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From:	Presidency
To:	Delegations
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Subject:	Proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU (First reading)

The third examination of the proposal was finalised during three meetings of the Asylum Working Party (29-30 January, 13-14 February and 5-6 March 2018). The fourth examination of the proposal at JHA Counsellors level was finalised during five meetings (11 April, 17 April, 23 April, 3 May and 23 May).

This document contains compromise proposals suggested by the Presidency in relation to Articles 1-9.

Taking into account of the ongoing examination of the Dublin Regulation, the compromise proposals should be read in conjunction with the compromise proposals made in relation to the Dublin Regulation.

Suggested modifications are indicated as follows:

- new text compared to the Commission proposal is in **bold**;
- new text compared to the previous version is in **bold underline**;
- deleted text is in ~~strikethrough~~.

Comments made by delegations orally and in writing, as well as explanations given by the Commission and the Presidency appear in the footnotes of the Annex.

2016/0224 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**establishing a common procedure for international protection in the Union and repealing
Directive 2013/32/EU¹**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 78(2)(d) thereof,

Having regard to the proposal from the European Commission,

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

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

Acting in accordance with the ordinary legislative procedure,

¹ **HU, IT, NL, SI:** parliamentary reservation. **BE, CZ, EE, EL, ES, FI, FR, HU, IE, IT, LT, NL, PL, PT, SE, SI:** scrutiny reservation. **FR, PL, SK:** Directive instead of a Regulation.

Whereas:

- (1) The objective of this Regulation is to streamline, simplify and harmonise the procedural arrangements of the Member States by establishing a common procedure for international protection in the Union. To meet that objective, a number of substantive changes are made to Directive 2013/32/EU of the European Parliament and of the Council² and that Directive should be repealed and replaced by a Regulation. References to the repealed Directive should be construed as references to this Regulation.
- (2) A common policy on asylum, including a Common European Asylum System which is based on the full and inclusive application of the Geneva Convention Relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967 (Geneva Convention), 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 Union. Such a policy should be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States.
- (3) The Common European Asylum System is based on common standards for asylum procedures, recognition and protection offered at Union level, reception conditions and a system for determining the Member State responsible for asylum seekers. Notwithstanding progress achieved so far in the progressive development of the Common European Asylum System, there are still significant disparities between the Member States in the types of procedures used, the recognition rates, the type of protection granted, the level of material reception conditions and benefits given to applicants and beneficiaries of international protection. These divergences are important drivers of secondary movements and undermine the objective of ensuring that in a Common European Asylum System all applicants are equally treated wherever they apply in the Union.

² Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) (OJ L180, 29.6.2013, p. 60).

- (4) In its Communication of 6 April 2016,³ the Commission set out its options for improving the Common European Asylum System, namely to establish a sustainable and fair system for determining the Member State responsible for asylum seekers, to reinforce the Eurodac system, to achieve greater convergence in the EU asylum system, to prevent secondary movements within the Union and a new mandate for the European Union Agency for Asylum. That Communication is in line with calls by the European Council on 18-19 February 2016⁴ to make progress towards reforming the EU's existing framework so as to ensure a humane and efficient asylum policy. It also proposes a way forward in line with the holistic approach to migration set out by the European Parliament in its own initiative report of 12 April 2016.
- (5) For a well-functioning Common European Asylum System, substantial progress should be made regarding the convergence of national asylum systems. The current disparate asylum procedures in all Member States should be replaced with a common procedure for granting and withdrawing international protection applicable across all Member States pursuant to Regulation (EU) No XXX/XXX of the European Parliament and of the Council (Qualification Regulation)⁵ ensuring the timeliness and effectiveness of the procedure. Applications made by the third-country nationals and stateless persons for the international protection should be examined in a procedure, which is governed by the same rules, regardless of the Member State where the application is lodged to ensure equity in the treatment of applications for international protection, clarity and legal certainty for the individual applicant.

³ COM(2016) 197 final.

⁴ EUCO 19.02.2016, SN 1/16.

⁵ OJ L [...], [...], p. [...].

- (6) A common procedure for granting and withdrawing international protection should limit the secondary movements of applicants for international protection between Member States, where such movements would be caused by differences in legal frameworks, by replacing the current discretionary provisions with harmonised rules and by clarifying the rights and obligations of applicants and the consequences of non-compliance with those obligations, and create equivalent conditions for the application of Regulation (EU) No XXX/XXX (Qualification Regulation) in Member States.
- (7) This Regulation should apply to all applications for international protection made in the territory of the Member States, including those made at the external border, on the territorial sea or in the transit zones of Member States, and the withdrawal of international protection. Persons seeking international protection who are present on the territorial sea of a Member State should be disembarked on land and have their applications examined in accordance with this Regulation.
- (8) This Regulation should apply to applications for international protection in a procedure where it is examined whether the applicants qualify as beneficiaries of international protection in accordance with Regulation (EU) No XXX/XXX (Qualification Regulation). In addition to the international protection, the Member States may also grant under their national law other national humanitarian statuses to those who do not qualify for the refugee status or subsidiary protection status. In order to streamline the procedures in Member States, the Member States should have the possibility to apply this Regulation also to applications for any kind of such other protection.
- (9) With respect to the treatment of persons falling within the scope of this Regulation, Member States are bound by obligations under instruments of international law to which they are party.

- (10) The resources of the Asylum, Migration and Integration Fund should be mobilised to provide adequate support to Member States' efforts in applying this Regulation, in particular to those Member States which are faced with specific and disproportionate pressures on their asylum and reception systems.
- (11) The European Union Agency for Asylum should provide Member State with the necessary operational and technical assistance in the application of this Regulation, in particular by providing experts to assist national authorities to receive, register, and examine applications for international protection and by providing updated information on third countries, including country of origin information and guidance on the situation in specific countries of origin. When applying this Regulation, Member States should take into account operational standards, indicators, guidelines and best practices developed by the European Union Agency for Asylum.
- (12) 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 have an effective access to the procedure, the opportunity to cooperate and properly communicate with the responsible authorities so as to present the relevant facts of his or her case and sufficient procedural guarantees to pursue his or her case throughout all stages of the procedure.

- (13) The applicant should be provided with an effective opportunity to present all relevant elements at his or her disposal to the determining authority. For this reason, the applicant should, subject to limited exceptions, enjoy the right to be heard through a personal interview on the admissibility or on merits of his or her application, as appropriate. For the right to a personal interview to be effective, the applicant should be assisted by an interpreter and be given the opportunity to provide his or explanations concerning the grounds for his or her application in a comprehensive manner. The applicant should be given sufficient time to prepare and consult with his or her legal adviser or counsellor, and he or she may be assisted by the legal adviser or counsellor during the interview. The personal interview should be conducted under conditions which ensure appropriate confidentiality and by adequately trained and competent personnel, including where necessary, personnel from authorities of other Member States or experts deployed by the European Union Agency for Asylum. The personal interview may only be omitted when the determining authority is to take a positive decision on the application or is of the opinion that the applicant is unfit or unable to be interviewed owing to enduring circumstance beyond his or her control. Given that the personal interview is an essential part of the examination of the application, the interview should be recorded and the applicants and their legal advisers should be given access to the recording, as well as to the report or transcript of the interview before the determining authority takes a decision, or in the case of an accelerated examination procedure, at the same time as the decision is made.

- (14) It is in the interests of both Member States and applicants to ensure a correct recognition of international protection needs already at the stage of the administrative procedure by providing good quality information and legal support which leads to more efficient and better quality decision-making. For that purpose, access to legal assistance and representation should be an integral part of the common procedure for international protection. In order to ensure the effective protection of the applicant's rights, particularly the right of defence and the principle of fairness, and to ensure the economy of the procedure, applicants should, upon their request and subject to conditions set out in this Regulation, be provided with free legal assistance and representation during the administrative procedure and in the appeal procedure. The free legal assistance and representation should be provided by persons competent to provide them under national law.
- (15) Certain applicants may be in need of special procedural guarantees due, *inter alia*, to their age, gender, sexual orientation, gender identity, disability, serious illness, mental disorders or as a consequence of torture, rape or other serious forms of psychological, physical, sexual or gender-based violence. It is necessary to systematically assess whether an individual applicant is in need of special procedural guarantees and identify those applicants as early as possible from the moment an application is made and before a decision is taken.
- (16) To ensure that the identification of applicants in need of special procedural guarantees takes place as early as possible, the personnel of the authorities responsible for receiving and registering applications should be adequately trained to detect signs of vulnerability signs and they should receive appropriate instructions for that purpose. Further measures dealing with identification and documentation of symptoms and signs of torture or other serious acts of physical or psychological violence, including acts of sexual violence, in procedures covered by this Regulation 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).

