cooperate and properly communicate with the competent authorities so as to present the relevant facts of his/her case and sufficient procedural guarantees to pursue his/her case throughout all stages of the procedure. Moreover, the procedure in which an application for asylum ⇒ international protection ⇐ is examined should normally provide an applicant at least with the right to stay pending a decision by the determining authority, access to the services of an interpreter for submitting his/her case if interviewed by the authorities, the opportunity to communicate with a representative of the United Nations High Commissioner for Refugees (UNHCR) ⇒ and with organizations providing advice or counselling to applicants for

international protection ~~or with any organisation working on its behalf~~, the right to appropriate notification of a decision, a motivation of that decision in fact and in law, the opportunity to consult a legal adviser or other counsellor, and the right to be informed of his/her legal position at decisive moments in the course of the procedure, in a language he/she can reasonably be supposed to understand and, in the case of a negative decision, the right to an effective remedy before a court or tribunal .

↓ 2005/85/EC recital 14

~~In addition, specific procedural guarantees for unaccompanied minors should be laid down on account of their vulnerability. In this context, the best interests of the child should be a primary consideration of Member States.~~

↓ new

(19) With a view to ensuring an effective access to the examination procedure, officials who first come into contact with persons seeking international protection, in particular those carrying out surveillance of land or maritime borders or conducting border checks, should receive instructions and necessary training on how to recognise and deal with requests for international protection. They should be able to provide third country nationals or stateless persons who are present in the territory, including at the border, in the territorial waters or in the transit zones of the Member States, and wish to request international protection, with all relevant information as to where and how applications for international protection may be lodged. Where those persons are present in the territorial waters of a Member State, they should be disembarked in land and have their applications examined in accordance with this Directive.

(20) In addition, special procedural guarantees for vulnerable applicants, such as minors, unaccompanied minors, persons who have been subjected to torture, rape or other serious acts of violence or disabled persons, should be laid down in order to create the conditions necessary for their effective access to procedures and presenting the elements needed to substantiate the application for international protection.

- (21) National measures dealing with identification and documentation of symptoms and signs of torture or other serious acts of physical or mental violence, including acts of sexual violence, in procedures covered by this directive should *inter alia* be based on the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).
- (22) With a view to ensuring substantive equality between female and male applicants, examination procedures should be gender sensitive. In particular, personal interviews should be organised in a way which makes it possible for both female and male applicants to speak about their past experiences in cases involving gender based persecution. The complexity of gender related claims should be properly taken into account in procedures based on the safe third country concept, the safe country of origin concept or the notion of subsequent applications.
- (23) The "best interests of the child" should be a primary consideration of Member States when implementing this Directive, in line with the 1989 United Nations Convention on the Rights of the Child.
- (24) Procedures for examining international protection needs should be organised in a way that makes it possible for the competent authorities to conduct a rigorous examination of applications for international protection.

↓ 2005/85/EC recital 15

⇒ new

- (25) Where an applicant makes a subsequent application without presenting new evidence or arguments, it would be disproportionate to oblige Member States to carry out a new full examination procedure. In these cases, Member States should ⇒ be able to dismiss an application as inadmissible in accordance with the *res judicata principle* ⇐ ~~have a choice of procedure involving exceptions to the guarantees normally enjoyed by the applicant.~~

↓ 2005/85/EC recital 16

⇒ new

- (26) Many **asylum** applications ⇒ for international protection ⇐ are made at the border or in a transit zone of a Member State prior to a decision on the entry of the applicant. Member States should be able to ⇒ provide for admissibility and/or substantive examination procedures which make it possible to decide on applications made at the border or in transit zones at those locations ⇐ ~~keep existing procedures adapted to the specific situation of these applicants at the border. Common rules should be defined on possible exceptions made in these circumstances to the guarantees normally enjoyed by applicants. Border procedures should mainly apply to those applicants who do not meet the conditions for entry into the territory of the Member States.~~
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↓ 2005/85/EC recital 17

⇒ new

- (27) A key consideration for the well-foundedness of an **asylum** application ⇒ for international protection ⇐ is the safety of the applicant in his/her country of origin. Where a third country can be regarded as a safe country of origin, Member States should be able to designate it as safe and presume its safety for a particular applicant, unless he/she presents **serious** counter-indications.
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↓ 2005/85/EC recital 18

- (28) Given the level of harmonisation achieved on the qualification of third country nationals and stateless persons as refugees, common criteria for designating third countries as safe countries of origin should be established.

↓ 2005/85/EC recital 19

~~Where the Council has satisfied itself that these criteria are met in relation to a particular country of origin, and has consequently included it in the minimum common list of safe countries of origin to be adopted pursuant to this Directive, Member States should be obliged to consider applications of persons with the nationality of that country, or of stateless persons formerly habitually resident in that country, on the basis of the rebuttable presumption of the safety of that country. In the light of the political importance of the designation of safe countries of origin, in particular in view of the implications of an assessment of the human rights situation in a country of origin and its implications for the policies of the European Union in the field of external relations, the Council should take any decisions on the establishment or amendment of the list, after consultation of the European Parliament.~~

↓ 2005/85/EC recital 20 (adapted)

~~It results from the status of Bulgaria and Romania as candidate countries for accession to the European Union and the progress made by these countries towards membership that they should be regarded as constituting safe countries of origin for the purposes of this Directive until the date of their accession to the European Union.~~

↓ 2005/85/EC recital 21

⇒ new

- (29) The designation of a third country as a safe country of origin for the purposes of this Directive cannot establish an absolute guarantee of safety for nationals of that country. By its very nature, the assessment underlying the designation can only take into account the general civil, legal and political circumstances in that country and whether actors of persecution, torture or inhuman or degrading treatment or punishment are subject to sanction in practice when found liable in the country concerned. For this reason, it is important that, where an applicant shows that there are **serious** ⇒ valid ⇐ reasons to consider the country not to be safe in his/her particular circumstances, the designation of the country as safe can no longer be considered relevant for him/her.

↓ 2005/85/EC recital 22 (adapted)

⇒ new

- (30) Member States should examine all applications on the substance, i.e. assess whether the applicant in question qualifies ~~as a refugee~~ ☒ for international protection ☒ in accordance with ~~Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted⁶; Directive [...]/EC [the Qualification Directive]~~ except where the present Directive provides otherwise, in particular where it can be reasonably assumed that another country would do the examination or provide sufficient protection. In particular, Member States should not be obliged to assess the substance of an ~~asylum~~ application ⇒ for international protection ⇐ where a first country of asylum has granted the applicant refugee status or otherwise sufficient protection and the applicant will be readmitted to this country.

↓ 2005/85/EC recital 23

⇒ new

- (31) Member States should also not be obliged to assess the substance of an ~~asylum~~ application ⇒ for international protection ⇐ where the applicant, due to a ⇒ sufficient ⇐ connection to a third country as defined by national law, can reasonably be expected to seek protection in that third country ⇒, and there are grounds for considering that the applicant will be admitted or re-admitted to that country ⇐. Member States should only proceed on this basis where this particular applicant would be safe in the third country concerned. In order to avoid secondary movements of applicants, common principles for the consideration or designation by Member States of third countries as safe should be established.

⁶ ~~OJL 304, 13.9.2004, p. 12.~~

↓ 2005/85/EC recital 24

⇒ new

- (32) Furthermore, with respect to certain European third countries, which observe particularly high human rights and refugee protection standards, Member States should be allowed to not carry out, or not to carry out full examination of asylum applications regarding applicants who enter their territory from such European third countries. ~~Given the potential consequences for the applicant of a restricted or omitted examination, this application of the safe third country concept should be restricted to cases involving third countries with respect to which the Council has satisfied itself that the high standards for the safety of the third country concerned, as set out in this Directive, are fulfilled. The Council should take decisions in this matter after consultation of the European Parliament.~~
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↓ 2005/85/EC recital 25

~~It follows from the nature of the common standards concerning both safe third country concepts as set out in this Directive, that the practical effect of the concepts depends on whether the third country in question permits the applicant in question to enter its territory.~~

↓ 2005/85/EC recital 26

⇒ new

- (33) With respect to the withdrawal of refugee ⇒ or subsidiary protection ⇐ status, Member States should ensure that persons benefiting from ⇒ international protection ⇐ ~~refugee status~~ are duly informed of a possible reconsideration of their status and have the opportunity to submit their point of view before the authorities can take a motivated decision to withdraw their status. ~~However, dispensing with these guarantees should be allowed where the reasons for the cessation of the refugee status is not related to a change of the conditions on which the recognition was based.~~

↓ 2005/85/EC recital 27

⇒ new

- (34) It reflects a basic principle of Community law that the decisions taken on an application for ~~asylum~~ ⇒ international protection ⇐ and on the withdrawal of refugee ⇒ or subsidiary protection ⇐ status are subject to an effective remedy before a court or tribunal ~~within the meaning of Article 234 of the Treaty. The effectiveness of the remedy, also with regard to the examination of the relevant facts, depends on the administrative and judicial system of each Member State seen as a whole.~~
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↓ 2005/85/EC recital 28

- (35) In accordance with Article 64 of the Treaty, this Directive does not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.
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↓ 2005/85/EC recital 29 (adapted)

⇒ new

- (36) This Directive does not deal with procedures ⇒ between Member States ⇐ governed by ~~Council Regulation (EC) No 343/2003 of 18 February 2003~~ Regulation (EC) No [.../...] [establishing the criteria and mechanisms for determining the Member State responsible for examining an ~~asylum~~ application ⇒ for international protection ⇐ lodged in one of the Member States by a third-country national ⇒ or a stateless person ⇐ ⁷ (The Dublin Regulation)].

⁷ ~~OJ L 50, 25.2.2003, p. 1.~~

↓ new

- (37) Applicants with regard to whom Regulation EC No [...] [the Dublin Regulation] applies should enjoy access to the basic principles and guarantees set out in this Directive and to the special guarantees pursuant to Regulation EC No [...] [the Dublin Regulation].

↓ 2005/85/EC recital 30

- (38) The implementation of this Directive should be evaluated at regular intervals ~~not exceeding two years~~.

↓ 2005/85/EC recital 31

⇒ new

- (39) Since the objective of this Directive, namely to establish minimum standards on procedures in Member States for granting and withdrawing ~~refugee status~~ ⇒ international protection ⇐ cannot be sufficiently attained by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve this objective.

↓ 2005/85/EC recital 32 (adapted)

~~In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom has notified, by letter of 24 January 2001, its wish to take part in the adoption and application of this Directive.~~

↓ 2005/85/EC recital 33 (adapted)

~~In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Ireland has notified, by letter of 14 February 2001, its wish to take part in the adoption and application of this Directive.~~

↓ 2005/85/EC recital 34

- (40) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark does not take part in the adoption of this Directive and is not bound by it or subject to its application.
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↓ new

- (41) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with the earlier Directive. The obligation to transpose the provisions which are unchanged arises under the earlier Directive.
- (42) This Directive should be without prejudice to the obligations of the Member States relating to the time-limit for transposition into national law of the Directive set out in Annex III, Part B.

↓ 2005/85/EC

⇒ new

HAVE ADOPTED THIS DIRECTIVE⁸:

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 ⇒ international protection by virtue of Directive .../.../EC [the Qualification Directive] ⇐ ~~refugee status~~.

Article 2

Definitions⁹

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;

⁸ General reservation: **AT**
General scrutiny reservation: **CZ, DE, HU, LT, PT, SE, SI, SK**
General scrutiny reservation on Presidency suggestions made in document 7872/10: **CY**
Parliamentary scrutiny reservation: **CZ, HU, LT**

Linguistic reservation: **AT, CY, CZ, DE, HU, LU, LT, PL, RO, SE**

⁹ Reservation: **EL**

Scrutiny reservation: **FR**

~~(b) "application" or "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. 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;~~

↓ new

(b) "application" or "application for international protection" means a request made by a third country national or a stateless person for ¹⁰protection from a Member State, who can be understood to seek refugee status or subsidiary protection status, and who does not explicitly request another kind of ¹¹protection outside the scope of Directive [...]/EC [the Qualification Directive], that can be applied for separately;

↓ 2005/85/EC

⇒ new

(c) "applicant" or "applicant for ⇒ international protection ⇐ asylum" means a third country national or stateless person who has made an application for asylum ⇒ international protection ⇐ in respect of which a final decision has not yet been taken;

↓ new


⇒ Council

(d)¹² ⇒ "applicant in need of special procedural guarantees" means an applicant who has been identified in accordance with Article 21 (2) of the Reception Conditions Directive as

¹⁰ HU proposed to insert "international".

¹¹ HU proposed to insert "international".

¹² Reservation: **AT, DE, FR, MT** because of reference to Article 21(2) of the Reception Conditions Directive and scrutiny reservation: **BG, CY, CZ, EL, HU, LV, NL** (also requesting a reservation on the provision in the CION proposal), **RO, SE, SI, SK**.

having particular procedural needs due to his/her age, gender, disability, mental disorders or consequences of torture, rape or other serious forms of psychological, physical or sexual violence; 

↓ 2005/85/EC (adapted)

⇒ new

- (~~e~~)(e) "final decision" means a decision on whether the third country national or stateless person be granted refugee ⇒ or subsidiary protection ⇐ status by virtue of Directive 2004/83/EC Directive [...]/../EC [the Qualification Directive] and which is no longer subject to a remedy within the framework of Chapter V of this Directive irrespective of whether such remedy has the effect of allowing applicants to remain in the Member States concerned pending its outcome, ~~subject to Annex III to this Directive;~~
- (e)(f) "determining authority" means any quasi-judicial or administrative body in a Member State responsible for examining applications for ~~asylum~~ ⇒ international protection ⇐ and competent to take decisions at first instance in such cases, subject to Annex I;
- (~~f~~)(g) "refugee" means a third country national or a stateless person who fulfils the requirements of Article 1 ~~of the Geneva Convention as set out in 2 (d) of Directive 2004/83/EC~~ Directive [...]/../EC [the Qualification Directive];
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HU, NL remarked that the reference is awkward considering that the discussion on this provision has not yet been finalised.

FR proposed "an applicant who has been **recognized by a Member State** ~~identified in accordance with Article 21 (2) of the Reception Conditions Directive~~ as having particular procedural needs due to his/her age, gender, **serious disease and/or** disability, mental disorders or consequences of torture, rape or other serious forms of psychological, physical or sexual violence;"

DE supported the FR proposal while suggesting to replace "recognized" by "identified" and to delete "mental disorders".

HU, LV, SE, SI, SK advocated consistency of terminology between this provision and provisions in other (proposals on) legislative acts in the field of asylum.

HU suggested an indicative instead of a closed list.

↓ new

(h) "person eligible for subsidiary protection" means a third country national or a stateless person who fulfils the requirements of Article 2 (f) of Directive [..././EC] [the Qualification Directive];

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(i) "international protection status" means the recognition by a Member State of a third country national or a stateless person as a refugee or a person eligible for subsidiary protection;

↓ 2005/85/EC (adapted)

~~(e)~~(i) "refugee status" means the recognition by a Member State of a third country national or a stateless person as a refugee;

↓ new

(k) "subsidiary protection status" means the recognition by a Member State of a third country national or a stateless person as a person eligible for subsidiary protection;

(l) "minor" means a third country national or a stateless person below the age of 18 years;

↓ 2005/85/EC (adapted)

⇒ new

↻ Council

~~(h)~~(m) "unaccompanied minor" means ~~a person below the age of 18 who arrives in the territory of the Member States unaccompanied by an adult responsible for him/her whether by law or~~

13 CZ suggested to include a definition of a "person eligible for international protection".

~~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;~~ ⇒ a minor as defined in Article 2 (l)¹⁴ of Directive [.../.../EC] [the Qualification Directive]; ⇐

~~(i)(n)~~¹⁵ "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;~~¹⁶ ⇒ person appointed by the competent authorities¹⁷ to act as a legal guardian in order to assist and represent an unaccompanied minor with a view to ensuring the child's best interests and exercising legal capacity for the minor where necessary; ⇐

~~(i)(o)~~¹⁸ "withdrawal of ~~refugee~~ ⇒ international protection ⇐ status" means the decision by a competent authority to revoke, end or refuse to renew ~~the~~ refugee ⇒ or subsidiary protection ⇐ status of a person in accordance with Directive 2004/83/EC Directive [.../.../EC] [the Qualification Directive] ;

~~(k)(p)~~ "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~~ ⇒ international protection ⇐ has been made or is being examined.

¹⁴ **SI** requested clarification as to the implications of being in a procedure to obtain international protection status.

¹⁵ Scrutiny reservation: **SI** requesting clarification as to what functions he performs; how many representatives an unaccompanied minor could have; how a representative is to be appointed; what kind of organisations could make representatives available.

DE considered the definition too limited in view of the different functions a representative performs.

HU considered the definition not consistent with Article 21(1)(a).

AT noted that the Procedures Directive and the Reception Conditions Directive have different definitions of "representative".

¹⁶ Reservation **PT** on deleted text considering that it must be possible for a minor to have himself represented by a NGO. In response, **CION** indicated that the representative needs to be recognised by the competent authorities and that, for that reason, NGOs are less suited to act as representatives.

¹⁷ **DE** proposed "bodies" instead of "authorities".

¹⁸ Reservation: **CZ**

⇒(q)¹⁹ "subsequent application" means a further application made after a final decision has been taken on the previous application, including cases where the applicant has explicitly withdrawn his/her application and cases where the determining authority has rejected the application following its implicit withdrawal in accordance with Article 24 (1). ☹

Article 3

Scope

1. This Directive shall apply to all applications for ~~asylum~~ ⇒ international protection ⇐ made in the territory, including at the border ⇒, in the territorial waters²⁰ ⇐ or in the transit zones of the Member States, and to the withdrawal of ~~refugee status~~ ⇒ international protection status ⇐.
 2. This Directive shall not apply in cases of requests for diplomatic or territorial asylum submitted to representations of Member States.
 - ~~3. Where Member States employ or introduce a procedure in which asylum applications are examined both as applications on the basis of the Geneva Convention and as applications for other kinds of international protection given under the circumstances defined by Article 15 of Directive 2004/83/EC, they shall apply this Directive throughout their procedure.~~
- 43.²¹ ~~Moreover,~~ Member States may decide to apply this Directive in procedures for deciding on applications for any kind of ⇒ [...] ☹ protection ⇒ falling outside the scope of Directive [..../.../EC] [the Qualification Directive] ⇐.

¹⁹ Scrutiny reservation: **EL, FI, NL, SE, SI**
DE proposed to delete "final" (supported by **FI**), to include in the definition the case when the original examination procedure has been discontinued and to refrain from the reference to Article 24(1).

²⁰ **PT** requested clarification of the term "territorial waters" in particular in the light of the deadlines for examining an application for international protection.

²¹ Scrutiny reservation: **RO, SI**

↓ 2005/85/EC

⇒ new

↻ Council

Article 4

Responsible authorities

1. ²²Member States shall designate for all procedures a determining authority which will be responsible for an appropriate examination of the applications in accordance with this Directive, ~~in particular Articles 8(2) and 9.~~ ⇒ Member States shall ensure that this authority ⇐ ↻ is provided with appropriate means, including sufficient competent personnel²³, to carry out its tasks in accordance with this Directive. ↻

↓ new

↻ Council

2. ²⁴↻ Member States shall ensure that the personnel of the determining authority have the appropriate knowledge and skills regarding issues falling within the scope of this Directive and other EU instruments dealing with international protection. To that end, Member States shall²⁵ provide for initial and, where relevant, follow up training, among others on: ↻²⁶:

²² Scrutiny reservation: **EL** (considering it difficult to identify a single determining authority), **FR, NL, SK**

²³ **FR** proposed to delete the phrase "including sufficient competent personnel" fearing that the requirement related to personnel could result in additional grounds for litigation. **LU** however underlined the importance of such a phrase.

²⁴ Scrutiny reservation: **CZ**

AT, CY, DE, EL, IT, PT, LU, LV, NL, SI, SK considered that paragraph (2) contains too much detail. **LU** suggested to refer to only refer to "sufficient training". **NL** proposed to delete (a) to (f). **PT** proposed to delete (b) and (e). In response, **CI** indicated that the list represented basic training needs.

²⁵ **LU** proposed "may" instead of "shall".

²⁶ **AT, SK** preferred "such as".

(a) substantive and procedural rules on international protection and Human Rights set out in relevant international and \Rightarrow EU \Leftarrow instruments, including the principles of non-*refoulement* and non-discrimination;

(b) gender \Rightarrow [...] \Leftarrow and age awareness;

(c) use of country of origin information;

(d) interview \Rightarrow techniques \Leftarrow , including cross-culture communication;²⁷

(e) \Rightarrow use of expert medical reports in procedures for granting international protection; \Leftarrow ²⁸

(f) evidence assessment, including the principle of the benefit of the doubt;²⁹

(g) case law issues relevant to the examination of applications for international protection.

\Rightarrow When providing training pursuant to this paragraph, Member States may give priority to specific issues in order to address the particular needs of the personnel of the determining authority.

Member States may make use of the support of the European Asylum Support Office when implementing this paragraph. \Leftarrow

↓ 2005/85/EC

~~In accordance with Article 4(4) of Regulation (EC) No 343/2003, applications for asylum made in a Member State to the authorities of another Member State carrying out~~

²⁷ CY requested clarification of the term "cross-culture communication".

AT considered inclusion of "cross-culture communication" in the training excessive.

²⁸ CY preferred to keep the reference "signs of torture" as included in the CION proposal.

²⁹ AT, DE proposed to delete the reference to the principle of the benefit of the doubt considering this criminal law principle out of place in asylum law. DE also did not agree with the CION which stated that this principle is contained in the Geneva Convention.

~~immigration controls there shall be dealt with by the Member State in whose territory the application is made.~~

↓ 2005/85/EC (adapted)

⇒ new

↻ Council

23.³⁰ However, Member States may provide that another authority is responsible for the purposes of ~~it~~ ⇒

↻ (a) ↻ processing cases pursuant to Regulation (EC) No .../... [the Dublin Regulation]. ⇐

↻ (b) ~~taking decisions refusing permission to enter the territory in the framework of a border procedure as described in Article 37,~~³¹ ~~provided the determining authority has examined a request for international protection in accordance with the basic principles and guarantees set out in Chapter II and concluded that a person does not qualify for international protection.~~ ↻

~~(a) processing cases in which it is considered to transfer the applicant to another State according to the rules establishing criteria and mechanisms for determining which State is responsible for considering an application for asylum, until the transfer takes place or the requested State has refused to take charge of or take back the applicant.~~

³⁰ Reservation: **CY, LV, PL** and scrutiny reservation: **FR, SK BE, SE** opposed the removal of the possibility of another responsible authority than the determining authority being responsible. **BE** proposed to maintain (b) and (c). **FR**, supported by **DE**, proposed that, besides Dublin cases, it should be possible that another authority than the determining authority is responsible in case of a refusal of the authorisation to an applicant for international protection to enter to the territory of a Member State in the framework of the procedure of Article 37.

³¹ Reservation **NL** and scrutiny reservation **CZ, SI** on phrase "provided ... international protection." considering this an inappropriate condition to the decision to refuse entry. **NL** added to consider this phrase not in line with Article 13 of the Schengen border code which obliges Member States to take asylum decision into account and but not to make entry decision conditional upon them. **CION** expressed its opposition to paragraph 3(b).

~~(b) taking a decision on the application in the light of national security provisions, provided the determining authority is consulted prior to this decision as to whether the applicant qualifies as a refugee by virtue of Directive 2004/83/EC;~~

~~(e) conducting a preliminary examination pursuant to Article 32, provided this authority has access to the applicant's file regarding the previous application;~~

~~(d) processing cases in the framework of the procedures provided for in Article 35(1);~~

~~(e) refusing permission to enter in the framework of the procedure provided for in Article 35(2) to (5), subject to the conditions and as set out therein;~~

~~(f) establishing that an applicant is seeking to enter or has entered into the Member State from a safe third country pursuant to Article 36, subject to the conditions and as set out in that Article.~~

34. Where ~~an authority~~ ~~authorities are~~ ~~is~~ ~~designated~~ in accordance with paragraph 23, Member States shall ensure that the personnel of ~~that authority~~ ~~such authorities~~ have the appropriate knowledge or receive the necessary training to fulfil their obligations when implementing this Directive.

↓ new

5.³² Applications for international protection made in a Member State to the authorities of another Member State carrying out border or immigration controls there shall be dealt with by the Member State in whose territory the application is made.

³² **CY, MT:** reservation and scrutiny reservation: **LT**
MT considered the Dublin Regulation sufficient. In response, **CION** indicated that it should be clear which Member State is responsible for dealing with the application, inter alia in the light of the envisaged joint border patrols.

↓ 2005/85/EC

⇒ new

Article 5

More favourable provisions

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

CHAPTER II³³

BASIC PRINCIPLES AND GUARANTEES

Article 6

Access to the procedure

~~1. Member States may require that applications for asylum be made in person and/or at a designated place.~~

↓ new

⇒ Council

1. Member States shall designate competent authorities responsible for the receipt and registration of applications for international protection. Without prejudice to paragraphs 5, 6, 7 and 8, Member States may require that applications for international protection be made in person and/or at a designated place.

³³ Scrutiny reservation on Chapter II: IT

2.³⁴ Member States shall ensure that a person who **⇒ declares the intention** **☉** to make an application for international protection has an effective opportunity to lodge the application with the competent authority as soon as possible³⁵.

↓ 2005/85/EC

⇒ new

23. Member States shall ensure that each adult having legal capacity has the right to make an application for **⇒ international protection** **⇐ asylum** on his/her own behalf.

34. 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. **⇒ Before consent is requested, each adult among these persons shall be informed in private of relevant procedural consequences and of his or her right to make a separate application for international protection.** **⇐**

↓ new

☉ Council

5.³⁶ Member States shall ensure that a minor has the right to make an application for international protection either on his/her own behalf, **☉ if he/she has the legal capacity to**

³⁴ IT requested clarification on the obligations for Member States that result from paragraph (2).

³⁵ NL expressed concerns with regard to the phrase "as soon as possible" in the light of the Netherlands asylum procedure which provides for a 6-day rest and preparatory period preceding the lodging of an application and proposed to add at the end of the sentence: "without prejudice to the period needed to prepare the lodging of the application and the interview".

³⁶ Reservation: AT (fearing abuse) and scrutiny reservation: DE, RO

act in procedures according to the national law of the Member State concerned, or through his/her parents or an adult responsible for him/her, whether by law or by national practice of the Member State concerned, or a³⁷ representative.

6.³⁸ Where an unaccompanied minor is detected on the territory of a Member State, a person acting on behalf of the appropriate bodies referred to in Article 10 of Directive 2008/115/EC of the European Parliament and of the Council or, where applicable, a representative referred to in Article 2(n), shall³⁹ have the right to lodge an application for international protection on behalf of an unaccompanied minor if, on the basis of an individual assessment of the unaccompanied minor's personal situation, he/she is of the opinion that the minor may have protection needs pursuant to Directive [...]/.../EC [the Qualification Directive].

↓ 2005/85/EC

⇒ new

47.⁴⁰ 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 17(1)(a);
- (c) the cases in which the lodging of an application for asylum ⇒ international protection ⇐ is deemed to constitute also the lodging of an application for asylum ⇒ international protection ⇐ for any unmarried minor.

~~5. Member States shall ensure that authorities likely to be addressed by someone who wishes to make an application for asylum are able to advise that person how and where he/she~~

³⁷ CY proposed to add "legal" before "representative".

³⁸ Reservation: AT, FI and scrutiny reservation DE, EL, SE, LT.

AT requested to clarify who and at what moment make an application on behalf of the unaccompanied minor.

³⁹ OJ L 348, 24.12.2008, p. 98





⁴⁰ CY suggested to merge (a) and (c).


~~may make such an application and/or may require these authorities to forward the application to the competent authority.~~

↓ new

→ Council

8.⁴¹ Member States shall ensure that border guards, police and immigration authorities, and personnel of detention facilities have instructions and receive necessary training for dealing with⁴² applications for international protection. If these authorities are designated as competent authorities pursuant to paragraph 1, the instructions shall include an obligation to register the application. In other cases, the instructions shall require to forward the application to the authority competent for this registration together with all relevant information.⁴³

Member States shall ensure that all other authorities likely to be addressed by someone who  declares the intention  to make an application for international protection are able to advise that person how and where he/she may make such an  [...] .

9.⁴⁴  From the moment a person declares the intention to make an application for international protection before the competent authority, he/she shall be considered as an

⁴¹ Reservation: **EE, LT, LV, PL, NL** and scrutiny reservation: **AT, BG, HU, IT, RO, SE, SK NL** considered paragraph (8) too detailed and proposed, opposed by **EL**, to delete the second and the third sentence.

⁴² **PT** proposed "registering" instead of "dealing with".

⁴³ In view of the reservations against the time-limits for registering an application for international protection provided for in paragraph (9), **HU** suggested to set time-limits for the authorities mentioned in paragraph (8) for transmitting the declaration of intention to the competent authority.

⁴⁴ Reservation: **EL, FR, IT, PL, NL** and scrutiny reservation **AT, BG, CZ, DE, EE, SE, SI, SK** considering the expression of a wish to apply for international protection an unclear starting point, also in relation to the question when an applicant is entitled to receive all rights under the Reception Conditions Directive. **AT** considered that the official asylum procedure would start when the applicant appears before the competent authority.

CZ remarked that in different national systems the term "registration" may encompass different actions. The time needed for such actions might make a 72 hours time-limit not workable.

AT requested clarification on the relationship between this Article and the provisions in the Dublin Regulation

applicant for international protection and the application for international protection shall be registered as soon as possible and no later than 72 hours⁴⁵ [...]⁴⁶.

Member States may provide that the registration be completed within 7 working days⁴⁷ where a large number of third country nationals or stateless persons simultaneously request international protection which makes it practicably impossible to complete the registration within the time limit referred to in the previous paragraph.

Article 7⁴⁸

Information and counseling at border crossing points and detention facilities

1. Member States shall ensure that information on procedures to be followed in order to make an application for international protection is made available at:

(a) border crossing points, including transit zones, at external borders; and

(b) detention facilities.

CIION indicated that the reference to a wish to make an application is already included in paragraph (5) of the Directive currently in force.

FR, supported by RO, proposed to precise the notion of registration by referring to an administrative document which proves that the application has been made without all administrative formalities related to the application needing to be finalised.

⁴⁵ Reservation: CY, CZ, EE, EL, FR, IT, PL, SK and scrutiny reservation: SI, considering 72 hours insufficient time, for instance when an interpreter has to be brought in. PL could agree to a time limit of 72 hours if a list with cases where registration may be completed in 7 days would be set up.

⁴⁶ Reservation EL considering that some authorities might not be competent to receive such a declaration of intent.

⁴⁷ PL proposed "as soon as possible" instead of "7 working days".

⁴⁸ Reservation: AT, LV, PT considering the Article to contain too many obligations for Member States and scrutiny reservation: CZ, DE, EE, SI

NL advocated a clear distinction between moment of registration, the period of preparation of the asylum application and the period of rest in between.

IT expressed concerns in particular as regards security in case of transit.

⁴⁹ Scrutiny reservation: BG, NL

2. ⁵⁰Member States shall provide for interpretation arrangements in order to ensure ⁵¹communication between persons who **☞** declares the intention **☞** to make an application for international protection and border guards or personnel of detention facilities.

3. ⁵² Member States shall ensure that **☞** relevant **☞** organizations providing advice and counseling to applicants for international protection have access to **☞** persons who express or have expressed an intention to apply for international protection at **☞** the border crossing points, including transit zones, and detention facilities subject to an agreement with the competent authorities of the Member State⁵³.

Member States may provide for rules covering the presence of such organizations in the areas referred to in this Article.

⁵⁰ Scrutiny reservation: **BG, CY, NL, PL, SE**. In this context, **CY, EL, LV, PL** pointed out that interpretation services are not always available. In response, **CION** indicated that the wording "interpretation arrangements" had been included with a view to providing flexibility as to the implementation of this provision by the Member States, so that, for instance, translation could be provided by NGOs or border guards.

⁵¹ **PL** suggested to insert "effective".

⁵² Scrutiny reservation: **LT**

LT, supported by **NL**, expressed concerns on how to distinguish persons who wish to make an application for international protection, and, therefore, should receive information, from other persons. **LT** also opposed the obligation for Member States to ensure access to border crossing points and detention facilities for organisations providing advice and counselling. **IT** expressed doubts about the increased possibilities for access to border crossing points and detention facilities pointing out that, at the moment, Italy has an agreement with UNHCR on such access.

⁵³ **CY** stated that the agreement needs to have entered into force before the entry into force of the Directive.

↓ 2005/85/EC

⇒ new

Article ~~7~~8

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 the determining authority has made a decision in accordance with the procedures at first instance set out in Chapter III. This right to remain shall not constitute an entitlement to a residence permit.
2. ⁵⁴Member States can make an exception only where, ~~in accordance with Articles 32 and 34,~~ ⇒ a person makes ⇐ a subsequent application ⇒ as described in Article 35 (8) ⁵⁵⇐ ~~will not be further examined~~ or where they will surrender or extradite, as appropriate, a person either to another Member State pursuant to obligations in accordance with a European arrest warrant⁵⁶ or otherwise, or to a third country ⇒, with the exception of the country of origin of the applicant concerned ⇐, or to international criminal courts or tribunals.

↓ new

3. ⁵⁷A Member State may extradite an applicant to a third country pursuant to paragraph 2 only where the competent authorities are satisfied that an extradition decision will not

⁵⁴ Reservation: **AT, DE, PL**

⁵⁵ **NL** requested clarification about the reference to Article 35(8) considering that this paragraph contains a reference to subsequent applications and to new applications.

⁵⁶ Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1)

⁵⁷ Reservation: **PL** and scrutiny reservation: **FR**

DE expressed concerns about paragraph (3) as it introduces a limitation of the possibilities for Member States to extradite a person in comparison with the reference to extradition in the Directive currently in force. **DE** requested clarification whether the legal base of the Directive is sufficient for this newly introduced limitation.

result in direct or indirect *refoulement* in violation of international obligations of the Member State.

↓ 2005/85/EC (adapted)

⇒ new

Article ~~89~~⁵⁸

Requirements for the examination of applications

1. ~~Without prejudice to Article 23(4)(i),~~ Member States shall ensure that applications for ~~asylum~~ ⇒ international protection ⇐ are neither rejected nor excluded from examination on the sole ground that they have not been made as soon as possible.
-

↓ new

↻ Council

2. ⁶⁰ ↻ When assessing the elements of applications for international protection, the determining authority shall first determine whether applicants qualify as refugees and, if not, determine if the applicants are eligible for subsidiary protection ↻.
-

↓ 2005/85/EC (adapted)

⇒ new

↻ Council

23. Member States shall ensure that decisions by the determining authority on applications for ⇒ international protection ⇐ ~~asylum~~ are taken after an appropriate examination. To that end, Member States shall ensure that:
-

⁵⁸ Scrutiny reservation: **SE**

⁵⁹ Reservation: **MT**

⁶⁰ Reservation: **CY**

- (a) applications are examined and decisions are taken individually, objectively and impartially;
- (b)⁶¹ ⁶² accurate⁶³ and up-to-date information is obtained from relevant⁶⁴ sources, such as the European Asylum Support Office and 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 and, where the determining authority takes it into consideration for the purpose of taking a decision, to the applicant and /or his/her legal adviser;
- (c) the personnel examining applications and taking decisions have the knowledge with respect to relevant standards applicable in the field of asylum and refugee law;

↓ new

- (d)⁶⁵ the personnel examining applications and taking decisions are instructed and have the possibility to seek advice, whenever necessary, from experts on particular issues, such as medical, cultural, child or gender issues.