- (17) Applicants who are identified as being in need of special procedural guarantees should be provided with adequate support, including sufficient time, in order to create the conditions necessary for their effective access to procedures and for presenting the elements needed to substantiate their application for international protection. Where it is not possible to provide adequate support in the framework of an accelerated examination procedure or a border procedure, an applicant in need of special procedural guarantees should be exempted from those procedures. The need for special procedural guarantees of a nature that could prevent the application of accelerated or border procedures should also mean that the applicant is provided with additional guarantees in cases where his or her appeal does not have automatic suspensive effect, with a view to making the remedy effective in his or her particular circumstances.
- (18) 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. For this purpose, women should be given an effective opportunity to be interviewed separately from their spouse, partner or other family members. Where possible, women and girls should be provided with female interpreters and interviewers. Medical examinations on women and girls should be carried out by female medical practitioners, in particular having regard to the fact that the applicant may have been a victim of gender-based violence. The complexity of gender-related claims should be properly taken into account in procedures based on the concept of first country of asylum, the concept of safe third country, the concept of safe country of origin and in the notion of subsequent applications.
- (19) When, in the framework of an application being processed, the applicant is searched, that search should be carried by a person of the same sex. This should be without prejudice to a search carried out, for security reasons, on the basis of national law.

- (20) The best interests of the child should be a primary consideration of Member States when applying this Regulation, in accordance with Article 24 of the Charter and the 1989 United Nations Convention on the Rights of the Child. In assessing the best interests of the child, Member States should in particular take due account of the minor's well-being and social development, including his or her background. In view of Article 12 of the United Nations Convention on the Rights of the Child concerning the child's right to be heard, the determining authority shall provide a minor the opportunity of a personal interview unless this is manifestly not in the minor's best interests.
- (21) The common procedure streamlines the time-limits for an individual to accede to the procedure, for the examination of the application by the determining authority as well as for the examination of first level appeals by judicial authorities. Whereas a disproportionate number of simultaneous applications may risk delaying access to the procedure and the examination of the applications, a measure of flexibility to exceptionally extend those time-limits may at times be needed. However, to ensure an effective process, extending those time-limits should be a measure of last resort considering that Member States should regularly review their needs to maintain an efficient asylum system, including by preparing contingency plans where necessary, and considering that the European Union Agency for Asylum should provide Member States with the necessary operational and technical assistance. Where Member States foresee that they would not be able to meet the set time-limits, they should request assistance from the European Union Agency for Asylum. Where no such request is made, and because of the disproportionate pressure the asylum system in a Member State becomes ineffective to the extent of jeopardising the functioning of Common European Asylum System, the Agency may, based on an implementing decision of the Commission, take measures in support of that Member State.

- (22) Access to the common procedure should be based on a three-step approach consisting of the making, registering and lodging of an application. Making an application is the first step that triggers the application of this Regulation. A third-country national or stateless person is considered to have made an application when expressing a wish to receive international protection from a Member State. Such a wish may be expressed in any form and the individual applicant need not necessarily use specific words such as international protection, asylum or subsidiary protection. The defining element should be the expression by the third country national or the stateless person of a fear of persecution or serious harm upon return to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence. In case of doubt whether a certain declaration may be construed as an application for international protection, the third-country national or stateless person should be expressly asked whether he or she wishes to receive international protection. The applicant should benefit from rights under this Regulation and Directive XXX/XXX/EU (Reception Conditions Directive)⁶ as soon as he or she makes an application.
- (23) An application should be registered as soon as it is made. At this stage, the authorities responsible for receiving and registering applications, including border guards, police, immigration authorities and authorities responsible for detention facilities should register the application together with the personal details of the individual applicant. Those authorities should inform the applicant of his or her rights and obligations, as well as the consequences for the applicant in case of non-compliance with those obligations. The applicant should be given a document certifying that an application has been made. The time limit for lodging an application starts to run from the moment an application is registered.

⁶ OJ L [...], [...], p. [...].

- (24) The lodging of the application is the act that formalises the application for international protection. The applicant should be given the necessary information as to how and where to lodge his or her application and he or she should be given an effective opportunity to do so. At this stage he or she is required to submit all the elements at his or her disposal needed to substantiate and complete the application. The time-limit for the administrative procedure starts to run from the moment an application is lodged. At that time, the applicant should be given a document which certifies his or her status as an applicant, and which should be valid for the duration of the his or her right to remain on the territory of the Member State responsible for examining the application.
- (25) The applicant should be informed properly of his or her rights and obligations in a timely manner and in a language that he or she understands or is reasonably meant to understand. Having regard to the fact that where, for instance, the applicant refuses to cooperate with the national authorities by not providing the elements necessary for the examination of the application and by not providing his or her fingerprints or facial image, or fails to lodge his or her application within the set time limit, the application could be rejected as abandoned, it is necessary that the applicant be informed of the consequences for not complying with those obligations.
- (26) To be able to fulfil their obligations under this Regulation, the personnel of the authorities responsible for receiving and registering applications should have appropriate knowledge and should receive the necessary training in the field of international protection, including with the support of the European Union Agency for Asylum. They should also be given the appropriate means and instructions to effectively perform their tasks.
- (27) In order to facilitate access to the procedure at border crossing points and in detention facilities, information should be made available on the possibility to apply for international protection. Basic communication necessary to enable the competent authorities to understand if persons declare their wish to receive international protection should be ensured through interpretation arrangements.

- (28) This Regulation should provide for the possibility that applicants lodge an application on behalf of their spouse, partner in a stable and durable relationship, dependant adults and minors. This option allows for the joint examination of those applications. The right of each individual to seek international protection is guaranteed by the fact that if the applicant does not apply on behalf of the spouse, partner, dependant adult or minor within the set time-limit for lodging an application, the spouse or partner may still do in his or her own name, and the dependant adult or minor should be assisted by the determining authority. However, if a separate application is not justified, it should be considered as inadmissible.
- (29) To ensure that unaccompanied minors have effective access to the procedure, they should always be appointed a guardian. The guardian should be a person or a representative of an organisation appointed to assist and guide the minor through the procedure with a view to safeguard the best interests of the child as well his or her general well-being. Where necessary, the guardian should exercise legal capacity for the minor. In order to provide effective support to the unaccompanied minors, guardians should not be placed in charge of a disproportionate number of unaccompanied minors at the same time. Member States should appoint entities or persons responsible for the support, supervision and monitoring of the guardians in the performance of their tasks. An unaccompanied minor should lodge an application in his or her own name or through the guardian. In order to safeguard the rights and procedural guarantees of an unaccompanied minor, the time-limit for him or her to lodge an application should start to run from when his or her guardian is appointed and they meet. Where the guardian does not lodge the application within the set time limit, the unaccompanied minor should be given an opportunity to lodge the application on his or her name with the assistance of the determining authority. The fact that an unaccompanied minor chooses to lodge an application in his or her own name should not preclude him or her from being assigned a guardian.

- (30) In order to guarantee the rights of the applicants, decisions on all applications for international protection should be taken on the basis of the facts, objectively, impartially and on an individual basis after a thorough examination which takes into account all the elements provided by the applicant and the individual circumstances of the applicant. To ensure a rigorous examination of an application, the determining authority should take into account relevant, accurate and up-to-date information relating to the situation in the country of origin of the applicant obtained from the European Union Agency for Asylum and other sources such as the United Nations High Commissioner for Refugees. The determining authority should also take into account any relevant common analysis of country of origin information developed by the European Union Agency for Asylum. Any postponement of concluding the procedure should fully comply with the obligations of the Member States under Regulation (EU) No XXX/XXX (Qualification Regulation) and with the right to good administration, without prejudice to the efficiency and fairness of the procedure under this Regulation.
- (31) In order to guarantee the rights of the applicant, a decision concerning his or her application should be given in writing. Where the decision does not grant international protection, the applicant should be given reasons for the decision and information on the consequences of the decision as well as the manner in which to challenge that decision. Without prejudice to the applicant's right to remain and to the principle of *non-refoulement*, such a decision may include, or may be issued together with, a return decision issued in accordance with Article 6 of Directive 2008/115/EC of the European Parliament and of the Council.⁷

⁷ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).