⁶¹ Scrutiny reservation: **CY, LT, SK**
LT questioned the appropriateness of making the information available to the applicant.
HU requested clarification when and how information should be made available.
CY, DE expressed doubts on last phrase "and, where...adviser". **DE** proposed to delete the phrase the CION has proposed to add in view of the possibility that access to some information could be restricted
CZ, SK, being concerned of the administrative costs, indicated they could accept a provision allowing applicants to have access to their file.
CZ proposed to delete the reference to UNHCR and EASO.

⁶² **LU** proposed "sources are accurate and contain up-to-date..."

⁶³ Reservation: **DE** on replacing "precise" with "accurate" in view of the heading "Member States shall ensure that". On the other hand, **AT** preferred "accurate".

⁶⁴ **CION** expressed reserves on replacement of "various" by "relevant" because the replacement is made in a part of the text which it did not propose to amend. Furthermore, **CION** questioned the added value of the replaced wording.

⁶⁵ Scrutiny reservation: **EE, PT, SE**
AT proposed to delete "medical" and "gender issues".

↓ 2005/85/EC

⇒ new

↻ Council

34. The authorities referred to in Chapter V shall, through the determining authority or the applicant or otherwise, have access to the general information referred to in paragraph 23(b), necessary for the fulfilment of their task.

45.⁶⁶ Member States ~~may~~ ⇒ shall ⇐ provide for rules concerning the translation of documents relevant for the examination of applications.

Article 910

Requirements for a decision by the determining authority

1. Member States shall ensure that decisions on applications for ~~asylum~~ ⇒ international protection ⇐ are given in writing.
2. Member States shall also ensure that, where an application is rejected ⇒ with regard to ↻ international protection ⇐⁶⁷, 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.

~~Member States need not state the reasons for not granting refugee status in a decision where the applicant is granted a status which offers the same rights and benefits under national and Community law as the refugee status by virtue of Directive 2004/83/EC. In these cases, Member States shall ensure that the reasons for not granting refugee status are~~

⁶⁶ Scrutiny reservation: **EE, LT, SE, SK**

AT, CY proposed to maintain "may" as in the Directive currently in force.

⁶⁷ **CION** expressed doubts about the replacement of "refugee status and/or subsidiary protection status" by "international protection" preferring the latter phrase because it makes clear that either one of the two statuses or both can be rejected.

~~stated in the applicant's file and that the applicant has, upon request, access to his/her file.~~⁶⁸

~~Moreover,~~ Member States need not provide information on how to challenge a negative decision in writing in conjunction with a decision where the applicant has been provided with this information at an earlier stage either in writing or by electronic means accessible to the applicant.

3. For the purposes of Article ~~6(3)~~(4), and whenever the application is based on the same grounds, Member States may take one single decision, covering all dependants.

↓ new

4. ⁶⁹Paragraph 3 shall not apply to cases where disclosure of particular circumstances of a person to members of his/her family can jeopardize the interests of that person, including cases involving gender and/or age based persecution. In such cases, a separate decision shall be issued to the person concerned.

⁶⁸ NL opposed deletion of the subparagraph considering that its national system provides for the grant of a single status and that, sanctioned by the highest court in the Netherlands, no appeal is possible on the issue whether the basis for that status is the Geneva Convention or provisions on subsidiary protection. Alternatively, NL submitted a proposal providing in essence that the first subparagraph of paragraph 2 would not apply in case an applicant is granted a general protection status.

⁶⁹ Reservation: AT in the light of its general opposition to merging procedures of dependants.

↓ 2005/85/EC (adapted)

⇒ new

↻ Council

Article ~~10~~11

Guarantees for applicants for ~~asylum~~ ⇒ international protection ⇐

1. With respect to the procedures provided for in Chapter III, Member States shall ensure that all ~~applicants for asylum~~ ⇒ applicants for international protection ⇐ enjoy the following guarantees:

- (a) they shall be informed in a language which they may reasonably be supposed to understand of the procedure to be followed and of their rights and obligations during the procedure and the possible consequences of not complying with their obligations and not cooperating with the authorities. They shall be informed of the time-frame, as well as the means at their disposal for fulfilling the obligation to submit the elements as referred to in Article 4 of ~~Directive 2004/83/EC~~ Directive [...../..EC] [the Qualification Directive]. This information shall be given in time to enable them to exercise the rights guaranteed in this Directive and to comply with the obligations described in Article ~~11~~12;
- (b) they shall 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 ~~12 and 13~~ 13, 14, ⇒ 15, 16 and 30 ⇐ and appropriate communication cannot be ensured without such services. In this case and in other cases where the competent authorities call upon the applicant, these services shall be paid for out of public funds;

- (c)⁷⁰ they shall 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~~ ⇒ providing legal advice or counselling to ⇨ applicants for international protection ⇩ in accordance with national legislation of ⇩ that Member State;
- (d) they shall be given notice in reasonable time of the decision by the determining authority on their application for ~~asylum~~ ⇒ international protection ⇩ . 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~~ ⇒ international protection ⇩ ;
- (e)⁷¹ they shall be informed of 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 in accordance with the provisions of Article ~~9~~10(2).

2. With respect to the procedures provided for in Chapter V, Member States shall ensure that all applicants ~~for asylum~~ enjoy equivalent guarantees for the ones referred to in paragraph 1(b), (c) and (d) of this Article.

Article ~~11~~12

Obligations of the applicants for ~~asylum~~ ⇒ international protection ⇩

1. ⇒ Applicants for international protection shall cooperate with the competent authorities with a view to establishing their identity and other elements referred to in Article 4(2) of Directive [...]/../EC] [the Qualification Directive]. ⇩ ⁷²Member States may impose upon

⁷⁰ Reservation: **AT** considering that the proposal broadens the scope of the provision too much, and scrutiny reservation: **SI**

⁷¹ Reservation: **MT** and scrutiny reservation: **SI**

⁷² **HU** proposed to insert "They shall tolerate the taking of their fingerprints according to Regulation [...]/../EC] [the EURODAC Regulation]."

applicants ~~for asylum~~ other obligations to cooperate with the competent authorities insofar as these obligations are necessary for the processing of the application.

2. ⁷³In particular, Member States may provide that:

- (a) applicants ~~for asylum~~ are required to report to the competent authorities or to appear before them 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;
- (c) applicants ~~for asylum~~ are required to inform the competent authorities of their current place of residence or address and of any changes thereof 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)⁷⁴ the competent authorities may search the applicant and the items he/she carries with him/her, provided the search is carried out by a person of the same sex .
- (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.

⁷³ **LT**, supported by **EL**, suggested to add to the list that Member States may require a DNA test with a view to establishing family relations. In response, **CION** indicated it is up to the Member States to establish whether family links exist, noting also that DNA tests seem to fall out of scope of the Procedures Directive.

⁷⁴ Scrutiny reservation: **SE**
FI, NL proposed to insert "wherever possible" as is done in Article 14(3)(c).

Personal interview

1. ⁷⁶Before 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~~
⇒ international protection ⇐ with a person competent under national law to conduct such an interview. ⇒ Interviews on the substance of an application for international protection shall always be conducted by the personnel of the determining authority. ⇐

⇒ In exceptional circumstances, such as where a large number of third country nationals or stateless persons simultaneously request international protection which makes it practically impossible for the determining authority to conduct timely interviews on the substance of an application for international protection, Member States may provide that the personnel of another authority be involved in conducting such interviews.

In this particular case, the personnel shall:

a) have the appropriate knowledge and skills regarding issues falling within the scope of this Directive;

b) receive training foreseen in article 4.1⁷⁷ for the personnel of the determining authority. ☹

~~Member States may also give the opportunity of a personal interview to each dependant adult referred to in Article 6(3).~~

⁷⁵ Reservation: **PL** and scrutiny reservation: **FR, SE**

⁷⁶ Scrutiny reservation: **FR, LV, PT, RO** and **LU** (both expressing reluctance to involve other authorities than the competent authority in the interviews), **SI**

⁷⁷ **FI** questioned whether Article 4(1) would be the correct reference.

↓ new

Where a person has made an application for international protection on behalf of his/her dependants, each adult to whom the applicant relates must be given the opportunity to express his/her opinion in private and to be interviewed on his/her application.

↓ 2005/85/EC (adapted)

⇒ new

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

2. ⁷⁸The personal interview ⇒ on the substance of the application ⇐ may be omitted where:

(a) the determining authority is able to take a positive decision with ⇒ regard to refugee status ⇐ on the basis of evidence available; or

~~(b) the competent authority has already had a meeting with the applicant for the purpose of assisting him/her with completing his/her application and submitting the essential information regarding the application, in terms of Article 4(2) of Directive 2004/83/EC; or~~

~~(c) the determining authority, on the basis of a complete examination of information provided by the applicant, considers the application to be unfounded in cases where the circumstances mentioned in Article 23(4)(a), (e), (g), (h) and (j) apply.~~

~~3. The personal interview may also be omitted where~~

~~(b) 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, ⇒ the

⁷⁸ Scrutiny reservation: **EE, NL, PL, SI**
AT, CZ opposed deletion of (b) and (c) of the Directive currently in force.

competent authority shall consult a medical expert to establish whether the condition is temporary or permanent. ~~Member States may require a medical or psychological certificate.~~^{79 80}

Where the Member State does not provide the applicant with the opportunity for a personal interview pursuant to ~~this paragraph~~ point (b), or where applicable, to the dependant, reasonable efforts shall be made to allow the applicant or the dependant to submit further information.

~~43.~~ 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~~ ⇒ international protection ⇐ .

~~54.~~ 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.

~~65.~~ Irrespective of Article ~~2024~~(1), Member States, when deciding on the application for ~~asylum~~ ⇒ international protection ⇐, may take into account the fact that the applicant failed to appear for the personal interview, unless he/she had good reasons for the failure to appear.

Article ~~13~~14

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 shall take place under conditions which ensure appropriate confidentiality.

⁷⁹ NL suggested "long term" instead of "permanent".

⁸⁰ FR, supported by DE (while remarking that this point is already covered by Article 36) and opposed by NL, proposed to add a new point (c) "under the conditions provided for in Article 35(8)(d)".

3. ⁸¹Member States shall take appropriate steps to ensure that personal interviews are conducted under 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, ⇨ gender, ⇩ or vulnerability; ~~insofar as it is possible to do so; and~~ ⁸²

↓ new

↻ Council

- (b) wherever possible, provide for the interview with the applicant to be conducted by a person of the same sex if the applicant concerned so requests ⇨ duly motivated, as long as this request is not based on discriminatory reasons ⁸³ ⇩;

⁸¹ On (b) and (c) reservation: **AT, EL, FR, IT, RO** and scrutiny reservation: **CY, SI, SK**

On (b) scrutiny reservation: **NL**

FR, supported by **DE**, stated that the (b) and (c) must take into account three conditions (availability of interviewer/ interpreter, no breach of principle of non discrimination, and - supported by **AT** - link with grounds for persecution) and proposed to replace in (b) and (c) "duly motivated" with "and as long as the nature of the application justifies it".

CION, supported by **AT, HU, RO**, advocated avoiding putting to many specific conditions in the littera (b) and (c) as this will increase grounds for litigation.

HU, NL expressed doubts about the phrase "as long as... reasons" fearing it might complicate organising the interview. **NL** proposed to delete this phrase. **HU** proposed to replace it with "unless the request is aimed at prolonging the procedure. In case of a gender related claim the interview shall be conducted by a person of the sex chosen by the applicant". Furthermore, **NL** expressed doubts about "duly motivated" expecting the interviewed applicant to be reticent giving a motivation regarding sensitive issues.

⁸² Scrutiny reservation: **AT**

SE wondered whether age and sexual inclination should be added.

⁸³ **MT** proposed "if the applicant concerned makes a duly motivated request, as.."

↓ 2005/85/EC

↻ Council

(~~bc~~) 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 ⁸⁴ ~~may reasonably be supposed to~~ ↻ [...] ↻. Wherever possible, Member States shall provide an interpreter of the same sex if the applicant so requests ↻ duly motivated, as long as this request is not based on discriminatory reasons⁸⁵ ↻ ↵

↓ new

↻ Council

(d) ensure that the person who conducts an interview on the substance of an application for international protection does not wear a ↻ military or law enforcement ↻ uniform⁸⁶;

e) ensure that interviews with minors are conducted in a child- ↻ appropriate ↻ manner.

↓ 2005/85/EC

4. Member States may provide for rules concerning the presence of third parties at a personal interview.

⁸⁴ AT, DE, HU, MT, NL, LU, LV, supported by CION, wanted to maintain the phrase "and in which he/she is able to communicate".

SE, supported by CION, proposed: "can understand and can communicate".

⁸⁵ MT proposed instead "if the applicant concerned makes a duly motivated request, as..".

⁸⁶ Scrutiny reservation: AT

↓ new

↻ Council

Article 15

Content of a personal interview ⁸⁷

When conducting a personal interview on the substance of an application for international protection, the determining authority shall ensure that the applicant ↻ is given the ⁸⁸opportunity to present elements needed to substantiate the application in accordance with Article 4 of Directive [...]/../EC [the Qualification Directive] as completely as possible. This shall include the opportunity to give an explanation regarding elements which may be missing and/or any inconsistencies or contradictions in his/her statements. ↻

⁸⁷ Reservation: **PT** and scrutiny reservation: **AT, SE, SI**
In response to concerns expressed by **AT, HU, RO** as to the situation in which information becomes available after the personal interview, **CION** indicated that the first sentence of Article 15 makes clear that this situation does not have as a consequence that a second interview needs to be conducted.

PL considered the content of the Article inappropriate for a legislative text fearing, moreover, additional possibilities for prolonging legal proceedings.

⁸⁸ **CY** proposed to insert "appropriate".

~~Article 14~~

~~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 4(2) of Directive 2004/83/EC.~~

~~2. Member States shall ensure that applicants have timely access to the report of the personal interview. Where access is only granted after the decision of the determining authority, Member States shall ensure that access is possible as soon as necessary for allowing an appeal to be prepared and lodged in due time.~~

~~3. Member States may request the applicant's approval of 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 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 12(2)(b).~~

↓ new

↻ Council

*Article 16*⁸⁹

↻ Report and recording ↻ of personal interviews

1. Member States shall ensure that a **↻ thorough report containing all substantial elements ↻** is made of every personal interview **↻ even if the interview is audio or⁹⁰ audio-visually recorded.**

⁹¹Unless the interview is audio or⁹² audio-visually recorded, and this recording is admissible as evidence in procedures in accordance with Chapter V⁹³ Member States shall request the applicant's approval on the contents of the **↻ report ↻** at the end of the personal interview **↻ or within a specified time limit. To that end, Member States shall ensure that the applicant is informed with the assistance of an interpreter if necessary⁹⁴, of the content of the report. ↻**

2. Where an applicant refuses to approve the contents of the **↻ report referred to in paragraph 1 ↻**, the reasons for this refusal shall be entered into the applicant's file.

⁸⁹ Reservation: **MT** and scrutiny reservation: **BG, CY, FR, IT, SE.**

⁹⁰ **LU** proposed "and" instead of "or".

⁹¹ Reservation: **HU** considering that the applicant must be able to comment the transcript even if a recording of the interview has been made, because the transcript could contain omissions.

Scrutiny reservation: **SE**

AT, NL, SI, supported by **CION**, underlined that it is more important that the applicant agrees that the interview is correctly reflected in the report than that he approves the content of the report.

⁹² **LU** proposed "and" instead of "or".

⁹³ **NL** proposed to replace "Member States shall request...To that end" with "As soon as possible and timely before the decision on the application for international protection" considering that it is not possible to finalise a report before the end of the interview.

⁹⁴ **NL** did not consider it necessary to have assistance of an interpreter explaining that Article 18 already provides for legal assistance which in the Netherlands includes translation of the transcript. Because in the Netherlands a subsidy is granted for legal assistance, **NL** does not consider it necessary to also refer to assistance of an interpreter for informing the applicant about the content of the report.

The refusal of an applicant to approve the contents of the report referred to in paragraph 1 shall not prevent the determining authority from taking a decision on his/her application.

3. Where applicable, Member States shall ensure that the recording of the personal interview is annexed to the report.⁹⁵

4. ⁹⁶Member States shall ensure that applicants have timely access⁹⁷ to the report referred to in paragraph 1 and, where applicable, the recording before the determining authority takes a decision.

Article 17⁹⁸

Medical reports

1. ⁹⁹Member States shall allow an applicant to have a medical examination carried out , at his/her own costs, in order to submit a medical certificate to the determining authority in support of his/her statements regarding past

⁹⁵ Scrutiny reservation: **FI, SI**

⁹⁶ Reservation **AT, BG, CY, MT** and scrutiny reservation: **DE**

AT, BG considered paragraph (4) to have no added value.

CY, MT opposed the applicant having access to the report and/or the recording before the decision on the application.

AT requested assurances that access would not entail an obligation to send these documents to the applicant but provided only for the obligation to allow the applicant to look into these documents. In response, **CION** specified that access needed to be provided on request of the applicant.

⁹⁷ **EL** expressed doubts about the added value of the specification "timely".

⁹⁸ Reservation: **AT, CY, DE, MT** and scrutiny reservation: **EL, FR, IT, LT, SE, SI**

AT, DE expressed concerns that Member States could be confronted with costs of medical examinations and that procedures could suffer delays, in particular in relation to the airport procedure and other accelerated procedures. Moreover, **AT** missed added value in relation to provisions in, in particular, the Reception Conditions Directive. **DE** suggested to specify that medical examinations would only be allowed for objective reasons. **DE** submitted a proposal amending Article 17 as reflected in document 7235/10.