- (32) It is necessary that decisions on applications for international protection are taken by authorities whose personnel has the appropriate knowledge and has received the necessary training in the field of international protection, and that they perform their activities with due respect for the applicable ethical principles. This should apply to the personnel of authorities from other Member States and experts deployed by the European Union Agency for Asylum deployed to assist the determining authority of a Member State in the examination of applications for international protection.
- (33) Without prejudice to carrying out an adequate and complete examination of an application for international protection, it is in the interests of both Member States and applicants for a decision to be taken as soon as possible. Maximum time-limits for the duration of the administrative procedure as well as for the first level of appeal should be established to streamline the procedure for international protection. In this way, applicants should be able to receive a decision on their application within the least amount of time possible in all Member States thereby ensuring a speedy and efficient procedure.
- (34) In order to shorten the overall duration of the procedure in certain cases, Member States should have the flexibility, in accordance with their national needs, to prioritise the examination of any application by examining it before other, previously made applications, without derogating from normally applicable procedural time limits, principles and guarantees.
- (35) Before determining the Member State responsible in accordance with Regulation (EU) No XXX/XXX of the European Parliament and of the Council (Dublin Regulation),⁸ the first Member State in which an application has been lodged should examine the admissibility of that application when a country which is not a Member State is considered as a first country of asylum or safe third country for the applicant. In addition, an application should be considered to be inadmissible when it is a subsequent applicant without new relevant elements or findings and when a separate application by a spouse, partner, dependent adult or minor is not considered to be justified.

⁸ OJ L [...], [...], p. [...].

- (36) The concept of first country of asylum should be applied as a ground for inadmissibility where it can reasonably be assumed that another country would grant protection in accordance with the substantive standards of the Geneva Convention or the applicant would be provided sufficient protection in that country. In particular, the Member States should not examine the merits of an application where a first country of asylum has granted the applicant refugee status or otherwise sufficient protection. Member States should proceed on that basis only where they are satisfied including, where necessary or appropriate, based on assurances obtained from the third country concerned, that the applicant has enjoyed and will continue to enjoy protection in that country in accordance with the Geneva Convention or has otherwise enjoyed and will continue to enjoy sufficient protection, particularly as regards the right of legal residence, appropriate access to the labour market, reception facilities, healthcare and education, and the right to family reunification in accordance with international human rights standards.
- (37) The concept of safe third country should be applied as a ground for inadmissibility where the applicant, due to a connection to the third country including one through which he or she has transited, can reasonably be expected to seek protection in that country, and there are grounds for considering that the applicant will be admitted or readmitted to that country. Member States should proceed on that basis only where they are satisfied including, where necessary or appropriate, based on assurances obtained from the third country concerned, that the applicant will have the possibility to receive protection in accordance with the substantive standards of the Geneva Convention or will enjoy sufficient protection, particularly as regards the right of legal residence, appropriate access to the labour market, reception facilities, healthcare and education, and the right to family reunification in accordance with international human rights standards.

- (38) An application for international protection should be examined on its merits to determine whether an applicant qualifies for international protection in accordance with Regulation (EU) No XXX/XXX (Qualification Regulation). There need not be an examination on the merits where an application should be declared as inadmissible in accordance with this Regulation. However, where from a *prima facie* assessment it is clear that an application may be rejected as manifestly unfounded, the application may be rejected on that ground without examining its admissibility.
- (39) The examination of an application should be accelerated and completed within a maximum of two months in those instances where an application is manifestly unfounded because it is an abusive claim, including where an applicant comes from a safe country of origin or an applicant is making an application merely to delay or frustrate the enforcement of a removal decision, or where there are serious national security or public concerns, where the applicant does not apply for international protection in the first Member State of entry or in the Member State of legal residence or where an applicant whose application is under examination and who made an application in another Member State or who is on the territory of another Member State without a residence document is taken back under the Dublin Regulation. In the latter case, the examination of the application should not be accelerated if the applicant is able to provide substantiated justifications for having left to another Member State without authorisation, for having made an application in another Member State or for having otherwise been unavailable to the competent authorities, such as for instance that he or she was not informed adequately and in a timely manner of his or her obligations. Furthermore, an accelerated examination procedure may be applied to unaccompanied minors only within the limited circumstances set out in this Regulation.

- (40) Many 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 an examination on admissibility or an examination on the merits which would make it possible for such applications to be decided upon at those locations in well-defined circumstances. The border procedure should not take longer than four weeks and after that period applicants should be allowed entry to the territory of the Member State. It is only where a disproportionate number of applicants lodge their applications at the borders or in a transit zone, that the border procedure may be applied at locations in proximity to the border or transit zone. A border procedure may be applied to unaccompanied minors only within the limited circumstances set out in this Regulation.
- (41) The notion of public order may, *inter alia*, cover a conviction of having committed a serious crime.
- (42) As long as an applicant can show good cause, the lack of documents on entry or the use of forged documents should not *per se* entail an automatic recourse to an accelerated examination procedure or a border procedure.
- (43) Where an applicant either explicitly withdraws his or her application of his or her own motion, or does not comply with the obligations arising from this Regulation, Regulation (EU) No XXX/XXX (Dublin Regulation) or Directive XXX/XXX/EU (Reception Conditions Directive) thereby implicitly withdraws his or her application, the application should not be further examined and it should be rejected as explicitly withdrawn or abandoned, and any application in the Member States by the same applicant further after that decision should be considered to be a subsequent application. However, the implicit withdrawal should not be automatic but the applicant should be allowed the opportunity to report to the determining authority and demonstrate that the failure to comply with those obligations was due to circumstances beyond his control.

- (44) Where an applicant makes a subsequent application without presenting new evidence or findings which significantly increase his or her likelihood of qualifying as a beneficiary of international protection or which relate to the reasons for which the previous application was rejected as inadmissible, that subsequent application should not be subject to a new full examination procedure. In those cases, following a preliminary examination, applications should be dismissed as inadmissible or as manifestly unfounded where the application is so clearly without substance or abusive that it has no tangible prospect of success, in accordance with the *res judicata* principle. The preliminary examination shall be carried out on the basis of written submissions and a personal interview however the personal interview may be dispensed with in those instances where, from the written submissions, it is clear that the application does not give rise to relevant new elements or findings or that it is clearly without substance and has no tangible prospect of success. In case of subsequent applications, exceptions may be made to the individual's right to remain on the territory of a Member State after a subsequent application is rejected as inadmissible or unfounded, or in the case of a second or further subsequent applications, as soon as an application is made in any Member States following a final decision which had rejected a previous subsequent application as inadmissible, unfounded or manifestly unfounded.
- (45) A key consideration as to whether an application for international protection is well-founded is the safety of the applicant in his or her country of origin. Having regard to the fact that Regulation (EU) No XXX/XXX (Qualification Regulation) aims to achieve a high level of convergence on the qualification of third-country nationals and stateless persons as beneficiaries of international protection, this Regulation establishes common criteria for designating third countries as safe countries of origin and, in view of the need to strengthen the application of the safe country of origin concept as an essential tool to support the swift processing of applications that are likely to be unfounded, this Regulation sets out an EU common list of safe countries of origin.

- (46) The fact that a third country is on the EU common list of safe countries of origin cannot establish an absolute guarantee of safety for nationals of that country and therefore does not dispense with the need to conduct an appropriate individual examination of the application for international protection. 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 that country. For this reason, where an applicant shows that there are serious reasons to consider the country not to be safe in his or her particular circumstances, the designation of the country as safe can no longer be considered relevant for him or her.
- (47) As regards the designation of safe third countries at Union level, this Regulation provides for having such a designation. Third countries should be designated as safe third countries at Union level by means of an amendment to this Regulation based on the conditions set out in this Regulation and after carrying out a detailed evidence-based assessment involving substantive research and broad consultation with Member States and relevant stakeholders.
- (48) The establishment of an EU common list of safe countries of origin and an EU common list for safe third countries should address some of the existing divergences between Member States' national lists of safe countries. While Member States should retain the right to apply or introduce legislation that allows for the national designation of third countries other than those designated as safe third countries at Union level or appearing on the EU common list as safe countries of origin, the establishment of such common designation or list should ensure that the concept is applied by all Member States in a uniform manner in relation to applicants whose countries of origin are on the common list or who have a connection with a safe third country. This should facilitate convergence in the application of procedures and thereby also deter secondary movements of applicants for international protection. For that reason, the possibility of using national lists or designations should come to an end within a period of five years from entry into force of this Regulation.

- (49) The Commission, assisted by the European Union Agency for Asylum, should regularly review the situation in third countries designated as safe third countries at Union level or that are on the EU common list of safe countries of origin. In case of sudden change for the worse in the situation of such a third country, the Commission should be able to suspend the designation of that third country as safe third country at Union level or the presence of that third country from the EU common list of safe countries of origin for a limited period of time by means of a delegated act in accordance with Article 290 of the Treaty on the Functioning of the European Union. Moreover, in this case, the Commission should propose an amendment for the third country not to be designated as a safe third country at Union level any longer or to remove that third country from the EU common list of safe country of origin within 3 months of the adoption of delegated act suspending the third country.
- (50) For the purpose of this substantiated assessment, the Commission should take into consideration a range of sources of information at its disposal including in particular, its Annual Progress Reports for third countries designated as candidate countries by the European Council, regular reports from the European External Action Service and the information from Member States, the European Union Agency for Asylum, the United Nations High Commissioner for Refugees, the Council of Europe and other relevant international organisations. The Commission should be able to extend the suspension of the designation of a third country as a safe third country at Union level or the presence of a third country from the EU common list of safe country of origin for a period of six months, with a possibility to renew that extension once. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

- (51) When the period of validity of the delegated act and its extensions expires, without a new delegated act being adopted, the designation of the third country as safe third country at Union level or from the EU common list of safe countries of origin should no longer be suspended. This shall be without prejudice to any proposed amendment for the removal of the third country from the lists.
- (52) The Commission, with the assistance of the European Union Agency for Asylum, should regularly review the situation in third countries that have been removed from the EU common list of safe countries of origin or safe third countries, including where a Member State notifies the Commission that it considers, based on a substantiated assessment, that, following changes in the situation of that third country, it fulfils again the conditions set out in this Regulation for being designated as safe. In such a case, Member States could only designate that third country as a safe country of origin or a safe third country at the national level as long as the Commission does not raise objections to that designation. Where the Commission considers that these conditions are fulfilled, it may propose an amendment to the designation of safe third countries at Union level or to the EU common list of safe countries of origin so as to add the third country.
- (53) As regards safe countries of origin, following the conclusions of the Justice and Home Affairs Council of 20 July 2015, at which Member States agreed that priority should be given to an assessment by all Member States of the safety of the Western Balkans, the European Union Agency for Asylum organised an expert-level meeting with the Member States on 2 September 2015, where a broad consensus was reached that Albania, Bosnia and Herzegovina, Kosovo*,⁹ the former Yugoslav Republic of Macedonia, Montenegro and Serbia should be considered as safe countries of origin within the meaning of this Regulation.

⁹ * This designation is without prejudice to positions on status, and is in line with UNSCR 1244/99 and the ICJ Opinion on the Kosovo declaration of independence.

- (54) Based on a range of sources of information, including in particular reporting from the European External Action Service and information from Member States, the European Union Agency for Asylum, the United Nations High Commissioner for Refugees, the Council of Europe and other relevant international organisations, a number of third countries are considered to qualify as safe countries of origin.
- (55) As regards Albania, the legal basis for protection against persecution and mistreatment is adequately provided by substantive and procedural human rights and anti-discrimination legislation, including membership of all major international human rights treaties. In 2014, the European Court of Human Rights found violations in four out of 150 applications. There are no indications of any incidents of expulsion, removal or extradition of own citizens to third countries where, inter alia, there is a serious risk that they would be subjected to the death penalty, torture, persecution or other inhuman or degrading treatment or punishment, or where their lives or freedom would be threatened on account of their race, religion, nationality, sexual orientation, membership of a particular social group or political opinion, or from which there is a serious risk of an expulsion, removal or extradition to another third country. In 2014, Member States considered that 7,8 % (1040) of asylum applications of citizens from Albania were well-founded. At least eight Member States have designated Albania as a safe country of origin. Albania has been designated as a candidate country by the European Council. At the time of designation, the assessment was that Albania fulfilled the criteria established by the Copenhagen European Council of 21-22 June 1993 relating to the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities and Albania will have to continue to fulfil those criteria, for becoming a member in line with the recommendations provided in the Annual Progress Report.

(56) As regards Bosnia and Herzegovina, its Constitution provides the basis for the sharing of powers between the country's constituent peoples. The legal basis for protection against persecution and mistreatment is adequately provided by substantive and procedural human rights and anti-discrimination legislation, including membership of all major international human rights treaties. In 2014, the European Court of Human Rights found violations in five out of 1196 applications. There are no indications of any incidents of expulsion, removal or extradition of own citizens to third countries where, inter alia, there is a serious risk that they would be subjected to the death penalty, torture, persecution or other inhuman or degrading treatment or punishment, or where their lives or freedom would be threatened on account of their race, religion, nationality, sexual orientation, membership of a particular social group or political opinion, or from which there is a serious risk of an expulsion, removal or extradition to another third country. In 2014, Member States considered that 4,6 % (330) of asylum applications of citizens from Bosnia and Herzegovina were well-founded. At least nine Member States have designated Bosnia and Herzegovina as a safe country of origin.

(57) As regards the former Yugoslav Republic of Macedonia, the legal basis for protection against persecution and mistreatment is adequately provided by principle substantive and procedural human rights and anti-discrimination legislation, including membership of all major international human rights treaties. In 2014, the European Court of Human Rights found violations in six out of 502 applications. There are no indications of any incidents of expulsion, removal or extradition of own citizens to third countries where, inter alia, there is a serious risk that they would be subjected to the death penalty, torture, persecution or other inhuman or degrading treatment or punishment, or where their lives or freedom would be threatened on account of their race, religion, nationality, sexual orientation, membership of a particular social group or political opinion, or from which there is a serious risk of an expulsion, removal or extradition to another third country. In 2014, Member States considered that 0,9 % (70) of asylum applications of citizens of the former Yugoslav Republic of Macedonia were well-founded. At least seven Member States have designated the former Yugoslav Republic of Macedonia as a safe country of origin. The former Yugoslav Republic of Macedonia has been designated as a candidate country by the European Council. At the time of designation, the assessment was that the former Yugoslav Republic of Macedonia fulfilled the criteria established by the Copenhagen European Council of 21-22 June 1993 relating to the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. The former Yugoslav Republic of Macedonia will have to continue to fulfil those criteria, for becoming a member in line with the recommendations provided in the Annual Progress Report.

- (58) As regards Kosovo*, the legal basis for protection against persecution and mistreatment is adequately provided by substantive and procedural human rights and anti-discrimination legislation. The non-accession of Kosovo* to relevant international human rights instruments such as the ECHR results from the lack of international consensus regarding its status as a sovereign State. There are no indications of any incidents of expulsion, removal or extradition of own citizens to third countries where, inter alia, there is a serious risk that they would be subjected to the death penalty, torture, persecution or other inhuman or degrading treatment or punishment, or where their lives or freedom would be threatened on account of their race, religion, nationality, sexual orientation, membership of a particular social group or political opinion, or from which there is a serious risk of an expulsion, removal or extradition to another third country. In 2014, Member States considered that 6,3 % (830) of asylum applications of citizens of Kosovo* were well-founded. At least six Member States have designated Kosovo* as a safe country of origin.
- (59) This Regulation is without prejudice to Member States' position on the status of Kosovo, which will be decided in accordance with their national practice and international law. In addition, none of the terms, wording or definitions used in this Regulation constitute recognition of Kosovo by the Union as an independent State nor does it constitute recognition by individual Member States of Kosovo in that capacity where they have not taken such a step. In particular, the use of the term "countries" does not imply recognition of statehood.

(60) As regards Montenegro, the legal basis for protection against persecution and mistreatment is adequately provided by substantive and procedural human rights and anti-discrimination legislation, including membership of all major international human rights treaties. In 2014, the European Court of Human Rights found violations in one out of 447 applications. There are no indications of any incidents of expulsion, removal or extradition of own citizens to third countries where, inter alia, there is a serious risk that they would be subjected to the death penalty, torture, persecution or other inhuman or degrading treatment or punishment, or where their lives or freedom would be threatened on account of their race, religion, nationality, sexual orientation, membership of a particular social group or political opinion, or from which there is a serious risk of an expulsion, removal or extradition to another third country. In 2014, Member States considered that 3,0 % (40) of asylum applications of citizens of Montenegro were well-founded. At least nine Member States have designated Montenegro as a safe country of origin. Montenegro has been designated as a candidate country by the European Council and negotiations have been opened. At the time of designation, the assessment was that Montenegro fulfilled the criteria established by the Copenhagen European Council of 21-22 June 1993 relating to the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. Montenegro will have to continue to fulfil those criteria, for becoming a member in line with the recommendations provided in the Annual Progress Report.

(61) As regards Serbia, the Constitution provides the basis for self-governance of minority groups in the areas of education, use of language, information and culture. The legal basis for protection against persecution and mistreatment is adequately provided by substantive and procedural human rights and anti-discrimination legislation, including membership of all major international human rights treaties. In 2014, the European Court of Human Rights found violations in 16 out of 11 490 applications. There are no indications of any incidents of expulsion, removal or extradition of own citizens to third countries where, inter alia, there is a serious risk that they would be subjected to the death penalty, torture, persecution or other inhuman or degrading treatment or punishment, or where their lives or freedom would be threatened on account of their race, religion, nationality, sexual orientation, membership of a particular social group or political opinion, or from which there is a serious risk of an expulsion, removal or extradition to another third country. In 2014, Member States considered that 1,8 % (400) of asylum applications of citizens from Serbia were well- founded. At least nine Member States have designated Serbia as a safe country of origin. Serbia has been designated as a candidate country by the European Council and negotiations have been opened. At the time of designation, the assessment was that Serbia fulfilled the criteria established by the Copenhagen European Council of 21-22 June 1993 relating to the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. Serbia will have to continue to fulfil those criteria, for becoming a member in line with the recommendations provided in the Annual Progress Report.