SE, SI suggested to clarify that the medical examination has to be relevant for the examination of the application.

⁹⁹ Reservation: **NL**

DE expressed concerns about the implications of an applicant not being able to afford the costs of the medical examination or an applicant overshooting the time limit for submitting the results of the examination.

persecution or serious harm. ➔ Member States may, however, require the applicant to submit the results of the medical examination to the determining authority within a time limit after the moment he/she has been informed about his/her rights pursuant to this Article. If the applicant fails to submit the results of the medical report within this time limit without good reasons, it shall not prevent the determining authority from taking a final¹⁰⁰ decision on the application for international protection. ☹

2. ¹⁰¹Without prejudice to paragraph 1, in cases where ➔ the determining authority considers that there is reason to believe ☹ that the applicant ➔ 's ability to be interviewed and/or to give accurate and coherent statements does not exist or is limited as a result of ☹ post-traumatic stress disorder ¹⁰² ➔ , past persecution or serious harm¹⁰³, it ☹ shall ensure that a medical examination is carried out ➔ with the applicant's consent ☹.

3. ¹⁰⁴Member States shall provide for relevant arrangements in order to ensure that impartial¹⁰⁵ and qualified medical expertise is made available for the purpose of a medical examination referred to in paragraph 2.

➔ [...] ☹

4. ¹⁰⁶Member States shall ensure that ➔ personnel ☹ interviewing applicants in accordance with this Directive receive training with regard to ➔ awareness of medical problems¹⁰⁷ that

¹⁰⁰ CZ, SK indicated that "final" should be deleted in view of the definition of "final decision" in Article 2(e).

¹⁰¹ Reservation: NL

AT considered paragraph (2) redundant in view of Article 13 and expressed concerns about the consequences of the applicant refusing to undergo the medical examination.

IT requested clarification about the relation between paragraph (2) and Article 13(2). IT also pointed out that an applicant suffering from PTSS might not be able to give his consent to a medical examination.

¹⁰² HU suggested to insert "or other mental disorders" and to delete " and this might interfere with his/her ability to be interviewed and/or to give accurate and coherent statements".

¹⁰³ NL questioned added value of the phrase "past persecution or serious harm" given that this in general can only be determined after examination of the application.

¹⁰⁴ Reservation: LT and scrutiny reservation: PL

AT suggested to add the substance of paragraph (3) to Article 9(3).

¹⁰⁵ CZ, LT, PL proposed to delete "impartial".

¹⁰⁶ Reservation: PT

MT, LV considered paragraph (4) already covered by Article 4.

AT underlined that the persons interviewing need not be medical experts.

¹⁰⁷ PT expressed concerns about the term "medical problems".

can adversely affect the ability of the applicants to be interviewed and to comply with the obligation to substantiate the application for international protection ☹.

5. ¹⁰⁸The results of medical examinations referred to in paragraphs 1 and 2 shall be assessed by the determining authority along with other elements of the application. ☺ [...] ☹

↓ 2005/85/EC

⇒ new

Article ~~15~~18¹⁰⁹

Right to legal assistance and representation

1. ⇒ Applicants for international protection shall be given the opportunity ⇐ ~~Member States shall allow applicants for asylum the opportunity, at their own cost,~~¹¹⁰ to consult in an effective manner a legal adviser or other counsellor, admitted or permitted as such under national law, on matters relating to their ~~asylum~~ applications ⇒ for international protection, at all stages of the procedure, including following a negative decision ⇐.
2. ~~111~~¹¹¹In 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 paragraph 3. ⇒ To that end, Member States shall: ⇐

¹⁰⁸ Scrutiny reservation: **DE** for reasons of data protection.

¹⁰⁹ Reservation: **AT, CY, DE, EL, FR, IT, MT, PL, SE, SI, SK** and scrutiny reservation: **BG, CZ, EE, LT, NL** opposing extension of legal assistance and representation to all stages of the procedure and wanting to avoid better treatment of applicants for international protection than of own nationals.

IT explained that the Italian system does not provide legal assistance for its own citizens in administrative procedures.

CZ explained that the Czech Republic does not have legal assistance in administrative procedures.

LT explained that in Lithuania the asylum authorities and not the legal advisors provide information on the procedure.

AT made a proposal to amend Article 18 (document 8610/10).

¹¹⁰ **CY** proposed to maintain the phrase "at their own costs".

¹¹¹ **MT** proposed keeping the text of paragraph (2) as it is in the Directive currently in force.

↓ new

(a) provide for free legal assistance in procedures in accordance with Chapter III.

This shall include, at least, the provision of information on the procedure to the applicant in the light of his/her particular circumstances and explanations of reasons in fact and in law in the case of a negative decision;¹¹²

(b) provide for free legal assistance or representation in procedures in accordance with Chapter V. This shall include, at least, the preparation of the required procedural documents and participation in the hearing¹¹³ before a court or tribunal of first instance on behalf of the applicant.¹¹⁴

↓ 2005/85/EC (adapted)

⇒ new

3. Member States may provide in their national legislation that free legal assistance and/or representation is granted:

~~(a) only for procedures before a court or tribunal in accordance with Chapter V and not for any onward appeals or reviews provided for under national law, including a rehearing of an appeal following an onward appeal or review, and/or~~¹¹⁵

~~(b)~~(a) only to those who lack sufficient resources; and/or

~~(c)~~(b) only to legal advisers or other counsellors specifically designated by national law to assist and/or represent applicants ~~for asylum~~ ⇒ for international protection. ⇐ and/or

¹¹² **RO** suggested to limit point (2a) to providing information about the procedure and to refrain from including explanations of reasons in fact and in law in the case of a negative decision.

¹¹³ **SI** opposed participation in the hearing as this could lead to a conflict of interests.

¹¹⁴ **EL** requested clarification about the relation between point (2b) and paragraph (4) considering both provisions contradictory.

¹¹⁵ **SI** proposed to maintain point (a).

~~(d) only if the appeal or review is likely to succeed.~~¹¹⁶

~~Member States shall ensure that legal assistance and/or representation granted under point (d) is not arbitrarily restricted.~~

↓ new

With respect to the procedures provided for in Chapter V, Member States may choose to only make free legal assistance and/or representation available to applicants insofar as such assistance is necessary to ensure their effective access to justice. Member States shall ensure that legal assistance and/or representation granted pursuant to this paragraph is not arbitrarily restricted.¹¹⁷

↓ 2005/85/EC

⇒ new

4. Rules concerning the modalities for filing and processing requests for legal assistance and/or representation may be provided by Member States.

↓ new

- 5.¹¹⁸ Member States may allow non-governmental organisations to provide free legal assistance and/or representation to applicants for international protection in procedures provided for in Chapter III and/or Chapter V.

¹¹⁶ AT, DE, EE proposed to maintain (d).

¹¹⁷ LT proposed to delete the last sentence considering it redundant.

¹¹⁸ DE opposed the proposal that NGOs provide free legal assistance and/or representation, whereas CZ supported that proposal.

↓ 2005/85/EC (adapted)

⇒ new

56. Member States may also:

- (a) impose monetary and/or time-limits on the provision of free legal assistance and/or representation, provided that such limits do not arbitrarily restrict access to legal assistance-and/or representation;
- (b) provide that, as regards fees and other costs, the treatment of applicants shall not be more favourable than the treatment generally accorded to their nationals in matters pertaining to legal assistance.

67. 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 ~~16~~19¹¹⁹

Scope of legal assistance and representation

1. ¹²⁰Member States shall ensure that a legal adviser or other counsellor admitted or permitted as such under national law, and who assists or represents an applicant for ⇒ international protection ⇐ asylum under the terms of national law, shall enjoy access to such ⊗ the ⊗ information in the applicant's file ⇒ upon which a decision is or will be made. ¹²¹⇐ as is ~~liable to be examined by the authorities referred to in Chapter V, insofar as the information is relevant to the examination of the application.~~

Member States may make an exception where disclosure of information or sources would jeopardise national security, the security of the organisations or person(s) providing the information or the security of the person(s) to whom the information relates or where the

¹¹⁹ EL suggested to add certain parameters on confidentiality.

¹²⁰ Reservation: CY and scrutiny reservation: SE

¹²¹ MT expressed concerns as to legal aid and access to information before a court case.

investigative interests relating to the examination of applications of ~~for~~ ~~for~~ ~~asylum~~
⇒ international protection ⇐ by the competent authorities of the Member States or the
international relations of the Member States would be compromised. In these cases,
⇒ Member States shall: ⇐

↓ new

⇒ Council

¹²²

⇒ [...] ⇐

↓ 2005/85/EC (adapted)

⇒ new

⇒ Council

~~of~~ ¹²³ make ~~of~~ access to the information or sources ¹²⁴ in question ~~shall be~~ available to the
authorities referred to in Chapter V ~~except where such access is precluded for~~
reasons of national security ~~except where such access is precluded in cases of~~
national security.

2. Member States shall ensure that the legal adviser or other counsellor who assists or
represents an applicant for ⇒ international protection ⇐ ~~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 of visiting 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 in order to ensure an efficient

¹²² Reservation: **AT, IT** and scrutiny reservation: **EL, HU, NL, SI**
CION opposed the deletion of the paragraph on granting access to advisors / counsellors
who have undergone a security check.

¹²³ Reservation: **CZ**

¹²⁴ **SE** proposed to delete "or sources".

¹²⁵ **CION** stated that condition included in the phrase "except ... security", is contrary to case
law of the Court of Justice and the European Court of Human Rights.

examination of the application, provided that access by the legal adviser or other counsellor is not thereby severely limited or rendered impossible.

↓ new

3. ¹²⁶Member States shall allow the applicant to bring to the personal interview a legal adviser or other counsellor admitted or permitted as such under national law.

↓ 2005/85/EC

⇒ new

~~34.~~ 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 ~~17~~21(1)(b).

~~4. Member States may provide that the applicant is allowed to bring with him/her to the personal interview a legal adviser or other counsellor admitted or permitted 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 a legal adviser or other counsellor shall not prevent the competent authority from conducting the personal interview with the applicant, ⇒ without prejudice to Article 21 1(b) ⇐.

¹²⁶ **FR** proposed to delete paragraph 3 in the light of the principle of equality and because of costs. **NL, SE, CION** contested the implication that this paragraph would be linked to free legal assistance.

↓ new

☞ Council

Article 20

Applicants ☞ in need of special procedural guarantees ☞¹²⁷

1. ¹²⁸Member States shall take ☞ into account the specific situation of applicants in need of procedural guarantees when implementing this Directive, providing relevant support where needed to ensure that they are given the opportunity to present the elements of an application as completely as possible and with all evidence. ☞

2. ☞ [...] ☞. ¹²⁹

3. ☞ [...] ☞. ¹³⁰

¹²⁷ On concept of "applicants in need of special procedural guarantees", reservation: **AT, MT** and scrutiny reservation: **DE, EL, HU, IT, FR, PL, SE, SI, SK**

DE has submitted a proposal amending Article 20 (document 7235/10).

¹²⁸ Scrutiny reservation: **NL**

¹²⁹ **FR**, opposed by **AT**, proposed to re-insert paragraph 2 of the Commission proposal without the reference to Article 21 of the Reception Conditions Directive.

HU expressed support for the Commission proposal to guarantee sufficient time for applicants with special needs to prepare the interview.

¹³⁰ **CION** opposed the deletion of paragraph (3) of the Commission proposal which provided that accelerated procedures and procedures establishing that an application is manifestly unfounded shall not apply to applicants with special needs.

↓ 2005/85/EC (adapted)

⇒ new

↻ Council

Article ~~17~~21¹³¹

Guarantees for unaccompanied minors

1. With respect to all procedures provided for in this Directive and without prejudice to the provisions of Articles ~~12 and 14~~ 13, ⇒ 14 ⇐ and 15, Member States shall:
- (a)¹³² as soon as possible take measures to ensure that a representative¹³³ represents and/or assists¹³⁴ the unaccompanied minor with respect to ⇒ the lodging and ⇐ the examination of the application. ⇒ The representative shall ⇐ [...] ⇐ have the necessary expertise in the field of childcare¹³⁵. ⇐ This representative can also be the representative referred to in ~~Article 19 of Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers~~¹³⁶ Directive [...]/.../EC [the Reception Conditions Directive];
- (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

¹³¹ Scrutiny reservation: **IT, SE, SI**

¹³² **HU** proposed to specify that the representative must have the competence to defend the interests of the unaccompanied minor.

¹³³ Reservation: **EL** pointed to the need to have consistency between this Article and the definition of representative in Article 2 considering that in some cases a judge appoints a lawyer as a representative. Furthermore, **EL** expressed concerns about the double obligation to have both legal expertise and expertise in the field of child care.

¹³⁴ **DE** proposed "...that a representative can assist, in particular represent, the unaccompanied..".

NL proposed to keep "/or".

¹³⁵ **SE** requested clarification as regards "the necessary expertise in the field of child care".

¹³⁶ ~~OJL 31, 6.2.2003, p. 18~~

the personal interview. Member States shall ~~allow~~ ⇒ **allow** ◐ ◀¹³⁷ ~~the~~
⊗ a ⊗ representative ⇒ and/or a legal advisor or other counsellor admitted
as such under national law are ◀ ~~to be~~ present at that interview and ⇒ have an
opportunity ◀ to ask questions or make comments, within the framework set
by the person who conducts the interview.

**◐ Member States may require the presence of the unaccompanied minor at the personal interview,
even if his/her representative is present. ◐**

2. Member States may refrain from appointing a representative where the unaccompanied
minor:

(a) will in all likelihood reach the age of maturity before a decision at first instance
is taken; or

~~(b) can avail himself, free of charge, of a legal adviser or other counsellor,
admitted as such under national law to fulfil the tasks assigned above to the
representative; or~~

~~(c)~~ (b) is married or has been married.

~~3. Member States may, in accordance with the laws and regulations in force on 1
December 2005, also refrain from appointing a representative where the unaccompanied
minor is 16 years old or older, unless he/she is unable to pursue his/her application without
a representative.¹³⁸~~

43. Member States shall ensure that:

(a) If an unaccompanied minor has a personal interview on his/her application
for **asylum** ⇒ international protection ◀ as referred to in Articles ~~12, 13 and~~
~~14, 13, 14 and 15~~ that interview is conducted by a person who has the
necessary knowledge of the special needs of minors;

¹³⁷ CION expressed concerns about replacing "ensure" with "allow" remarking that the change
is made in part of the recast where it has not made a proposal.

¹³⁸ DE, PL proposed to maintain paragraph (3) of the Directive currently in force.

- (b) an official with the necessary knowledge of the special needs of minors prepares the decision by the determining authority on the application of an unaccompanied minor.

↓ new

⇒ Council

4.¹³⁹

⇒ [...] ⇐

↓ 2005/85/EC

⇒ new

- 5.¹⁴⁰ Member States may use medical examinations to determine the age of unaccompanied minors within the framework of the examination of an application for ~~asylum~~ ⇒ international protection ⇐ ⇒, where, following his/her general statements or other relevant evidence, Member States still have doubts concerning his/her age ⇐.

↓ new

Any medical examination shall be performed in full respect of the individual's dignity, selecting the less invasive exams.¹⁴¹

-
- ¹³⁹ Reservation: **CY, IT, LU, MT**
CION indicated that free legal assistance must be available for all unaccompanied minors, irrespective of the issue where this is to be provided, in both in Article 18 and Article 21, or only in Article 18.
- ¹⁴⁰ Reservation **CY, LU**
LU, supported by **NL**, opposed the limitation introduced by the proposed modification of paragraph (5). Furthermore, **LU, NL** requested clarification with regard to the statements referred to in the paragraph.
- ¹⁴¹ **AT** preferred the wording laid down in Article 6(5) of the Dublin Regulation as it has resulted from the discussions in the Asylum Working Party suggesting to include this provision in Article 17 of the Procedures Directive.

↓ 2005/85/EC

⇒ new

↻ Council

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~~ ⇒ international protection ⇐, ↻ [...] ↻ in a language which they ↻ ~~may reasonably be supposed to~~ ↻ ~~may reasonably be supposed to~~ understand, of the possibility that their age may be determined by 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~~ ⇒ international protection ⇐, 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 the minors concerned; and
- (c) the decision to reject an application for ~~asylum~~ ⇒ international protection ⇐ 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~~ ⇒ international protection ⇐.

↓ new

↻ Council

6.¹⁴² ↻ [...] ↻

↓ 2005/85/EC

↻ new

↻ Council

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

Article ~~18~~22¹⁴³

Detention

1. Member States shall not hold a person in detention for the sole reason that he/she is an applicant for ↻ international protection ↻ ~~asylum~~. ↻ Grounds and conditions of detention as well as guarantees available to detained applicants for international protection shall be in accordance with Directive [...]/.../EC [the Reception Conditions Directive]. ↻
2. Where an applicant for ~~asylum~~ ↻ international protection ↻ is held in detention, Member States shall ensure that there is a possibility of speedy judicial review ↻ in accordance with Directive [...]/.../EC [the Reception Conditions Directive] ↻.

¹⁴² Reservation: **HU** opposing the deletion of the provision that Article 27(6) shall not apply to unaccompanied minors.

CION expressed itself strongly against deletion of this paragraph.

¹⁴³ Reservation: **PL** on the horizontal issue of detention and scrutiny reservation: **NL AT, HU, PT** wanted this provision to be reflected in the Reception Conditions Directive. In response, **CION** remarked that the place of the provisions on detention is less relevant considering that these provisions, if adopted, will need to be transposed in national legislation irrespective of the Directive they are laid down in.