- (62) As regards Turkey, the legal basis for protection against persecution and mistreatment is adequately provided by substantive and procedural human rights and anti-discrimination legislation, including membership of all major international human rights treaties. In 2014, the European Court of Human Rights found violations in 94 out of 2 899 applications. There are no indications of any incidents of expulsion, removal or extradition of own citizens to third countries where, inter alia, there is a serious risk that they would be subjected to the death penalty, torture, persecution or other inhuman or degrading treatment or punishment, or where their lives or freedom would be threatened on account of their race, religion, nationality, sexual orientation, membership of a particular social group or political opinion, or from which there is a serious risk of an expulsion, removal or extradition to another third country. In 2014, Member States considered that 23,1 % (310) of asylum applications of citizens of Turkey were well-founded. One Member State has designated Turkey as a safe country of origin. Turkey has been designated as a candidate country by the European Council and negotiations have been opened. At the time, the assessment was that Turkey sufficiently meets fulfilled the political criteria established by the Copenhagen European Council of 21-22 June 1993 relating to stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, and Turkey will have to continue to fulfil those criteria, for becoming a member in line with the recommendations provided in the Annual Progress Report.
- (63) With respect to the withdrawal of refugee or subsidiary protection status, and in particular in view of the regular status review to be carried out on the basis of Regulation (EU) No XXX/XXX (Qualification Regulation), Member States should ensure that persons benefiting from international protection are duly informed of a possible reconsideration of their status and that they are given the opportunity to submit their point of view, within a reasonable time, by means of a written statement and in a personal interview, before the authorities can take a reasoned decision to withdraw their status.

- (64) Decisions taken on an application for international protection, including the decisions concerning the explicit or implicit withdrawal of an application, and the decisions on the withdrawal of refugee or subsidiary protection status should be subject to an effective remedy before a court or tribunal in compliance with all requirements and conditions laid down in Article 47 of the Charter. To ensure the effectiveness of the procedure, the applicant should lodge his or her appeal within a set time-limit. For the applicant to be able to meet those time-limits and with a view to ensuring effective access to judicial review, he or she should be able to be assisted by an interpreter as well as be entitled to free legal assistance and representation.
- (65) For an applicant to be able to exercise his or her right to an effective remedy, he or she should be allowed to remain on the territory of a Member State until the time-limit for lodging a first level of appeal expires, and when such a right is exercised within the set time-limit, pending the outcome of the remedy. It is only in limited cases set out in this Regulation that the suspensive effect of an appeal is not automatic and where the applicant would need to request the court or tribunal to stay the execution of a return decision or the court would act of its own motion to this effect. Where an exception is made to the right to a remedy with automatic suspensive effect, the applicant's rights of defence should be adequately guaranteed by providing him or her with the necessary interpretation and legal assistance, as well as by allowing sufficient time for the applicant to prepare and submit his or her request to the court or tribunal. Furthermore, in this framework, the court or tribunal should be able to examine the decision refusing to grant international protection in terms of fact and law. The applicant should be allowed to remain on the territory pending the outcome of the procedure to rule on whether or not he or she may remain. However, that decision should be taken within one month.

- (66) Having regard to the need for equity in the management of applications and effectiveness in the common procedure for international protection, time-limits should not only be set for the administrative procedure but they should also be established for the appeal stage, at least insofar as the first level of appeal is concerned. This should be without prejudice to an adequate and complete examination of an appeal, and therefore a measure of flexibility should still be maintained in cases involving complex issues of fact or law.
- (67) In accordance with Article 72 of the Treaty on the Functioning of the European Union, this Regulation 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.
- (68) Regulation (EU) No 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) ¹⁰ applies to the processing of personal data by the Member States carried out in application of this Regulation.
- (69) Any processing of personal by the European Union Agency for Asylum within the framework of this Regulation should be conducted in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council,¹¹ as well as Regulation (EU) No XXX/XXX (EU Asylum Agency Regulation) ¹² and it should, in particular, respect the principles of necessity and proportionality.

¹⁰ OJ L 119, 4.5.2016, p. 1.

¹¹ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

¹² OJ L [...], [...], p. [...].

- (70) Any personal data collected upon registration or lodging of an application for international protection and during the personal interview should be considered to be part of the applicant's file and it should be kept for a **sufficient** number of years since third-country nationals or stateless persons who request international protection in one Member State may try to request international protection in another Member State or may submit further subsequent applications in the same or another Member State for years to come. Given **the substantial data retention period provided for in the Eurodac Regulation and given** that most third-country nationals or stateless persons who have stayed in the Union for several years will have obtained a settled status or even citizenship of a Member State after a period of ten years from when they are granted international protection, ~~that~~ **a period of ten years** should be considered a necessary period for the storage of personal details, including fingerprints and facial images. **This ten-year storage period should start anew from the date on which information related to a subsequent application or a procedure for withdrawing international protection is added to the applicant's file if, during the initial period of ten years a subsequent application is registered or a procedure for withdrawing international protection is initiated.**
- (71) In order to ensure uniform conditions for the implementation of this Regulation, in particular as regards the provision of information, documents to the applicants and measures concerning applicants in need of special procedural guarantees including minors, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council¹³ of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers.

¹³ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (72) In order to address sudden changes for the worse in a third country designated as a safe third country at Union level or included in the EU common list of safe countries of origin, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of suspending the designation of that third country as safe third country at Union level or the presence of that third country from the EU common list of safe countries of origin for a period of six months where the Commission considers, on the basis of a substantiated assessment, that the conditions set by this Regulation are no longer met. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Inter-institutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (73) This Regulation does not deal with procedures between Member States governed by Regulation (EU) No XXX/XXX (Dublin Regulation).
- (74) This Regulation should apply to applicants to whom Regulation (EU) No XXX/XXX (Dublin Regulation) applies, in addition and without prejudice to the provisions of that Regulation.
- (75) The application of this Regulation should be evaluated at regular intervals.

- (76) Since the objective of this Regulation, namely to establish a common procedure for granting and withdrawing international protection, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Regulation, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (77) [In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, those Member States have notified their wish to take part in the adoption and application of this Regulation]

OR

[In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption of this Regulation and are not bound by it or subject to its application.]

OR

[(XX) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, the United Kingdom is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.]

(XX) In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Ireland has notified (, by letter of ...,) its wish to take part in the adoption and application of this Regulation.]

OR

[(XX) In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom has notified (, by letter of ...,) its wish to take part in the adoption and application of this Regulation.

(XX) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.]

(78) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

(79) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Regulation seeks to ensure full respect for human dignity and to promote the application of Articles 1, 4, 8, 18, 19, 21, 23, 24, and 47 of the Charter.

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter¹⁴

This Regulation establishes a common procedure for granting and withdrawing international protection referred to in Regulation (EU) No XXX/XXX (Qualification Regulation).

Article 2

Scope¹⁵

1. This Regulation applies to all applications for international protection made in the territory of the Member States, including at the external border, in the territorial sea or in the transit zones of the Member States, and to the withdrawal of international protection.
2. This Regulation does not apply to applications for international protection and to requests for diplomatic or territorial asylum submitted to representations of Member States.

¹⁴ **DE:** clarify the relationship between Dublin IV and APR (applicability of possible sanctions and legal protection, relationship between Art. 3 (3) Dublin IV and Art. 36 APR).

¹⁵ **IT:** align text with Dublin Regulation.

Article 3

Extension of the scope of application

~~Member States may decide to apply this Regulation to applications for protection to which Regulation (EU) No XXX/XXX (Qualification Regulation) does not apply.~~

-Article 4

Definitions

1. For the purposes of this Regulation, the following definitions ~~referred to in Article 2 of Regulation (EU) No XXX/XXX (Qualification Regulation)~~ apply:
 - (a) ~~'Geneva Convention'~~;
 - (b) ~~'refugee'~~;
 - (c) ~~'beneficiary of subsidiary protection'~~;
 - (d) **'international protection' means refugee status and subsidiary protection status as defined in points (e) and (f);**
 - (e) **'refugee status' means the recognition by a Member State of a third-country national or a stateless person as a refugee in accordance with Regulation (EU) No XXX/XXX (Qualification Regulation);**
 - (f) **'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 in accordance with Regulation (EU) No XXX/XXX (Qualification Regulation);**
 - ~~(g) 'minor';~~
 - ~~(h) 'unaccompanied minor'.~~

2. In addition to paragraph 1, the following definitions apply¹⁶:

- (ai) 'application for international protection' or 'application' means a request **for protection** made **to a Member State** by a third-country national or a stateless person ~~for protection from a Member State~~, who can be understood as seeking refugee status or subsidiary protection status¹⁷;
- (bj) 'applicant' means a third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been ~~made~~ **taken**¹⁸;
- (ek) 'applicant in need of special procedural guarantees' means an applicant whose ability to benefit from the rights and comply with the obligations provided for in this Regulation is limited due to individual circumstances;

¹⁶ **DE:** add a definition of the term “border” which clarifies that borders may also include internal borders within the meaning of Art. 2 (1) of Regulation (EU) 2016/399. Background: the Commission argued that the Asylum Procedure Regulation always refers to external borders, even if the word “borders” is not further specified. Germany does not share this interpretation because Art. 41 on the border procedure must apply also to MS without EU external land borders in case of a temporary reintroduction of controls at the internal borders pursuant to Chapter II of Regulation (EU) 2016/399.