Procedure in case of withdrawal of the application

1. Insofar as Member States provide for the possibility of explicit withdrawal of the application under national law, when an applicant ~~for asylum~~ explicitly withdraws his/her application for ~~asylum~~ ⇒ international protection ⇐, Member States shall ensure that the determining authority takes a decision to either discontinue the examination or 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 enters a notice in the applicant's file.

Procedure in the case of implicit withdrawal or abandonment¹⁴⁵ of the application

1. ¹⁴⁶When there is reasonable cause to consider that an applicant for ~~asylum~~ ⇒ international protection ⇐ has implicitly withdrawn or abandoned his/her application for ~~asylum~~ ⇒ international protection ⇐, Member States shall ensure that the determining authority takes a decision to ~~either~~ ⇐ either ⇐ discontinue the examination ⇐ or, provided that the determining authority considers the application to be unfounded on the basis of an adequate¹⁴⁷ examination of the substance of the application in accordance with this Directive and [..././EC] [The Qualification Directive], reject the application ⇐ ~~or reject the application on the basis that the applicant has not established an entitlement to refugee status in accordance with Directive 2004/83/EC.~~

¹⁴⁴ Scrutiny reservation: **EL, IT, SE, SI**

¹⁴⁵ **CZ, SI** requested clarification of the difference between implicit and explicit withdrawal and abandonment of an application.

¹⁴⁶ Reservation: **CY** and scrutiny reservation: **AT, DE, MT, RO**

¹⁴⁷ **DE**, supported by **EE**, expressed its preference for the text of the current directive (rejection on the basis that the applicant has not established an entitlement).

CION indicated that "adequate" would be acceptable on condition that this term would be further specified and would include at least a personal interview.

Member States may assume that the applicant has implicitly withdrawn or abandoned his/her application for ~~asylum~~ ⇒ international protection ⇐ 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 4 of Directive ~~2004/83/EC~~ [...]/[EC] [the Qualification Directive] or has not appeared for a personal interview as provided for in Articles ~~12~~13, ~~13~~14, 15 and ~~14~~16, unless the applicant demonstrates within a reasonable time that his/her failure was due to circumstances beyond his control;
- (b) he/she has absconded or left without authorisation the place where he/she lived or was held, without contacting the competent authority within a reasonable time, or he/she has not within a reasonable time complied with reporting duties or other obligations to communicate.

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

2. ¹⁴⁸Member States shall ensure that the applicant who reports again to the competent authority after a decision to discontinue as referred to in paragraph 1 of this Article is taken, is entitled to request that his/her case be reopened, ~~unless the request is examined in accordance with Articles 32 and 34.~~

~~Member States may provide for a time limit after which the applicant's case can no longer be re-opened.~~

¹⁴⁸ Reservation: AT, CY, MT and scrutiny reservation: LV
AT, CY, DE, MT, SE opposed the deletions proposed in the recast.
CY, HU suggested to define criteria for re-opening a case.
DE proposed to re-insert the phrase ", unless the request is examined in accordance with the Articles 32 and 34 [in recast Articles 35 and 36]".
DE considered the absence of an applicant a sign of non cooperation which would justify a follow-up procedure geared to such non cooperation. CION indicated it did not want cases, where a new application is made because of an explicit or implicit withdrawal, to be considered as subsequent applications with reduced set of guarantees because these applications have never been fully examined.

⇒ Member States may provide for a time-limit of at least one year after which the applicant's case can no longer be re-opened  ¹⁴⁹

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 where it was discontinued.

↓ new



3. ¹⁵⁰ This Article shall be without prejudice to Regulation (EC) No .../.... [the Dublin Regulation].

↓ 2005/85/EC
⇒ new

Article ~~24~~25

The role of UNHCR

1. Member States shall allow the UNHCR:

- (a) to have access to applicants for  international protection  ~~asylum~~, including those in detention and in airport or port transit zones¹⁵¹;

¹⁴⁹ Reservation: **DE, EE, EL, HU** considering 1 year too long
Scrutiny reservation: **EE, FI** and **NL** (both expressing concerns about the term "re-opened" (in Finland and the Netherlands a re-application is required)) (**RO** fearing abuse.

¹⁵⁰ Reservation: **AT** and scrutiny reservation: **SI**

¹⁵¹ **LT** proposed to delete the specification "airport or port" as in Article 19(2).

- (b) to have access to information on individual applications for ~~asylum~~ ⇒ international protection ⇐, 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~~ ⇒ international protection ⇐ at any stage of the procedure.

2. Paragraph 1 shall also apply to an organization which is working in the territory of the Member State concerned on behalf of the UNHCR pursuant to an agreement with that Member State.

Article ~~22~~26

Collection of information on individual cases

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

- (a) ~~directly~~ disclose information regarding individual applications for ⇒ international protection ⇐ ~~asylum~~, or the fact that an application has been made, to the alleged actor(s) of persecution ⇒ or serious harm ⇐ ~~of the applicant for asylum~~;
- (b) obtain any information from the alleged actor(s) of persecution ⇒ or serious harm ⇐ 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 jeopardise the physical integrity of the applicant and his/her dependants, or the liberty and security of his/her family members still living in the country of origin.

CHAPTER III

PROCEDURES AT FIRST INSTANCE

SECTION I

Article ~~23~~27¹⁵²

Examination procedure

1. Member States shall process applications for ~~asylum~~ ⇒ international protection ⇐ in an examination procedure in accordance with the basic principles and guarantees of Chapter II.
2. Member States shall ensure that such a procedure is concluded as soon as possible, without prejudice to an adequate and complete examination.

↓ new

↻ Council

3. ¹⁵³Member States shall ensure that a procedure is concluded within 6 months after the application is lodged.

¹⁵² Reservation: **AT, CY, IT, MT, PL, PT** and scrutiny reservation: **EL, LT, SE, SI, SK**
AT made a proposal to amend Article 27 as reflected in document 6510/10.

¹⁵³ Scrutiny reservation: **FI**

DE, EL, SE preferred to refrain from mentioning any upper time limits.

NL, supported by **CZ, DE, FR, PL, LT, LU, SE, SK**, submitted a proposal entailing which would refrain from specifying a time-limit in case of extension beyond the initial 6-month period and further specification of the cases in which such extension is justified (1. where the authority cannot reasonably be expected to give a decision in good time because of a) uncertainty about the situation in the country of origin which is expected to exist for a short period, b) other reasons of force majeure; 2. the applicant has agreed with the suspension or the extension).

HU proposed to specify that, in case of an implicit withdrawal or abandonment, the time the examination of the application was suspended should not be included in these time-limits.

☞ This time-limit may be extended for the period strictly necessary to complete the procedure, in no event exceeding 12 months, on a case by case basis, where: :

(a) ☞ complex issues of fact and law ☞ are involved including cases of applicants in need of special procedural guarantees and cases where a large number of third country nationals or stateless persons simultaneously request international protection which makes it practicably impossible to conclude the procedure within the time-limit referred to in the previous subparagraph:

(b) the delay can be attributed to the applicant.

The content of this paragraph shall be applicable without prejudice to Regulation [No./... The Dublin Regulation)]. ☞

4. ¹⁵⁴Member States shall ensure that, where a decision cannot be taken within the time period referred to in subparagraph 1 of paragraph 3, the applicant concerned shall:

(a) be informed of the delay; ☞ or ☞¹⁵⁵

(b) receive, upon his/her request, information on the reasons for the delay and the time-frame within which the decision on his/her application is to be expected.

The consequences of failure to adopt a decision within the time limits provided for in paragraph 3 shall be determined in accordance with national law.¹⁵⁶

¹⁵⁴ Scrutiny reservation: **DE**

¹⁵⁵ **CION**, supported by **CZ**, expressed concerns about replacement "and" by "or" fearing situations where the applicant will not be informed.

¹⁵⁶ **AT, EL, FR** proposed to delete this sentence.

Scrutiny reservation: **SI**

LU, NL requested clarification whether this subparagraph would also allow a Member State to determine in its national law that failure to adopt a decision within the time limits has no consequences.

↓ 2005/85/EC (adapted)

⇒ new

~~Member States shall ensure that, where a decision cannot be taken within six months, the applicant concerned shall either:~~

~~(a) be informed of the delay; or~~

~~(b) receive, upon his/her request, information on the time frame within which the decision on his/her application is to be expected. Such information shall not constitute an obligation for the Member State towards the applicant concerned to take a decision within that time frame.¹⁵⁷~~

35¹⁵⁸. Member States may prioritise ~~or accelerate any~~ an examination of an application for international protection in accordance with the basic principles and guarantees of Chapter II, ~~including where the application is likely to be well founded or where the applicant has special needs:~~

(a) where the application is likely to be well founded;

(b) where the applicant has special needs;

(c) in other cases with the exception of applications referred to in paragraph 6.

↓ 2005/85/EC (adapted)

⇒ new

↻ Council

46¹⁵⁹ Member States may ~~also~~ provide that an examination procedure in accordance with the basic principles and guarantees of Chapter II be ~~prioritised or~~ accelerated if:

¹⁵⁷ IT proposed to keep point (b) of the Directive currently in force.

¹⁵⁸ AT, RO, SE, SI questioned the added value of paragraph (5).

¹⁵⁹ Reservation: CY, EE and scrutiny reservation: AT, BG, EL, FR, PL, LV

(a) the applicant, in submitting his/her application and presenting the facts¹⁶⁰, has only raised issues that are not relevant ~~or of minimal relevance~~ to the examination of whether he/she qualifies as a refugee \Rightarrow or a person eligible for subsidiary protection \Leftarrow by virtue of ~~Directive 2004/83/EC~~ Directive [...]/EC [the Qualification Directive] ; or

~~(b) the applicant clearly does not qualify as a refugee or for refugee status in a Member State under Directive 2004/83/EC; or~~

\Rightarrow (a1) the applicant clearly does not qualify¹⁶¹ as a refugee or a person eligible for subsidiary protection in a Member State under Directive [...]/EC [The Qualification Directive];¹⁶² or \Leftarrow

~~(c) the application for asylum is considered to be unfounded;~~

~~(i) \Rightarrow (a2) \Leftarrow because~~ the applicant is from a safe country of origin within the meaning of ~~Articles 29, 30 and 31~~ \boxtimes this Directive \boxtimes ¹⁶³ ~~or~~

NL requested clarification about the reasons for not allowing Member States to apply accelerated procedures as long as every procedure respects the basic principles and guarantees of Chapter II of the Directive. Therefore, NL proposed to maintain the text as in Article 23(3) of the Directive currently in force. In response, CION indicated that respect of the principles and guarantees of Chapter II is not guaranteed throughout the Union and regarding all categories of applications.

DE indicated that, although it does not apply accelerated procedures, it does reject applications for being manifestly unfounded. In that light, DE, supported by AT, wanted to keep the points (e), (i), (k) and (l).

FR wanted to keep (h). CION opposed this considering this paragraph should be dealt with under the admissibility procedure and not (also) under the accelerated procedure.

MT wanted to keep (i).

PL wanted to keep (k).

SK wanted to keep (e), (k) and (n).

HU, LV, SI wanted to keep (n).

IT requested clarification why it is proposed to delete (l) and (n).

¹⁶⁰ HU proposed to insert "in the application and at the personal interview".

¹⁶¹ NL suggested to delete "qualify".

¹⁶² NL submitted a proposal for replacing the text of point (b) with the following text: "it can be determined in a careful manner that the applicant can be refused or granted international protection within the given time". CZ, DE could not support this proposal.

HU considered point (a1) not a valid condition for accelerating the examination of an application.

¹⁶³ AT proposed to insert "the country which is not a Member State, is considered to be a safe third country for the applicant; or". CION opposed this considering this paragraph should be

~~(ii) because the country which is not a Member State, is considered to be a safe third country for the applicant, without prejudice to Article 28(1); or~~

~~(d) (c)~~ the applicant has misled the authorities ¹⁶⁴by presenting false information or documents or by withholding relevant information or documents with respect to his/her identity and/or nationality that could have had a negative impact on the decision; or

~~(e) the applicant has filed another application for asylum stating other personal data;~~
~~or~~

~~(f) (d)~~ the applicant has not produced information establishing with a reasonable degree of certainty his/her identity or nationality, or ¹⁶⁵it is likely that, in bad faith, he/she has destroyed or disposed of an identity or travel document that would have helped establish his/her identity or nationality; or

⇒ ~~(d1) the applicant has made inconsistent, contradictory, improbable or insufficient representations which make his/her claim clearly unconvincing in relation to his/her having been the object of persecution or having suffered serious harm referred to in Directive [...]/EU [Qualification Directive], or~~ Ⓢ

~~(g) the applicant has made inconsistent, contradictory, improbable or insufficient representations which make his/her claim clearly unconvincing in relation to his/her having been the object of persecution referred to in Directive 2004/83/EC; or~~

~~(h) the applicant has submitted a subsequent application which does not raise any relevant new elements with respect to his/her particular circumstances or to the situation in his/her country of origin; or~~

~~(i) the applicant has failed without reasonable cause to make his/her application earlier, having had opportunity to do so; or~~

dealt with under the admissibility procedure and not (also) under the accelerated procedure. in this context, AT remarked that Article 41 does not contain a reference to Article 29.

¹⁶⁴ HU proposed to insert "responsible for the examination of the application".

¹⁶⁵ HU proposed to insert "there are valid reasons to consider that".

↓ new

↻ Council

(e) ↻ [...] ↻

↓ 2005/85/EC (adapted)

↻ new

↻ Council

~~(f) the applicant is making an application merely in order to delay or frustrate the enforcement of an earlier or imminent decision which would result in his/her removal; or~~

~~(k) the applicant has failed without good reason to comply with obligations referred to in Article 4(1) and (2) of Directive 2004/83/EC or in Articles 11(2)(a) and (b) and 20(1) of this Directive; or~~

~~(l) the applicant entered the territory of the Member State unlawfully or prolonged his/her stay unlawfully and, without good reason, has either not presented himself/herself to the authorities and/or filed an application for asylum as soon as possible, given the circumstances of his/her entry; or~~

~~↻ (f1) the applicant is a danger to the national security or public order of the Member State, or the applicant has been forcibly expelled for serious reasons of public security and public order under national law, or ↻~~

~~(m) the applicant is a danger to the national security or public order of the Member State, or the applicant has been forcibly expelled for serious reasons of public security and public order under national law; or~~

~~(n) the applicant refuses to comply with an obligation to have his/her fingerprints taken in accordance with relevant Community and/or national legislation; or~~

~~(o) the application was made by an unmarried minor to whom Article 6(4)(e) applies, after the application of the parents or parent responsible for the minor~~

~~has been rejected and no relevant new elements were raised with respect to his/her particular circumstances or to the situation in his/her country of origin.~~

↓ new

➔ Council

7.¹⁶⁶ ➔ Where any of the circumstances listed in paragraph 6 apply, Member States may reject an application as manifestly unfounded if the determining authority has established, after an adequate and complete¹⁶⁷ examination, that the applicant does not qualify for international protection pursuant to Directive [...]/EC [the Qualification Directive]. ➔

8.¹⁶⁸ Member States shall lay down reasonable time limits for the adoption of a decision in the procedure at first instance pursuant to paragraph 6.

9.¹⁶⁹ The fact that an application for international protection was submitted after an irregular entry into the territory or at the border, including in transit zones¹⁷⁰, as well as the lack of documents or use of forged documents, shall not *per se* entail an automatic recourse to an accelerated examination procedure.

¹⁶⁶ Scrutiny reservation: **EL, FR**

¹⁶⁷ Reservation on "and complete": **AT, CZ, SI, LT, SK**. In response, **CION** indicated that the Directive currently in force already contains the word "complete", that the proposal should not lead to the downgrading of existing provisions and that "complete" is appropriate because - contrary to the situations in Article 24- the applicant is present.

¹⁶⁸ **AT, EE** opposed by **CZ**, considered it not needed to establish separate time-limits deadlines for accelerated procedures.

¹⁶⁹ Reservation: **EE**

¹⁷⁰ **DE** proposed to delete the phrase ", as well as ... documents".

CZ took the position that the use forged documents constitutes a crime and is therefore sufficient reason to deal with this application in an accelerated procedure.

Article 28¹⁷¹

Unfounded applications

Without prejudice to Article 23, Member States shall only consider an application for international protection as unfounded if the determining authority has established that the applicant does not qualify for international protection pursuant to Directive [...]/EC [the Qualification Directive].

↓ 2005/85/EC

⇒ new

Article 24¹⁷²

Specific procedures

~~1. Member States may provide for the following specific procedures derogating from the basic principles and guarantees of Chapter II:~~

~~(a) a preliminary examination for the purposes of processing cases considered within the framework set out in Section IV;~~

~~(b) procedures for the purposes of processing cases considered within the framework set out in Section V;~~

~~2. Member States may also provide a derogation in respect of Section VI.~~

¹⁷¹ Scrutiny reservation: **AT, PL, SI, SK**

AT considered Article 28 redundant in view of Article 27.

SE requested clarification of the consequences of a decision that an application is manifestly unfounded.

¹⁷² **DE** requested to revisit this Article after all Articles in the proposal related to specific procedures have been read.

SECTION II

Article ~~2529~~¹⁷³

Inadmissible applications

1. In addition to cases in which an application is not examined in accordance with ~~Regulation (EC) No 343/2003~~ Regulation [No .../....] [the Dublin Regulation], Member States are not required to examine whether the applicant qualifies ~~as a refugee~~ ⇒ for international protection ⇐ in accordance with ~~Directive 2004/83/EC~~ Directive .../.../EC [the Qualification Directive] where an application is considered inadmissible pursuant to this Article.

↓ 2005/85/EC

⇒ new

↻ Council

2. Member States may consider an application for ~~asylum~~ ⇒ international protection ⇐ as inadmissible ⇒ only ⇐ ~~pursuant to this Article~~ if:
 - (a) another Member State has granted refugee status;
 - (b) a country which is not a Member State is considered as a first country of asylum for the applicant, pursuant to Article ~~2631~~;
 - (c) a country which is not a Member State is considered as a safe third country for the applicant, pursuant to Article ~~2732~~;
 - ~~(d) the applicant is allowed to remain in the Member State concerned on some other grounds and as result of this he/she has been granted a status equivalent to the rights and benefits of the refugee status by virtue of Directive 2004/83/EC.~~

¹⁷³ NL opposed deletion of (d) and (e) in the light of its asylum system granting a single status to those having international protection.

~~(c)~~ the applicant is allowed to remain in the territory of the Member State concerned on some other grounds which protect him/her against refoulement pending the outcome of a procedure for the determination of status pursuant to point (d);

~~(f)~~(d) the applicant has lodged ➔ a subsequent application which contains no new elements as described in Article 35¹⁷⁴ ☹;

~~(g)~~(e) a dependant of the applicant lodges an application, after he/she has in accordance with Article 6~~(3)~~(4) consented to have his/her case be part of an application made on his/her behalf, and there are no facts relating to the dependant's situation, which justify a separate application ➔ ;

(e1) the application was made by an unmarried minor to whom Article 6(7)(c) applies, after the application of the parents or parent responsible for the minor has been rejected and no relevant new elements were raised with respect to his/her particular circumstances or to the situation in his/her country of origin¹⁷⁵ ☹

¹⁷⁴ Scrutiny reservation: **DE**
AT found this condition problematic because an applicant can always raise new elements and therefore proposed to delete this condition. In response, **CION** indicated that the consequence of the **AT** proposal would be that any new application automatically would be inadmissible.

¹⁷⁵ Scrutiny reservation: **DE, FR**

↓ new

Article 30¹⁷⁶

Special rules on an admissibility interview

1. Member States shall allow applicants to present their views with regard to the application of the grounds referred to in Article 29 in their particular circumstances before a decision to consider an application inadmissible is taken. To that end, Member States shall conduct a personal interview on the admissibility of the application. Member States may make an exception only in accordance with Article 36 in cases of subsequent applications.
2. Paragraph 1 shall be without prejudice to Article 5 of Regulation (EC) No .../... [the Dublin Regulation].¹⁷⁷

↓ 2005/85/EC

⇒ new

Article ~~26~~31

The concept of first country of asylum

A country can be considered to be a first country of asylum for a particular applicant for ~~asylum~~ ⇒ international protection ⇐ if:

-
- ¹⁷⁶ Reservation: **PL** as to the relation between Article 30 and Article 13(2).
Scrutiny reservation: **AT, CY, EE, FI, HU, RO, SE, SI**.
AT proposed that the provision takes into account when a situation where the applicant cannot attend the admissibility interview (document 8610/10).
HU questioned in particular the reference to the Dublin Regulation.
In response to the question of **FI** who is allowed to conduct the interview, **CI** indicated that this not need to be a person from the determining authority.
- ¹⁷⁷ Reservation: **SI**

- (a) he/she has been recognised in that country as a refugee and he/she can still avail himself/herself of that protection; or
- (b) he/she otherwise enjoys sufficient protection in that country, including benefiting from the principle of non-refoulement;

provided that he/she will be readmitted to that country.

In applying the concept of first country of asylum to the particular circumstances of an ~~applicant for asylum~~ ⇒ applicant for international protection ⇐ Member States may take into account Article ~~27~~32 (1).

Article ~~27~~32

The safe third country concept

1. Member States may apply the safe third country concept only where the competent authorities are satisfied that a person seeking ~~asylum~~ ⇒ international protection ⇐ will be treated in accordance with the following principles in the third country concerned:
 - (a) life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;

↓ new

- (b) there is no risk of serious harm as defined in [Directive .../..EC] [the Qualification Directive];¹⁷⁸

¹⁷⁸ Reservation: **SI** and scrutiny reservation: **RO**

↓ 2005/85/EC

⇒ new

~~(b)~~(c) the principle of non-refoulement in accordance with the Geneva Convention is respected;

~~(e)~~(d) the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected; and

~~(d)~~(e) the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention.

2. The application of the safe third country concept shall be subject to rules laid down in national legislation, including:

(a) rules requiring a connection between the person seeking ~~asylum~~
⇒ international protection ⇐ and the third country concerned on the basis of which it would be reasonable for that person to go to that country;

(b) rules on the methodology by which the competent authorities satisfy themselves that the safe third country concept may be applied to a particular country or to a particular applicant. Such methodology shall include case-by-case consideration of the safety of the country for a particular applicant and/or national designation of countries considered to be generally safe;

(c)¹⁷⁹ rules in accordance with international law, allowing an individual examination of whether the third country concerned is safe for a particular applicant which, as a minimum, shall permit the applicant to challenge the application of the safe third country concept ~~on the grounds that he/she would be subjected to torture, cruel, inhuman or degrading treatment or punishment~~ ⇒ on the grounds that the third country is not safe in his/her particular circumstances. The

¹⁷⁹ AT opposed the proposed additional ground for challenging the application.

applicant shall also be allowed to challenge the existence of a connection between him/her and the third country in accordance with point (a) ⇐ .

3. When implementing a decision solely based on this Article, Member States shall:
 - (a) inform the applicant accordingly; and
 - (b) provide him/her with a document informing the authorities of the third country, in the language of that country, that the application has not been examined in substance.
4. Where the third country does not permit the ~~applicant for asylum~~ ⇒ applicant for international protection ⇐ to enter its territory, Member States shall ensure that access to a procedure is given in accordance with the basic principles and guarantees described in Chapter II.
5. Member States shall inform the Commission periodically of the countries to which this concept is applied in accordance with the provisions of this Article.

SECTION III

~~Article 28~~

~~Unfounded applications~~

~~1. Without prejudice to Articles 19 and 20, Member States may only consider an application for asylum as unfounded if the determining authority has established that the applicant does not qualify for refugee status pursuant to Directive 2004/83/EC.~~

~~2. In the cases mentioned in Article 23(4)(b) and in cases of unfounded applications for asylum in which any of the circumstances listed in Article 23(4)(a) and (c) to (o) apply, Member States may also consider an application as manifestly unfounded, where it is defined as such in the national legislation.~~

~~Article 29~~

~~Minimum common list of third countries regarded as safe countries of origin~~

~~1. The Council shall, acting by a qualified majority on a proposal from the Commission and after consultation of the European Parliament, adopt a minimum common list of third countries which shall be regarded by Member States as safe countries of origin in accordance with Annex II.~~

~~2. The Council may, acting by a qualified majority on a proposal from the Commission and after consultation of the European Parliament, amend the minimum common list by adding or removing third countries, in accordance with Annex II. The Commission shall examine any request made by the Council or by a Member State to submit a proposal to amend the minimum common list.~~

~~3. When making its proposal under paragraphs 1 or 2, the Commission shall make use of information from the Member States, its own information and, where necessary, information from UNHCR, the Council of Europe and other relevant international organisations.~~

~~4. Where the Council requests the Commission to submit a proposal for removing a third country from the minimum common list, the obligation of Member States pursuant to Article 31(2) shall be suspended with regard to this third country as of the day following the Council decision requesting such a submission.~~

~~5. Where a Member State requests the Commission to submit a proposal to the Council for removing a third country from the minimum common list, that Member State shall notify the Council in writing of the request made to the Commission. The obligation of this Member State pursuant to Article 31(2) shall be suspended with regard to the third country as of the day following the notification to the Council.~~

~~6. The European Parliament shall be informed of the suspensions under paragraphs 4 and 5.~~

~~7. The suspensions under paragraphs 4 and 5 shall end after three months, unless the Commission makes a proposal before the end of this period, to withdraw the third country from the minimum common list. The suspensions shall in any case end where the Council rejects a proposal by the Commission to withdraw the third country from the list.~~

~~8. Upon request by the Council, the Commission shall report to the European Parliament and the Council on whether the situation of a country on the minimum common list is still~~

~~in conformity with Annex II. When presenting its report, the Commission may make such recommendations or proposals as it deems appropriate.~~

Article ~~30~~³³¹⁸⁰

National designation of third countries as safe countries of origin

1. ~~Without prejudice to Article 29, Member States may retain or introduce legislation that allows, in accordance with Annex II, for the national designation of third countries other than those appearing on the minimum common list, as safe countries of origin for the purposes of examining applications for asylum ⇒ international protection ⇐ This may include designation of part of a country as safe, where the conditions in Annex II are fulfilled in relation to that part.~~

~~2. By derogation from paragraph 1, Member States may retain legislation in force on 1 December 2005 that allows for the national designation of third countries, other than those appearing on the minimum common list, as safe countries of origin for the purposes of examining applications for asylum where they are satisfied that persons in the third countries concerned are generally neither subject to:~~

~~(a) persecution as defined in Article 9 of Directive 2004/83/EC; nor~~

~~(b) torture or inhuman or degrading treatment or punishment.~~

~~3. Member States may also retain legislation in force on 1 December 2005 that allows for the national designation of part of a country as safe, or a country or part of a country as safe for a specified group of persons in that country, where the conditions in paragraph 2 are fulfilled in relation to that part or group.¹⁸¹~~

¹⁸⁰ FR: scrutiny reservation.

AT, DE, FR expressed regret as regards the deletion of the minimum common list of countries regarded as safe countries of origin.

¹⁸¹ HU requested clarification as regards the proposed deletion of paragraph (3) of the Directive currently in force in the light of the possibility for internal protection provided for in the Qualifications Directive. In response, CION explained that internal protection and the deletion of paragraph (3) are not in contradiction because, on the basis of the deleted paragraph (3), a Member State had to establish beforehand whether part of a country is safe,

~~4. In assessing whether a country is a safe country of origin in accordance with paragraphs 2 and 3, Member States shall have regard to the legal situation, the application of the law and the general political circumstances in the third country concerned.~~

↓ new

2. Member States shall ensure a regular review of the situation in third countries designated as safe in accordance with this Article.

↓ 2005/85/EC (adapted)

⇒ new

↻ Council

~~3.~~ The assessment of whether a country is a safe country of origin in accordance with this Article shall be based on a range of sources of information, including in particular information from other Member States, ⇒ the European Asylum Support Office, ⇐ the UNHCR, the Council of Europe and other relevant international organisations.

~~4.~~ Member States shall notify to the Commission the countries that are designated as safe countries of origin in accordance with this Article.

Article ~~31~~34

The safe country of origin concept

1. A third country designated as a safe country of origin in accordance with ~~⊗~~ this Directive ~~⊗~~ either Article 29 or 30 may, after an individual examination of the application, be considered as a safe country of origin for a particular applicant ~~for asylum~~ only if:

while the provision on internal protection provides that the Member State, at the time of taking the decision, determines that a person has access to protection in a part of a country and can safely and legally travel, gain admittance and settle in that part.

- (a) he/she has the nationality of that country; or
- (b) he/she is a stateless person and was formerly habitually resident in that country;
- (c) and he/she has not submitted any serious grounds for considering the country not to be a safe country of origin in his/her particular circumstances and in terms of his/her qualification as a refugee ⇒ or a person eligible for subsidiary protection ⇐ in accordance with Directive 2004/83/EC [Directive .../.../EC] [the Qualification Directive] .

~~2. Member States shall, in accordance with paragraph 1, consider the application for asylum as unfounded where the third country is designated as safe pursuant to Article 29.~~

32. Member States shall lay down in national legislation further rules and modalities for the application of the safe country of origin concept.

SECTION IV

Article ~~32~~35¹⁸²

Subsequent application

1. Where a person who has applied for ~~asylum~~ ⇒ international protection ⇐ in a Member State makes further representations or a subsequent application in the same Member State, that Member State ~~may~~ ⇒ shall ⇐ examine these further representations or the elements of the subsequent application in the framework of the examination of the previous application or in the framework of the examination of the decision under review or appeal, insofar as the competent authorities can take into account and consider all the elements underlying the further representations or subsequent application within this framework.

¹⁸² Reservation: **IT, FR** and scrutiny reservation: **CY, CZ, EL, LU, LV, PL, SE, SI, SK**
 Several delegations requested the **CION** a list with relevant case law.
AT made a proposal to Article 35 (document 8610/10).

2. 183184 ↻ [...] ⌂;

~~(b) after a decision has been taken on the previous application. Member States may also decide to apply this procedure only after a final decision has been taken.~~¹⁸⁵

↓ new

↻ Council

↻ [...] ⌂.

↓ 2005/85/EC

⇒ new

↻ Council

3. ¹⁸⁶A subsequent application for ~~asylum~~ ⇒ international protection ⇐ shall be subject first to a preliminary examination as to whether, after the withdrawal of the previous application or after ↻ a final decision on the previous ⌂ application has been reached, new elements or findings relating to the examination of whether he/she qualifies as a refugee ⇒ or a person eligible for subsidiary protection ⇐ by virtue of ~~Directive 2004/83/EC~~ Directive [...] /.../EC [the Qualification Directive] have arisen or have been presented by the applicant.

4. If, following the preliminary examination referred to in paragraph 3 of this Article, new elements or findings arise or are presented by the applicant which significantly add to the likelihood of the applicant qualifying as a refugee ⇒ or a person eligible for subsidiary

¹⁸³ Scrutiny reservation: **LV, RO**

¹⁸⁴ **DE** opposed the proposed deletion in the CION proposal of the reference to Article 20 of the Directive currently in force considering that the specific procedure referred to in paragraph (3) should also be possible in case of an implicit withdrawal or abandonment of an application.

¹⁸⁵ **DE** opposed the proposed deletion of paragraph (b) of the Directive currently in force considering the proposed new paragraph (b) too much of a limitation for Member States.

¹⁸⁶ Scrutiny reservation: **CZ, DE, FR, LV, NL**

LU requested clarification whether after a repatriation an application should be considered as a subsequent application.

protection ⇐ by virtue of ~~Directive 2004/83/EC~~ Directive [...]/../EC] [the Qualification Directive], the application shall be further examined in conformity with Chapter II.

5. Member States may, in accordance with national legislation, further examine a subsequent application where there are other reasons why a procedure has to be re-opened.
6. Member States may decide to further examine the application only if the applicant concerned was, through no fault of his/her own, incapable of asserting the situations set forth in paragraphs 3, 4 and 5 of this Article in the previous procedure, in particular by exercising his/her right to an effective remedy pursuant to Article ~~39~~ 41.
7. The procedure referred to in this Article may also be applicable in the case of a dependant who lodges an application after he/she has, in accordance with Article ~~6(2)(4)~~, consented to have his/her case be part of an application made on his/her behalf. In this case the preliminary examination referred to in paragraph 3 of this Article will consist of examining whether there are facts relating to the dependant's situation which justify a separate application.

¹⁸⁷ ⇨ 7a. The procedure referred to in this Article may also be applicable in case of an unmarried minor who lodges an application after he/she has been, in accordance with Article 6(7)(c), part of an application made on his/her behalf. In this case, the preliminary examination referred to in paragraph 3 of this Article will consist of examining whether there are facts relating to the unmarried minor's situation which justify a separate application. ©

¹⁸⁷ Scrutiny reservation: **AT**

↓ new

☞ Council

8. ¹⁸⁸If, following a final decision ☞ [...] ☞, the person concerned lodges a ☞ subsequent ☞ application for international protection in the same Member State before a return decision¹⁸⁹ has been enforced, that Member State may:

☞ [...] ☞ make an exception to the right to remain in the territory, provided the determining authority ☞ has decided not to examine further the application in accordance with this Article. ☞

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¹⁸⁸ Reservation: **BG, SI** and scrutiny reservation: **DE, FR, LU, LV, PL, PT, RO, SK**
NL advocated a simple and speedy procedure for rejecting a subsequent application while leaving it to a court or tribunal to determine whether the procedure has suspensive effect. **LU** requested clarification whether paragraph (8) is necessary. **BG, DE, SK** advocated that the procedure of paragraph (8) would apply as of the first subsequent application. In response, **CION** indicated that this would not be possible in the light of the right of appeal and the related right to remain in the Member State pending the outcome of the appeal.

In the same vein, **AT**, pointing to the link between Article 35 and the Articles 8 and 41, underlined that a subsequent application should be treated speedily and that an applicant does not need to remain on the territory of the Member State.

SE expressed doubts as regards the procedure provided in paragraph (8).

HU requested clarification about the link between paragraph (8)(a), which seems to oblige Member States to take a decision, and Article 29(2)(d), which provides that Member States "may" take a decision.

DE preferred to maintain a reference to Article 29(2)(d).

CZ, HU, SE opposed the proposal as it allows for the situation that an applicant makes a new application before the authority has had the opportunity to examine whether there are new elements in the new application. As a consequence, the applicant cannot be removed from the territory of the Member State irrespective of the number of previous applications he lodged.

¹⁸⁹ **CZ** suggested to replace "before a return decision has been enforced" with "after he/she was ordered to leave the territory".

¹⁹⁰ **FR** proposed to add a new subparagraph: "except under conditions provided for in Article 35(7), provide that the personal interview may be omitted when the initial written declarations clearly appear irrelevant, incoherent, contradictory, improbable or insufficient on the basis of the application provided and in particular regarding the content of the previous interview(s) and of the previous final decision".

9. ¹⁹¹Where a person with regard to whom a transfer decision has to be enforced pursuant to Regulation (EC) [...] [the Dublin Regulation] makes further representations or a subsequent application in the transferring Member State¹⁹², those representations or subsequent applications shall be examined by the responsible Member State, as defined in Regulation (EC) [...] [the Dublin Regulation], in accordance with this Directive.