¹⁷ **BE, DE:** scrutiny reservation. **EL, ES:** the deletion of the part existing in the current acquis (“and who does not explicitly request another kind of protection outside the scope of Directive 2011/95/EU, that can be applied for separately”) might have effects on the substance; keep the sentence, it improves clarity. **IT:** add “and/or lodged” after “made”.

¹⁸ **BE, CZ:** scrutiny reservation.

- (dl) 'final decision' means a decision on whether or not a third-country national or stateless person is granted refugee status or subsidiary protection status by virtue of Regulation (EU) No XXX/XXX (Qualification Regulation), ~~including~~ a decision rejecting the application as inadmissible or a decision rejecting an application as ~~explicitly withdrawn or abandoned~~ **implicitly withdrawn** and **which is no longer subject to a remedy before a court or tribunal of first instance** ~~can no longer be subject to an appeal procedure in the Member State concerned, irrespective of whether the applicant has the right to remain in accordance with this Regulation~~¹⁹;

Recital on the concept of 'court or tribunal'

The expression 'court or tribunal' is a concept governed by Union law which, by its very nature, can only mean an authority acting as a third party in relation to the authority which adopted the decision forming the subject-matter of the proceedings. That authority should perform judicial functions and it is not decisive whether that authority is recognized as a court or tribunal under national law.

- (m) 'examination of an application for international protection' means examination of the admissibility or the merits of an application for international protection in accordance with this Regulation and Regulation (EU) No XXX/XXX (Qualification Regulation);²⁰

¹⁹ **DE, EL, SE, SK:** scrutiny reservation. **FR:** reservation on "decision rejecting an application as implicitly withdrawn" linked to Article 39. **EE, EL, HR:** keep reference to "explicit withdrawal" ("termination following explicit withdrawal") - the act of withdrawal must have the same consequences as the final decision. **PRES:** in case of explicit withdrawal there will be no decision rejecting the application but the case will be terminated; hence there will be no decision that could be appealed. **IT:** add reference to national legislation before "is no longer subject...". **DE:** are the sanctions referred to in Article 5 of the Dublin Regulation subject to a legal remedy under APR? **PRES:** those referring to APR are subject to a remedy under APR.

²⁰ **CZ, DE, EL, SE, SK:** scrutiny reservation. **CY:** reservation.

- (en) 'determining authority' means any quasi-judicial or administrative body in a Member State responsible for examining **and taking decisions on** applications for international protection ~~competent to take decisions at first instance~~ **at the administrative stage of the procedure and, where applicable, on the withdrawal of international protection;**²¹
- (fo) ~~'guardian' means a person or an organisation appointed to assist and represent an unaccompanied minor with a view to safeguarding the best interests of the child and his or her general well-being in procedures provided for in this Regulation and exercising legal capacity for the minor where necessary;~~²²
- (gp) 'withdrawal of international protection' means the decision by a determining authority **or a competent court or tribunal to revoke, or end, including by refusing** ~~or refuse to renew,~~ **the international protection in accordance with Regulation (EU) No XXX/XXX (Qualification Regulation)** ~~refugee status or subsidiary protection status of a person;~~²³
- (hr) ~~'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 international protection has been made or is being examined;~~
- (is) ~~'subsequent application' means a further application for international protection made in any Member State after a final decision has been taken on a previous application including cases where the application has been rejected as explicitly withdrawn or as abandoned following its implicit withdrawal;~~²⁴

²¹ **ES, IT, PL:** align with QR.

²² **DE:** a definition of "*representative*" is needed. **PRES:** definition of representative is to be confirmed by trilogue on RCD and if so, it could be added to APR.

²³ **CZ:** reservation.

²⁴ **CZ:** scrutiny reservation on deletion. **DE:** why was this definition deleted?

- (jt) 'Member State responsible' means the Member State responsible for the examination of an application in accordance with Regulation (EU) No XXX/XXX (Dublin Regulation)²⁵;
- (u) **'minor' means a third-country national or a stateless person below the age of 18 years;**
- (v) **'unaccompanied minor' means a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her, whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such an adult; it includes a minor who is left unaccompanied after he or she has entered the territory of Member States;**
- (w) **'biometric data' means fingerprint data and facial image data in accordance with Article 3(p) of Regulation (EU) No XXX/XXX (Eurodac Regulation).**

²⁵ **ES:** reservation. **CY, EL, ES:** reword as follows: *“the MS responsible for the examination of an application in accordance with the criteria laid down in the Dublin Regulation”*.

Article 5

Responsible Competent authorities²⁶

1. ~~Each Member States shall designate a determining authority~~ **to carry out its tasks as provided for in this Regulation and in Regulation (EU) No XXX/XXX (Qualification Regulation), in particular** ~~The determining authority shall have the following tasks:~~
 - (a) ~~receiving, registering and examining applications for international protection;~~
 - (b) taking decisions on applications for international protection;
 - (c) taking decisions on ~~revoking, ending or refusing to renew~~ **the withdrawal of the refugee or subsidiary status of a person international protection as referred to in Regulation (EU) No XXX/XXXX (Qualification Regulation).**
2. ~~Each Member State shall provide the determining authority with appropriate means, including sufficient competent personnel to carry out its tasks in accordance with this Regulation. For that purpose, each Member State shall regularly assess the needs of the determining authority to ensure that it is always in a position to deal with applications for international protection in an effective manner, particularly when receiving a disproportionate number of simultaneous applications.~~

²⁶ **MT:** scrutiny reservation. **DE:** include youth welfare offices; explanation needed on the new structure (i.e. Articles 5 and 5a); was a special legal effect envisaged or was the text restructured for technical reasons? **PRES:** technical reasons.

3. **Member States may entrust the determining authority or other relevant national authorities such as the police, immigration authorities, border guards, authorities responsible for detention facilities or reception facilities with the task of registering applications for international protection in accordance with Article 27.**²⁷ ~~The following authorities shall have the task of receiving and registering applications for international protection, as well as informing applicants as to where and how to lodge an application for international protection:~~

~~(a) border guards;~~

~~(b) police;~~

~~(c) immigration authorities;~~

~~(d) authorities responsible for detention facilities~~

~~Member States may entrust also other authorities with those tasks.~~

3a. Member States may provide that an authority other than the determining authority shall be responsible for the procedure for determining the Member State responsible in accordance with Regulation (EU) XXX/XXX (Dublin Regulation) and for granting or refusing permission to enter in the framework of the procedure provided for in Article 41, subject to the conditions as set out in that Article and on the basis of a reasoned opinion of the determining authority.²⁸

3b. Member States may entrust other relevant authorities with the tasks under this Regulation except for the tasks referred to in paragraph 1 and Article 12(3).

²⁷ **SK:** reservation. **CZ, EL, FI, SK:** keep "*receiving*" (and reference to Article 25). **PL, BE:** reintroduce a reference to "*making*" and "*lodging*" in order to cover all three steps.

²⁸ **DE:** we need to be able to delegate decisions to other authorities where the person concerned has entered via a third country which is classified as a safe third country under EU law (comment valid for paras (1)-(3a)).