↓ 2005/85/EC (adapted)

⇒ new

↻ Council

~~Article 33¹⁹³~~

~~Failure to appear~~

~~Member States may retain or adopt the procedure provided for in Article 32 in the case of an application for asylum filed at a later date by an applicant who, either intentionally or owing to gross negligence, fails to go to a reception centre or appear before the competent authorities at a specified time.~~

¹⁹¹ Scrutiny reservation: **DE**

EL requested clarification as regards the case that a person lodges applications in several Member States. Furthermore, **EL** requested clarification whether a Member State taking back an applicant for international protection from another Member State would be obliged to gather information from the latter Member State. In this light, **EL** referred to the obligation contained in Article 27 to conclude a procedure within 6 months after the application was lodged.

AT underlined that Dublin transfers need to be done without delay.

¹⁹² **PT** suggested "responsible Member State" instead of "transferring Member State".

¹⁹³ **DE** opposed deletion of Article 33 of the Directive currently in force.

Procedural rules

1. Member States shall ensure that applicants ~~for asylum~~ ⇨ for international protection ⇨ whose application is subject to a preliminary examination pursuant to Article ~~32~~ 35 enjoy the guarantees provided for in Article ~~10~~ 11 (1).
2. ¹⁹⁵Member States may lay down in national law rules on the preliminary examination pursuant to Article ~~32~~ 35. Those rules may, inter alia:
 - (a) oblige the applicant concerned to indicate facts and substantiate evidence which justify a new procedure;
 - ~~(b) require submission of the new information by the applicant concerned within a time limit after he/she obtained such information;~~¹⁹⁶
 - ~~(c)~~(b) permit the preliminary examination to be conducted on the sole basis of written submissions without a personal interview ⇨, with the exception of cases referred to in Article 35 (7) ⇨ and (7a) ⇨.¹⁹⁷

The conditions shall not render impossible the access of applicants ~~for asylum~~ to a new procedure or result in the effective annulment or severe curtailment of such access.

3. Member States shall ensure that:
 - (a) the applicant is informed in an appropriate manner of the outcome of the preliminary examination and, in case the application will not be further

¹⁹⁴ Reservation: **FR**
SI questioned why an applicant needs to be informed considering that this person has already received information at an earlier stage of the application.

¹⁹⁵ Reservation: **DE**

¹⁹⁶ **DE** opposed the deletion of point 2(b) of the Directive currently in force.

¹⁹⁷ Scrutiny reservation: **DE**

FR proposed to delete (b). In reaction, **CION** indicated that in preliminary examinations an interview is not an obligation.

DE opposed the proposal to add "with the exception of cases referred to in Article 35(7)".

CION advocated to align the provisions for dependants with those of unaccompanied minors as in Article 13.

examined, of the reasons for this and the possibilities for seeking an appeal or review of the decision;

- (b) if one of the situations referred to in Article ~~32(2)~~ 35(3) applies, the determining authority shall further examine the subsequent application in conformity with the provisions of Chapter II as soon as possible.

SECTION V

Article ~~35~~37¹⁹⁸

Border procedures

1. Member States may provide for procedures, in accordance with the basic principles and guarantees of Chapter II, in order to decide at the border or transit zones of the Member State on:

- (a) ⇒ the admissibility of an ⇐ applications_s made at such locations_s and/or ⇐

↓ new

- (b) the substance of an application in an accelerated procedure pursuant to Article 27 (6).¹⁹⁹

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¹⁹⁸

Scrutiny reservation: **AT, CZ, EL, FR, RO**

DE advocated to retain the possibility of specific procedures for examinations at border and transit zones as provided for by Article 24 of the Directive currently in force.

FR, NL opposed the restriction of possibilities for rejecting manifestly unfounded applications.

NL requested clarification how the provision on border or transit zones would relate to its centre for receiving applicants for international protection at Schiphol airport, pointing out that this centre provides at least equivalent facilities to centres not located at a border or transit zone and has even been qualified as a best practice in the Union.

¹⁹⁹

DE opposed the reference to Article 27(6).

↓ 2005/85/EC

⇒ new

↻ Council

~~2. However, when procedures as set out in paragraph 1 do not exist, Member States may maintain, subject to the provisions of this Article and in accordance with the laws or regulations in force on 1 December 2005, procedures derogating from the basic principles and guarantees described in Chapter II, in order to decide at the border or in transit zones as to whether applicants for asylum who have arrived and made an application for asylum at such locations, may enter their territory.~~

~~3. The procedures referred to in paragraph 2 shall ensure in particular that the persons concerned:~~

~~(a) are allowed to remain at the border or transit zones of the Member State, without prejudice to Article 7;~~

~~(b) are immediately informed of their rights and obligations, as described in Article 10(1)(a);~~

~~(c) have access, if necessary, to the services of an interpreter, as described in Article 10(1)(b);~~

~~(d) are interviewed, before the competent authority takes a decision in such procedures, in relation to their application for asylum by persons with appropriate knowledge of the relevant standards applicable in the field of asylum and refugee law, as described in Articles 12, 13 and 14;~~

~~(e) can consult a legal adviser or counsellor admitted or permitted as such under national law, as described in Article 15(1); and~~

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FR, opposed by CION repeating the aim of a single determining authority, proposed to add a point (c): the decision to whether applicants for asylum who have arrived and made an application for asylum at such locations, may enter their territory."

CZ considered this point an immigration decision to which the (guarantees of the) Qualification Directive should not apply.

~~(f) have a representative appointed in the case of unaccompanied minors, as described in Article 17(1), unless Article 17(2) or (3) applies.~~

~~Moreover, in case permission to enter is refused by a competent authority, this competent authority shall state the reasons in fact and in law why the application for asylum is considered as unfounded or as inadmissible.~~

42. Member States shall ensure that a decision in the framework of the procedures provided for in paragraph 21 is taken within a reasonable time. When a decision has not been taken within four weeks, the applicant ~~for asylum~~ shall be granted entry to the territory of the Member State in order for his/her application to be processed in accordance with the other provisions of this Directive.²⁰¹

53. In the event of ~~particular types of arrivals, or~~ arrivals involving a large number of third country nationals or stateless persons lodging applications for ~~asylum~~ ⇒ international protection ⇐ at the border or in a transit zone, which makes it practically impossible to apply there the provisions of paragraph 1 ~~or the specific procedure set out in paragraphs 2 and 3~~, those procedures may also be applied where and for as long as these third country nationals or stateless persons are accommodated normally at locations in proximity to the border or transit zone.

SECTION VI

Article ~~36~~38

The European safe third countries concept

1. Member States may provide that no, or no full, examination of the asylum application and of the safety of the applicant in his/her particular circumstances as described in Chapter II, shall take place in cases where a competent authority has established, on the basis of the facts, that the applicant for ~~asylum~~ ⇒ international protection ⇐ is seeking to enter or has entered illegally into its territory from a safe third country according to paragraph 2.

²⁰¹ Scrutiny reservation: **SI** in particular as regards the 4-week period.

2. A third country can only be considered as a safe third country for the purposes of paragraph 1 where:

(a) it has ratified and observes the provisions of the Geneva Convention without any geographical limitations;

(b) it has in place an asylum procedure prescribed by law; ⇔ and ⇐

(c) it has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms and observes its provisions, including the standards relating to effective remedies; ~~and~~

~~(d) it has been so designated by the Council in accordance with paragraph 3.~~

~~3. The Council shall, acting by qualified majority on a proposal from the Commission and after consultation of the European Parliament, adopt or amend a common list of third countries that shall be regarded as safe third countries for the purposes of paragraph 1.~~

~~43.~~ The Member States concerned shall lay down in national law the modalities for implementing the provisions of paragraph 1 and the consequences of decisions pursuant to those provisions in accordance with the principle of non-refoulement ~~under the Geneva Convention~~, including providing for exceptions from the application of this Article for humanitarian or political reasons or for reasons of public international law.

~~54.~~ When implementing a decision solely based on this Article, the Member States concerned shall:

(a) inform the applicant accordingly; and

(b) provide him/her with a document informing the authorities of the third country, in the language of that country, that the application has not been examined in substance.

~~65.~~ Where the safe third country does not re-admit the applicant for asylum, Member States shall ensure that access to a procedure is given in accordance with the basic principles and guarantees described in Chapter II.

~~7. Member States which have designated third countries as safe countries in accordance with national legislation in force on 1 December 2005 and on the basis of the criteria in~~

~~paragraph 2(a), (b) and (c), may apply paragraph 1 to these third countries until the Council has adopted the common list pursuant to paragraph 3.~~

CHAPTER IV

PROCEDURES FOR THE WITHDRAWAL OF ~~REFUGEE~~ ⇒ INTERNATIONAL PROTECTION ⇐ STATUS

Article ~~37~~39

Withdrawal of ~~refugee~~ ⇒ international protection ⇐ status

Member States shall ensure that an examination to withdraw the ~~refugee~~ ⇒ international protection ⇐ status of a particular person may commence when new elements or findings arise indicating that there are reasons to reconsider the validity of his/her ~~refugee~~ ⇒ international protection ⇐ status.

Article ~~38-40~~

Procedural rules

1. Member States shall ensure that, where the competent authority is considering withdrawing the ~~refugee~~ ⇒ international protection ⇐ status of a third country national or stateless person in accordance with Article 14 ⇒ or Article 19 ⇐ of ~~Directive 2004/83/EC~~ Directive [..../.../EC] [the Qualification Directive] , the person concerned shall enjoy the following guarantees:
 - (a) to be informed in writing that the competent authority is reconsidering his or her qualification for ~~refugee~~ ⇒ international protection ⇐ status and the reasons for such a reconsideration; and
 - (b) to be given the opportunity to submit, in a personal interview in accordance with Article ~~10~~ 11 (1) (b) and Articles ~~12, 13 and~~ 14 and 15 or in a written

statement, reasons as to why his/her **refugee** ⇒ **international protection** ⇐ status should not be withdrawn.

In addition, Member States shall ensure that within the framework of such a procedure:

- (a) the competent authority is able to obtain precise²⁰² and up-to-date information from **relevant** sources, such as, where appropriate, from **the European Asylum Support Office** the UNHCR **[...]** , as to the general situation prevailing in the countries of origin of the persons concerned; and
- (b) where information on an individual case is collected for the purposes of reconsidering the **refugee** ⇒ **international protection** ⇐ status, it is not obtained from the actor(s) of persecution ⇒ or serious harm ⇐ in a manner that would result in such actor(s) being directly informed of the fact that the person concerned is a **refugee** ⇒ **beneficiary of international protection** ⇐ whose status is under reconsideration, nor jeopardise the physical integrity of the person and his/her dependants, or the liberty and security of his/her family members still living in the country of origin.


2. Member States shall ensure that the decision of the competent authority to withdraw the **refugee** ⇒ **international protection** ⇐ status is given in writing. The reasons in fact and in law shall be stated in the decision and information on how to challenge the decision shall be given in writing.

3. Once the competent authority has taken the decision to withdraw the **refugee** ⇒ **international protection** ⇐ status, Article ~~15~~18, paragraph 2, Article ~~16~~19, paragraph 1 and Article ~~24~~ 25 are equally applicable.

4. ²⁰³By derogation to paragraphs 1, 2 and 3 of this Article, Member States may decide that the **refugee** ⇒ **international protection** ⇐ status shall lapse by law ~~in case of cessation in accordance with Article 11(1)(a) to (d) of Directive 2004/83/EC or~~ if the **refugee** ⇒ **beneficiary of international protection** ⇐ has unequivocally renounced his/her recognition as a **refugee** ⇒ **beneficiary of international protection** ⇐ **Member States**

²⁰² HU suggested "accurate" instead of "precise" in order to achieve consistency with Article 9(3).

²⁰³ Scrutiny reservation: DE

may also provide that refugee status or subsidiary protection status shall lapse by law where a refugee or a person granted subsidiary protection has acquired the nationality of the Member State concerned. .


CHAPTER V

APPEALS PROCEDURES

Article ~~39~~41²⁰⁴

The right to an effective remedy

1. ²⁰⁵Member States shall ensure that applicants for ~~asylum~~ ⇒ international protection ⇐ have the right to an effective remedy before a court or tribunal, against the following:
 - (a) a decision taken on their application for ~~asylum~~ ⇒ international protection ⇐, including a decision:

 new

- (i) to consider an application unfounded in relation to refugee status and/or subsidiary protection status,

²⁰⁴ Reservation: **NL** and scrutiny reservation: **FR, MT, SE**.
NL opposed the paragraphs (1)(a) and (2) considering these contrary to the single status asylum granted in the Netherlands asylum procedure. In response, **CION** indicated that, at European level, refugee status and status of beneficiary of subsidiary protection are different.

²⁰⁵ **AT** proposed modifications of Article 41 as reflected in document 8610/10.
EL requested clarification whether the term "court or tribunal" also includes institutions such as the Court of Justice.

↓ 2005/85/EC

⇒ new

↻ Council

~~(i)(ii)~~ to consider an application inadmissible pursuant to Article ~~25(2)~~ 29,

~~(ii)(iii)~~ taken at the border or in the transit zones of a Member State as described in Article ~~35~~ 37 (1),

~~(iii)(iv)~~ not to conduct an examination pursuant to Article ~~36~~ 38;

(b) a refusal to re-open the examination of an application after its discontinuation pursuant to Articles ~~19~~ 23 and ~~20~~ 24;

~~(c)~~ a decision not to further examine the subsequent application pursuant to Articles ~~32 and 34~~,²⁰⁶

~~(d)~~ a decision refusing entry within the framework of the procedures provided for under Article ~~35(2)~~;

↻ (b1) a decision refusing entry within the framework of the procedures provided for under Article 37; ↻²⁰⁷

~~(e)(c)~~ a decision to withdraw ~~of refugee~~ ⇒ international protection ⇐ status pursuant to Article ~~38~~ 40.

↓ new

2. ²⁰⁸ Member States shall ensure that persons recognized by the determining authority as eligible for subsidiary protection have the right to an effective remedy as referred to in

²⁰⁶ Scrutiny reservation on proposed deletion: **DE**

²⁰⁷ **CZ, SI** opposed this proposal considering it an issue out of place in the Asylum Procedures Directive. In response, **CION** referred to a similar provision already included in Article 39(1)(d) of the Directive currently in force.

²⁰⁸ Scrutiny reservation: **CY, CZ, SK**

paragraph 1 against a decision to consider an application unfounded in relation to refugee status.

The person concerned shall be entitled to the rights and benefits guaranteed to beneficiaries of subsidiary protection pursuant to Directive [...]/../EC] [the Qualification Directive] pending the outcome of the appeal procedures.²⁰⁹

3. ²¹⁰Member States shall ensure that the effective remedy referred to in paragraph 1 provides for a full examination of both facts and points of law, including an *ex nunc* examination of the international protection needs pursuant to Directive [...]/../EC] [the Qualification Directive], at least in appeal procedures before a court or tribunal of first instance.

↓ 2005/85/EC Article 4

⇒ new

24. Member States shall provide for ⇒ reasonable ⇐ time-limits²¹¹ and other necessary rules for the applicant to exercise his/her right to an effective remedy pursuant to paragraph 1.

↓ 2005/85/EC Article 4

~~3. Member States shall, where appropriate, provide for rules in accordance with their international obligations dealing with~~

²⁰⁹ Scrutiny reservation on second subparagraph: **RO**

²¹⁰ Reservation: **IT, NL, PT** and scrutiny reservation: **AT**

NL considered the proposed range of the examination before a court or a tribunal at first instance covering a full *ex nunc* examination of facts and law too extensive and prone to abuse.

CY, PL expressed concerns about the broad range the examination by the court or tribunal at first instance can encompass. Furthermore, **PL** requested **CION** to provide the relevant case-law.

CZ requested clarification whether a court should only look at evidence newly submitted or actively gather new evidence.

EL requested clarification about the link with Article 35(1).

²¹¹ **CZ** requested clarification as regards the term "reasonable" time limits" recalling that a national court ruled that a 7-day time limit was too short and that, as a result, the Czech Republic now applies the standard time-limit of 15 days.

~~(a) the question of whether the remedy pursuant to paragraph 1 shall have the effect of allowing applicants to remain in the Member State concerned pending its outcome;~~

~~(b) the possibility of legal remedy or protective measures where the remedy pursuant to paragraph 1 does not have the effect of allowing applicants to remain in the Member State concerned pending its outcome. Member States may also provide for an ex officio remedy; and~~

~~(c) the grounds for challenging a decision under Article 25(2)(c) in accordance with the methodology applied under Article 27(2)(b) and (c).~~

↓ new

The time limits shall not render impossible or excessively difficult the access of applicants to an effective remedy pursuant to paragraph 1. Member States may also provide for an *ex officio* review of decisions taken pursuant to Article 37.

5.²¹² Without prejudice to paragraph 6, the remedy provided for in paragraph 1 of this Article shall have the effect of allowing applicants to remain in the Member State concerned pending its outcome.²¹³

6.²¹⁴ In the case of a decision taken in the accelerated procedure pursuant to Article 27 (6) and of a decision to consider an application inadmissible pursuant to Article 29 (2) (d),²¹⁵ and

²¹² Reservation: **DE, PL** and scrutiny reservation: **EE, IT, RO, SI**
DE expressed a preference for deleting paragraph (5) advocating, in case suspensive effect on remedies provided for in paragraph 1 as the main rule would remain, extended derogations.

AT, FR, PL, SK expressed concerns about the general provision that applicants can stay in the Member States pending their appeal.

In response, **CION** indicated that proposal regarding suspensive effect is in line with case law while providing some flexibility to Member States.

²¹³ **FR** proposed to add ", since the act against which the remedy was introduced ends the applicant's right to remain in the Member State." **CZ, SI** opposed this proposal considering it an issue out of place in the Asylum Procedures Directive.

²¹⁴ Reservation: **DE, EL, PL** and scrutiny reservation: **CZ, EE, IT, FI, SI, SK**

where the right to remain in the Member State pending the outcome of the remedy is not foreseen under national legislation, a court or tribunal shall have the power to rule whether or not the applicant may remain on the territory of the Member State, either upon request of the concerned applicant or acting on its own motion²¹⁶.

This paragraph shall not apply to procedures referred to in Article 37.²¹⁷

7.²¹⁸ Member States shall allow the applicant to remain in the territory pending the outcome of the procedure referred to in paragraph 6.

8. Paragraphs 5, 6 and 7 shall be without prejudice to Article 26 of Regulation (EC) No [...]/.... [the Dublin Regulation].

↓ 2005/85/EC Article 4

⇒ new

49.²¹⁹ Member States ~~may~~ ⇒ shall ⇐ lay down time-limits for the court or tribunal pursuant to paragraph 1 to examine the decision of the determining authority.

AT and **DE** proposed to specify that an applicant may not remain on the territory pending the outcome of a remedy when a valid expulsion order exists. In addition, **DE** proposed such non-suspensive effect also in case of an applicant coming from a safe third country.

NL, supported by **SE**, and with reference to the paragraphs (5), (6) and (7), considered it too restrictive to have derogations only for the accelerated procedure and inadmissible applications. Furthermore, **NL** considered that subsequent applications need not to have suspensive effect in all cases and that no suspensive effect should be provided in case of a threat to public order (supported by **SE**) or in case of return.

215 **FR** proposed to add "and if the decision aims to end the applicant's right to remain in the Member State".

216 **DE** proposed to delete "or acting on its own motion".

217 **DE** proposed to delete this sentence. In response, **CION** indicated that the European Court of Human Rights has ruled that border procedures must have suspensive effect.

218 Reservation: **DE** and scrutiny reservation: **EE, IT, FI, SI, SK**.

FI explained that, in Finland, a court can decide that an applicant remains in the Member State but not that an applicant is not allowed to remain. Considering that paragraph (7) seems to apply to both situations, **FI** entered a scrutiny reservation.

219 Reservation: **DE** considering it not possible that a Member State lays down time-limits for courts and tribunals and scrutiny reservation: **EE, FI, SE**.

FI, SI feared that an obligation of Member States to lay down time-limits for the court or tribunal may be in conflict with their autonomy.

- §10. Where an applicant has been granted a status which offers the same rights and benefits under national and Community law as the refugee status by virtue of ~~Directive 2004/83/EC~~ Directive [...]/../EC [the Qualification Directive] , the applicant may be considered as having an effective remedy where a court or tribunal decides that the remedy pursuant to paragraph 1 is inadmissible or unlikely to succeed on the basis of insufficient interest on the part of the applicant in maintaining the proceedings.
- §11. Member States may also lay down in national legislation the conditions under which it can be assumed that an applicant has implicitly withdrawn or abandoned his/her remedy pursuant to paragraph 1, together with the rules on the procedure to be followed.

CHAPTER VI

GENERAL AND FINAL PROVISIONS

Article ~~40~~42

Challenge by public authorities

This Directive does not affect the possibility for public authorities of challenging the administrative and/or judicial decisions as provided for in national legislation.

Article ~~41~~43

Confidentiality

Member States shall ensure that authorities implementing this Directive are bound by the confidentiality principle as defined in national law, in relation to any information they obtain in the course of their work.

SE could accept to indicate that the courts and tribunal should examine the decision of the determining authority "speedily".

↓ new

Article 44

Cooperation

Member States shall each appoint a national contact point and communicate its address to the Commission. The Commission shall communicate that information to the other Member States.

Member States shall, in liaison with the Commission, take all appropriate measures to establish direct cooperation and an exchange of information between the competent authorities.

↓ 2005/85/EC (adapted)

⇒ new

↻ Council

Article ~~44~~5

Report

No later than ~~1 December 2009~~ ⇒ [...] ⇐, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose any amendments that are necessary. Member States shall send the Commission all the information that is appropriate for drawing up this report. After presenting the report, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States at least every ~~two years~~ ⇒ five years ⇐.

Transposition

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with ~~this Directive by 1 December 2007~~ ☒ Articles [...] [The Articles which have been changed as to the substance by comparison with the earlier Directive] by [...] at the latest ☒. ~~Concerning Article 15, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 December 2008.~~ They shall forthwith ~~inform~~ ☒ communicate to ☒ the Commission ~~thereof~~ ☒ the text of those provisions ☞ [...] ☚. ^{221 222}

↓ new

☞ Council

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 27 (3) by [3 years from the date of the transposition]. They shall forthwith communicate to the Commission the text of those provisions ☞ [...] ☚.

²²⁰ LU requested clarification as to the single date of transposition provided for in Article 47 in view of the fact that Member States not necessarily transpose European legislation at the same time.

²²¹ CION opposed deletion of obligation for Member States to draw up a correlation table considering that, in the light of the principle of loyal cooperation, such a table enables it to carry out its role of monitoring the correct transposition and application of EU law.

²²² New recital to be inserted: "In accordance with point 34 of the Interinstitutional Agreement on better law-making (OJ C 321, 31.12.2003, p.1), Member States are encouraged to draw up, for themselves and in the interests of the Union, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public."

↓ 2005/85/EC (adapted)

⇒ new

↻ Council

When Member States adopt those provisions, they shall contain a reference to this Directive or ~~shall~~ be accompanied by such a reference on the occasion of their official publication. ~~The methods of making such reference shall be laid down by Member States.~~

⊗ They shall also include a statement that references in existing laws, regulations and administrative provisions to the directive repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated. ⊗

Member States shall communicate to the Commission the text of the ⊗ main ⊗ provisions of national law ~~which they adopt in the field~~ covered by this Directive ⇒ [...] ↻.

Article ~~44~~47

Transitional provisions

Member States shall apply the laws, regulations and administrative provisions set out in subparagraph 1 of Article ~~43~~ 46 to applications for ~~asylum~~ ⇒ international protection ⇐ lodged after ~~1 December 2007~~ ⇒ [...] ⇐ and to procedures for the withdrawal of ~~refugee status~~ ⇒ international protection ⇐ started after ~~1 December 2007~~ ⇒ [...] ⇐.

⇒ Applications submitted before [...] and procedures for the withdrawal of refugee status initiated before [...] shall be governed by the laws, regulations and administrative provisions in accordance with Directive 2005/85/EC. ⇐

↓ new

Member States shall apply the laws, regulations and administrative provisions set out in subparagraph 2 of Article 46 to applications for international protection lodged after [...].

Applications submitted before [...] shall be governed by the laws, regulations and administrative provisions in accordance with Directive 2005/85/EC.



Article 48

Repeal

Directive 2005/85/EC is repealed with effect from [day after the date set out in the first subparagraph of Article 46 of this Directive], without prejudice to the obligations of the Member States relating to the time-limit for transposition into national law of the Directive set out in Annex III, Part B.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex IV.

↓ 2005/85/EC (adapted)

Article ~~45~~49

Entry into force

This Directive shall enter into force on the ~~20th~~twentieth day following ☒ that of ☒ its publication in *the Official Journal of the European Union*.



Articles [...] shall apply from [day after the date set out in the first subparagraph of Article 46].

Article ~~46~~50

Addressees

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

Done at [...]

For the European Parliament

The President

[...]

For the Council

The President

[...]

ANNEX I

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) continue to apply, consider that:

- "determining authority" provided for in Article 2 ~~(e)~~ (f) 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)~~ (f) 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 Commission of any amendments to the provisions of section 17(1) of the Refugee Act 1996 (as amended).

ANNEX II

Designation of safe countries of origin for the purposes of Articles ~~29 and 30~~ 33(1)

A country is considered as a safe country of origin where, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is generally and consistently no persecution as defined in Article 9 of Directive 2004/83/EC Directive [...]/.../EC] [the Qualification Directive], no torture or inhuman or degrading treatment or punishment and no threat by reason of indiscriminate violence in situations of international or internal armed conflict.

In making this assessment, account shall be taken, inter alia, of the extent to which protection is provided against persecution or mistreatment by:

- (a) the relevant laws and regulations of the country and the manner in which they are applied;
- (b) observance of the rights and freedoms laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms and/or the International Covenant for Civil and Political Rights and/or the Convention against Torture, in particular the rights from which derogation cannot be made under Article 15(2) of the said European Convention;
- (c) respect of the non-refoulement principle according to the Geneva Convention;
- (d) provision for a system of effective remedies against violations of these rights and freedoms.

↓ 2005/85/EC

⇒ new

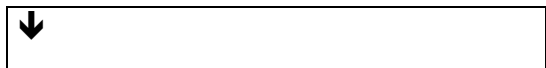
ANNEX III

Definition of "applicant" or "applicant for asylum"

When implementing the provisions of this Directive Spain may, insofar as the provisions of "Ley 30/1992 de Régimen jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común" of 26 November 1992 and "Ley 29/1998 reguladora de la Jurisdicción Contencioso-Administrativa" of 13 July 1998 continue to apply, consider that, for the purposes of Chapter V, the definition of "applicant" or "applicant for asylum" in Article 2(c) of this Directive shall include "recurrente" as established in the abovementioned Acts.

A "recurrente" shall be entitled to the same guarantees as an "applicant" or an "applicant for asylum" as set out in this Directive for the purposes of exercising his/her right to an effective remedy in Chapter V.

Spain will notify the Commission of any relevant amendments to the abovementioned Act.



ANNEX III

Part A

Repealed Directive

(referred to in Article 48)

Council Directive 2005/85/EC

(OJ L 326, 13.12.2005, p. 13)

Part B

Time-limit for transposition into national law

(referred to in Article 48)

Directive	Time-limits for transposition
2005/85/EC	First deadline: 1 December 2007 Second deadline: 1 December 2008



ANNEX IV

CORRELATION TABLE

Directive 2005/85/EC	This directive
Article 1	Article 1
Article 2 (a)	Article 2 (a)
Article 2 (b)	Article 2 (b)
Article 2 (c)	Article 2 (c)
-	Article 2 (d)
Article 2 (d)	Article 2 (e)
Article 2 (e)	Article 2 (f)
Article 2 (f)	Article 2 (g)
-	Article 2 (h)
-	Article 2 (i)
Article 2 (g)	Article 2 (j)
-	Article 2 (k)
-	Article 2 (l)
Article 2 (h)	Article 2 (m)
Article 2 (i)	Article 2 (n)
Article 2 (j)	Article 2 (o)
Article 2 (k)	Article 2 (p)
Article 3 (1)	Article 3 (1)
Article 3 (2)	Article 3 (2)
Article 3 (3)	-
Article 3 (4)	Article 3 (3)

Article 4 (1) first subparagraph	Article 4 (1) first subparagraph
Article 4 (1) second subparagraph	-
-	Article 4 (2)
Article 4 (2)	Article 4 (3)
Article 4 (3)	Article 4 (4)
-	Article 4 (5)
Article 5	Article 5
Article 6 (1)	-
-	Article 6 (1)
-	Article 6 (2)
Article 6 (2)	Article 6 (3)
Article 6 (3)	Article 6 (4)
-	Article 6 (5)
-	Article 6 (6)
Article 6 (4)	Article 6 (7)
Article 6 (5)	-
-	Article 6 (8)
-	Article 6 (9)
-	Article 7 (1) to (3)
Article 7 (1)	Article 8 (1)
Article 7 (2)	Article 8 (2)
-	Article 8 (3)
Article 8 (1)	Article 9 (1)
-	Article 9 (2)
Article 8 (2) (a)	Article 9 (3) (a)
Article 8 (2) (b)	Article 9 (3) (b)
Article 8 (2) (c)	Article 9 (3) (c)

-	Article 9 (3) (d)
Article 8 (3)	Article 9 (4)
Article 8 (5)	Article 9 (5)
Article 9 (1)	Article 10 (1)
Article 9 (2), first subparagraph	Article 10 (2), first subparagraph
Article 9 (2), second subparagraph	-
Article 9 (3)	Article 10 (3)
-	Article 10 (4)
Article 10	Article 11
Article 11	Article 12
Article 12 (1)	Article 13 (1)
Article 12 (2) (a)	Article 13 (2) (a)
Article 12 (2) (b)	-
Article 12 (2) (c)	-
Article 12 (3)	Article 13 (2) (b)
Article 12 (4) to (6)	Article 13 (3) to (5)
Article 13 (1) and (2)	Article 14 (1) and (2)
Article 13 (3) (a)	Article 14 (3) (a)
-	Article 14 (3) (b)
Article 13 (3) (b)	Article 14 (3) (c)
-	Article 14 (3) (d)
-	Article 14 (3) (e)
Article 13 (4)	Article 14 (4)
Article 13 (5)	-
-	Article 15
Article 14	-
-	Article 16

-	Article 17
Article 15 (1), (2) and (3) first subparagraph	Article 18 (1), (2) and (3) first subparagraph
Article 15 (3) (a)	-
Article 15 (3) (b)	Article 18 (3) (a)
Article 15 (3) (c)	Article 18 (3) (b)
Article 15 (3) (d)	-
Article 15 (3) second subparagraph	-
-	Article 18 (3) second subparagraph
Article 15 (4)	Article 18 (4)
-	Article 18 (5)
Article 15 (5)	Article 18 (6)
Article 15 (6)	Article 18 (7)
Article 16 (1)	Article 19 (1)
Article 16 (2)	Article 19 (2)
-	Article 19 (3)
Article 16 (3)	Article 19 (4)
Article 16 (4)	Article 19 (4)
-	Article 20 (1) to (3)
Article 17 (1)	Article 21 (1)
Article 17 (2) (a)	Article 21 (2) (a)
Article 17 (2) (b)	-
Article 17 (2) (c)	Article 21 (2) (b)
Article 17 (3)	-
Article 17 (4)	Article 21 (3)
-	Article 21 (4)
Article 17 (5)	Article 21 (5)

-	Article 21 (6)
Article 17 (6)	Article 21 (7)
Article 18	Article 22
Article 19	Article 23
Article 20	Article 24
Article 20 (1) (a) and (b)	Article 24 (1) (a) and (b)

Article 20 (2)	Article 24 (2)
-	Article 24 (3)
Article 21	Article 25
Article 22	Article 26
Article 23	Article 27
Article 23 (1)	Article 27 (1)
Article 23 (2), first subparagraph	Article 27 (2)
Article 23 (2), second subparagraph	-
-	Article 27 (3)
-	Article 27 (4)
Article 23 (3)	Article 27 (5)
Article 23 (4)	Article 27 (6)
Article 23 (4) (a)	Article 27 (6) (a)
Article 23 (4) (b)	-
Article 23 (4) (c) (i)	Article 27 (6) (b)
Article 23 (4) (c) (ii)	-
Article 23 (4) (d)	Article 27 (6) (c)
Article 23 (4) (e)	-
Article 23 (4) (f)	Article 27 (6) (d)

Article 23 (4) (g)	-
Article 23 (4) (h)	-
Article 23 (4) (i)	-
Article 23 (4) (j)	Article 27 (6) (f)
Article 23 (4) (k) to (n)	-
Article 23 (4) (o)	Article 27 (6) (e)
-	Article 27 (7)
-	Article 27 (8)
-	Article 27 (9)
-	Article 28
Article 24	-
Article 25	Article 29
Article 25 (1)	Article 29 (1)
Article 25 (2) (a) to (c)	Article 29 (2) (a) to (c)
Article 25 (2) (d) and (e)	-
Article 25 (2) (f) and (g)	Article 29 (2) (d) and (e)
-	Article 30
Article 26	Article 31
Article 27	Article 32
Article 27 (1) (a)	Article 32 (1) (a)
-	Article 32 (1) (b)
Article 27 (1) (b) to (d)	Article 32 (1) (c) to (e)
Article 27 (2) to (5)	Article 32 (2) to (5)
Article 28	-
Article 29	-
Article 30	Article 33
Article 30 (2) to (4)	-

-	Article 33 (2)
Article 30 (5)	Article 33 (3)
Article 30 (6)	Article 33 (4)
Article 31	Article 34
Article 31 (2)	-
Article 31 (3)	Article 34 (2)
Article 32 (1) to (7)	Article 35 (1) to (7)
-	Article 35 (8) and (9)
Article 33	-
Article 34	Article 36
Article 34 (1) and (2) (a)	Article 36 (1) and (2) (a)
Article 34 (2) (b)	-
Article 34 (2) (c)	Article 36 (2) (b)
Article 34 (3) (a) and (b)	Article 36 (3) (a) and (b)
Article 35 (1)	Article 37 (1) (a)
-	Article 37 (1) (b)
Article 35 (2) and (3) (a) to (f)	-
Article 35 (4)	Article 37 (2)
Article 35 (5)	Article 37 (3)
Article 36 (1) to (2)(c)	Article 38 (1) to 2(c)
Article 36 (2)(d)	-
Article 36(3)	-
Article 36(4)	Article 38(3)
Article 36(5)	Article 38(4)
Article 36(6)	Article 38(5)
Article 36(7)	-
Article 37	Article 39

Article 38	Article 40
Article 39	Article 41
Article 39 (1) (a)	Article 41 (1) (a)
-	Article 41 (1) (a) (i)
Article 39 (1) (a) (i)	Article 41 (1) (a) (ii)
Article 39 (1) (a) (ii)	Article 41 (1) (a) (iii)
Article 39 (1) (a) (iii)	-
Article 39 (1) (b)	Article 41 (1) (b)
Article 39 (1) (c) and (d)	-
Article 39 (1) (e)	Article 41 (1) (c)
-	Article 41 (2) and (3)
Article 39 (2)	Article 41 (4)
Article 39 (3)	-
-	Article 41 (5) to (8)
Article 39 (4)	Article 41 (9)
Article 39 (5)	Article 41(10)
Article 39 (6)	Article 41 (11)
Article 40	Article 42
Article 41	Article 43
-	Article 44
Article 42	Article 45
Article 43	Article 46
Article 44	Article 47
-	Article 48
Article 45	Article 49
Article 46	Article 50
Annex I	Annex I

Annex II

Annex II

Annex III

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Annex III

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Annex IV