4. ~~The determining authority of the Member State responsible may be assisted for the purpose of receiving, registering and examining applications for international protection by:~~
- ~~(a) the authorities of another Member State who have been entrusted by that Member State with the task of receiving, registering or examining applications for international protection;~~
 - ~~(b) experts deployed by the European Union Agency for Asylum, in accordance with Regulation (EU) No XXX/XXX (EU Asylum Agency Regulation).~~
- 4a. Member States shall provide the authorities applying this Regulation with appropriate means, including necessary competent personnel, to carry out their tasks.**
5. Member States shall ensure that the personnel of **authorities applying this Regulation** ~~the determining authority, or of any other authority responsible for receiving and registering applications for international protection in accordance with paragraph 3,~~ have the appropriate knowledge and **where necessary** are provided with ~~the necessary training and instructions~~ **guidance** to fulfil their obligations ~~when applying this Regulation.~~

Article 5a

Cooperation²⁹

1. **The authorities of the Member State where an application is made may, upon the request of that Member State, be assisted with registering applications by the authorities of another Member State in which they are entrusted with that same task. They may also be assisted by experts deployed by the European Union Agency for Asylum, in accordance with Regulation (EU) No XXX/XXX (EU Asylum Agency Regulation).**

2. **The determining authority of the Member State where an application is made or of the Member State responsible may, upon the request of that Member State, be assisted by personnel of the determining authority of another Member State in the performance of its tasks as provided for in this Regulation and in Regulation (EU) No XXX/XXX (Qualification Regulation), including with regard to the personal interview. The determining authority may also be assisted for those purposes by experts deployed by the European Union Agency for Asylum in accordance with Regulation (EU) No XXX/XXX (EU Asylum Agency Regulation).**

In addition, where there is a disproportionate number of third-country nationals or stateless persons that make an application within the same period of time, making it difficult in practice for the determining authority to conduct timely personal interviews of each applicant, the determining authority of the Member State where the application is made and lodged or of the Member State responsible maybe assisted by the personnel of other authorities of that Member State.³⁰

²⁹ **NL:** scrutiny reservation. **FI:** reservation.

³⁰ **DE:** scrutiny reservation on para (2). What is meant by "assisted" in this context? Would national regulations governing mutual assistance in official matters be applicable? Are there provisions governing qualifications and in particular language requirements? Does this para include the personal interview pursuant to Article 10? **EL:** add "*upon request*". **HR:** specify the type of interview.

Article 5b [former Article 18]

The role of the United Nations High Commissioner for Refugees

- 1. Member States shall allow the United Nations High Commissioner for Refugees:**
 - (a) to have access to applicants, including those in reception centres, in detention, at the border and in transit zones;**
 - (b) to have access to information on individual applications for international protection, on the course of the procedure and on the decisions taken, subject to the consent of the applicant;**
 - (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 international protection at any stage of the procedure.**
- 2. ~~Paragraph 1 shall also apply to an organisation which is working in the territory of the Member State concerned on behalf of the United Nations High Commissioner for Refugees pursuant to an agreement with that Member State.~~**

Article 6

Confidentiality principle³¹

1. The authorities applying this Regulation shall ~~safeguard the confidentiality of any information they obtain in the course of their work~~ **be bound by the principle of confidentiality as defined in national law in relation to any personal information they acquired in the performance of their duties**³².
2. Throughout the procedure for international protection and after a final decision on the application has been taken, the authorities shall not:
 - (a) disclose information regarding the individual application for international protection or the fact that an application has been made, to the alleged actors of persecution or serious harm;
 - (b) obtain any information from the alleged actors of persecution or serious harm in a manner that would result in such actors 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 or his or her dependants, or the liberty and security of his or her family members still living in the country of origin.

³¹ **SE:** scrutiny reservation. **DE:** how does this provision articulate with the Data Protection Regulation?

³² **CZ, HR, RO:** add the following at the end of para (1): "*Para 1 shall apply to all the authorities / entities / third parties who obtain any information relating to the application for international protection or the fact that an application has been made*". **PRES:** the Regulation is addressed to the MSs and to the authorities applying the Regulation. There is a limited scope of authorities who may obtain information under the Regulation.

CHAPTER II

BASIC PRINCIPLES AND GUARANTEES³³

SECTION I

RIGHTS AND OBLIGATIONS OF APPLICANTS

Article 7

Obligations of applicants³⁴

1. The applicant shall make **and lodge** his or her application in ~~the~~ a Member State of first entry or, where he or she is legally present in a Member State, he or she shall make the application in that Member State as provided for in Article 4(1) **and (1a)** of Regulation (EU) No XXX/XXX (Dublin Regulation).³⁵

³³ **PL:** Chapter II would not prevent secondary movements.

³⁴ **DE, FI, SE:** scrutiny reservation. **DE:** does this Articles also apply to UAMs (including to UAMs without a representative)? **PRES:** yes, this is a general rule which applies for all applicants, thus taking into account the specific provisions. According to the text UAM will have representative after making an application.

³⁵ **PRES:** the changes in this paragraph have been made with a view to align the text with the Dublin Regulation proposal. **FR:** scrutiny reservation linked with Dublin. **EL, HU, IT, SI:** reservation. **EL:** the provision seems to overlook the rest of the Dublin criteria. **CY, EL, ES, IT:** delete "*and lodge*".

2. The applicant shall **fully** cooperate with the ~~responsible~~ **competent** authorities³⁶ ~~for them to establish his or her identity as well as to register, enable the lodging of and examine the application by~~ **in matters covered by this Regulation, in particular, by:**³⁷
- (a) providing **his or her name, date of birth, sex, nationality and information about family members and other personal details relevant for the procedure for international protection** ~~the data referred to in points (a) and (b) of the second paragraph of Article 27(1);~~³⁸
 - (aa) **where available to the applicant, providing his or her identity or travel document, and if not available, providing an explanation for not being in possession of such documents;**³⁹
 - (ab) **providing his or her place of residence or address, and a telephone number and email where he or she may be reached, including any changes thereto;**

³⁶ **LU:** further obligations for the applicant should be added, e.g. the obligation to be submitted to a medical examination, to a linguistic test, translation of documents etc. **DE:** scrutiny reservation regarding "*in particular*"; are MS allowed to regulate further obligations in their national law? **PRES:** this is non-exhaustive list and MS may provide other obligations in their national legislation however non-compliance with other obligations cannot have an impact on the procedure if these are not set out in the Regulation.

³⁷ **DE:** insert "*in establishing the facts of the case*" after "*cooperate*"; include the following obligations in the article: immediately notify the competent authority when a residence permit was issued, present, hand over and surrender his passport or passport substitute to the authorities responsible for implementing this Regulation, cooperate, if he does not have a valid passport or passport substitute, in obtaining an identity document, tolerate voice recording beyond interview for the purpose of voice recognition and identity check. **PRES:** see PRES comment previous FN; also some of these obligations are already covered by paragraph (aa).

³⁸ **DE:** unclear what happens if it is not possible to provide this information, e.g. if the date of birth is unknown or the nationality is unverified keep reference to Art. 27 (1). **CZ:** unclear wording.

³⁹ **SI:** reservation. **CY, PT, SI:** delete "*where available*".

- (b) ~~providing fingerprints and facial image~~ **biometric data** as referred to in Regulation (EU) No XXX/XXX (Eurodac Regulation);⁴⁰
- (c) ~~lodging his or her application in accordance with Article 28 within the set time limit and submitting all elements at his or her disposal needed to substantiate his or her application;~~⁴¹
- (d) ~~hand over documents in his or her possession~~ **providing as soon as possible all the elements available to him or her which substantiate the application for international protection as referred to in Article 4(2) of Regulation EU XXX/XXX (Qualification Regulation) and any other information or documents relevant to the examination of the application for the procedures in accordance with this Regulation;**⁴²

(da) attending the personal interview.

3. ~~Where an applicant refuses to cooperate by not providing the details necessary for the examination of the application and by not providing his or her fingerprints and facial image and the responsible authorities have properly informed that person of his or her obligations and has ensured that that person has had an effective opportunity to comply with those obligations, his or her application shall be rejected as abandoned in accordance with the procedure referred to in Article 39.~~

⁴⁰ OJ L [...], [...], p. [...].

⁴¹ LU: text too vague, keep deleted part.

⁴² FR: delete "*any other information*".

4. ~~The applicant shall inform the determining authority of the Member State in which he or she is required to be present of his or her place of residence or address, or a telephone number where he or she may be reached by the determining authority or other responsible authorities. He or she shall notify that determining authority of any changes. The applicant shall accept any communication at the most recent place of residence or address which he or she as indicated by himself or herself. Member States shall establish in national law the method of communication and the moment that the communication is considered as received by the applicant accordingly in particular when he or she lodges an application in accordance with Article 28⁴³.~~
5. The applicant shall remain on the territory of the Member State where he or she is required to be present, in accordance with **Article 4(2a) of Regulation (EU) No XXX/XXX (Dublin Regulation)**.⁴⁴
6. ~~The applicant shall comply with obligations to report regularly to the competent authorities or to appear before them in person without delay or at a specified time or to remain in a designated area on its territory in accordance with Directive XXX/XXX/EU (Reception Conditions Directive), as imposed by the Member State in which he or she is required to be present in accordance with Regulation (EU) No XXX/XXX (Dublin Regulation).~~

⁴³ **ES:** difficult to oblige someone to do that; the consequences in case of failure to meet this obligation need to be clarified. **SE:** delete this para; if deemed necessary it could be included in 7.2 (ab). **HR:** move this para and para (5) to para (2).

⁴⁴ **DE:** scrutiny reservation. **HU, SI:** reservation.

7. **Without prejudice to any search carried out for security reasons,** ~~W~~where it is necessary for the ~~examination~~ **processing** of an application, the applicant may be required by the responsible **competent** authorities to be searched or have his or her items searched **in accordance with national law.** ~~Without prejudice to any search carried out for security reasons a~~ **Any** search of the applicant's person ~~under this Regulation~~ shall be carried out by a person of the same sex with full respect for the principles of human dignity and of physical and psychological integrity.⁴⁵

Recital to accompany paragraph 7

When processing an application for international protection, the competent authorities should be able to determine the travel route of the applicant as well as to verify the identity of the applicant. For that purpose, the competent authorities may need to search the applicant or to have his or her items searched. Those items may include electronic devices such as laptops, tablet computers or mobile phones. Any such search should be carried out in a way that respects fundamental rights and the principle of proportionality.

Article 8

General guarantees for applicants⁴⁶

1. ~~During the administrative procedure referred to in Chapter III applicants shall enjoy the guarantees set out in paragraphs 2 to 8 of this Article.~~

⁴⁵ **CZ:** this paragraph should be looked at in relation to Art. 13(2)(d); add "*in particular*" after "*Where it is necessary*" (the current text is too narrow. Similar text is missing in the new Dublin proposal). **DE:** add the following sentence: "*The withdrawal of the asylum application shall not terminate the foreigner's obligation to cooperate.*" **PRES:** the obligation to cooperate is general and relates to all stages of the procedure and all matters covered by this Regulation. After the withdrawal the person is no more an applicant and this Regulation is not applicable.

⁴⁶ **ES, FI, PT, SE, SI:** scrutiny reservation.

2. The determining authority **or, where applicable, other competent authorities or organisations** shall inform **the** applicants, ~~in a language which they understand or are reasonably meant to understand,~~ of the following⁴⁷:
- (a) the **right** to lodge an ~~individual~~ application;
 - (b) the **time-limits and stages of the** procedure ~~to be followed~~;
 - (c) **his or her** ~~their~~ rights and obligations during the procedure; **and the consequences for not complying with those obligations, in particular as regards the explicit or implicit withdrawal of an application including the obligation to remain in the territory of the Member State in which they are required to be present in accordance with Regulation (EU) No XXX/XXX (Dublin Regulation);**⁴⁸
 - (d) ~~the possible consequences of not complying with their obligations and not cooperating with the authorities~~ **the procedure for submitting elements to substantiate his or her application for international protection;**
 - (e) ~~the timeframe of the procedure;~~
 - (f) ~~the means at their disposal for fulfilling the obligation to submit the elements as referred to in Article 4 of Regulation (EU) No XXX/XXX (Qualification Regulation);~~
 - (g) ~~the consequences of an explicit or implicit withdrawal of the application;~~
 - (h) ~~the outcome of the decision of the determining authority, the reasons for that decision, as well as the consequences of a decision refusing to grant international protection and the manner in which to challenge such a decision.~~

⁴⁷ **DE, ES, LV:** scrutiny reservation.

⁴⁸ **DE:** scrutiny reservation; keep deleted part.

The information referred to in ~~the first~~ **this** paragraph shall be given ~~in good time to enable the applicants to exercise the rights guaranteed in this Regulation and for them to adequately comply with the obligations set out in Article 7~~ **at the latest upon registration of the application, in a language which the applicant understands or is reasonably supposed to understand. That information shall be given by means of the leaflet referred to in paragraph 6a, and orally, if needed.**⁴⁹

The applicant shall confirm that he or she has received and understood the information. Such confirmation shall be documented in the applicant's file. If the applicant refuses to confirm that he or she has received the information, note of that fact shall be entered in his or her file.

3. ~~The determining authority shall provide~~ **During the administrative procedure,** applicants **shall be provided** with the services of an interpreter **to assist with lodging their application or for the personal interview** ~~for submitting their case to the determining authority as well as to courts or tribunals whenever appropriate communication cannot **otherwise** be ensured without such services. Those~~ interpretation services shall be paid for from public funds.
4. ~~The determining~~ **competent** authorities shall provide applicants with the opportunity to communicate with ~~the~~ United Nations High Commissioner for Refugees or with any other organisation providing legal advice or other counselling to applicants in accordance with national law.

⁴⁹ **CZ:** scrutiny reservation; "*before lodging*" instead of "*upon registration*". **SE:** "*within a reasonable time*" instead of "*upon registration*".

5. **Without prejudice to Article 16(2)**, ~~The~~ determining authority shall ensure that applicants and, where applicable, their **representatives** ~~guardians~~, or legal advisers or other **counsellors admitted or permitted as such under national law ("legal advisers")** ~~or other counsellors~~ have access to the information referred to in Article 33(2)(eb) **and (ca)** required for the examination of applications and to the information provided by the experts referred to in Article 33(3), where the determining authority ~~has taken~~ **takes** that information into consideration for the purpose of taking a decision on their application⁵⁰.
6. ~~The determining authority shall give applicants notice within a reasonable time of the decision taken on their application. Where a guardian, legal adviser or other counsellor is legally representing the applicant, the determining authority may give notice of the decision to him or her instead of to the applicant.~~
- 6a. **The Commission shall specify, by means of implementing acts, the content of the information to be provided to applicants, drawn up in the form of a common leaflet. The common leaflet shall be established in such a manner so as to enable Member States to complete it with additional information specific to the Member State concerned. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(2).**⁵¹

⁵⁰ **SI:** provision to be deleted. **NL:** how does this relate to Article 16 and the exceptions it provides?

⁵¹ **EE, MT:** scrutiny reservation. **SK:** reservation. **ES, IT, MT, NL, PL, SE:** EASO work could be used as an alternative to implementing acts. **CZ:** this para is redundant.

Article 9

**Right to remain pending during the administrative procedure
examination of the application⁵²**

1. Applicants shall have the right to remain in the **territory of the Member State where he or she is required to be present in accordance with Article 4(2a) of Regulation (EU) No XXX/XXX [Dublin Regulation]** responsible, ~~for the sole purpose of the procedure, until the determining authority has taken a decision on the application is taken in accordance with the administrative procedure provided for in Chapter III⁵³.~~
2. The right to remain shall not constitute an entitlement to a residence permit ~~and it shall not give the applicant the right to travel to the territory of other Member States without authorisation as referred to in Article 6 of Directive XXX/XXX/EU (Reception Conditions Directive).~~

⁵² **BE, DE, EL, ES, IT, PT:** scrutiny reservation. **FR:** reservation.

⁵³ **FR, IE, SE:** scrutiny reservation. **HU:** reservation. **DE,** supported by **EL:** the provision does not specify the applicable right to remain during the Dublin procedure. It needs to be clarified that the right to remain also applies while the responsible MS is being identified. **IE:** add “*without prejudice to the implementation of the transfer decision...*” to the beginning of paragraph. **HU,** supported by **RO:** clarify that it refers to only the first administrative procedure. **PRES:** this provision applies only to the administrative procedure as stated in the title.

3. ~~The responsible authorities of Member States may~~ **provide in national law for an exception from** ~~revoke~~ the applicant's right to remain on their territory during ~~the~~ administrative procedure where⁵⁴:
- (a) ~~a person makes a subsequent application in accordance with Article 42 and in accordance with the conditions laid down in Article 43~~ **are fulfilled**,⁵⁵
- (b) a person is surrendered ~~or extradited, as appropriate,~~ to another Member State pursuant to obligations in accordance with a European arrest warrant⁵⁶ ~~or to a third country or to international criminal courts or tribunals~~;⁵⁷
- (ba) a person is extradited, surrendered or transferred to a third country, the international criminal court or another international court or tribunal for the purpose of, or resulting from judicial proceedings or for the execution of a sentence**;⁵⁸
4. A Member State may extradite, **surrender or transfer** an applicant to a third country pursuant to paragraphs 3(b) **and (ba)** only where the ~~determining competent~~ **authority considers** ~~is satisfied~~ that an extradition decision will not result in direct or indirect *refoulement* in breach of the international and Union obligations of that Member State⁵⁹.

⁵⁴ **SE:** scrutiny reservation **IT:** should be a "*shall*" clause. **FR:** scrutiny reservation to assess if there are other cases which may justify to limit the right to remain. **NL, IT, PL:** add a new point drafted as follows: "*a person is a danger for public order or the national security, without prejudice to Art. 12 and 18 of the Qualification Regulation*". **PRES:** MSs have at their disposal the necessary instruments to expel the person from their territory on the grounds of danger to the national security. There are strong provisions in QR which allow the rapid rejection of the application in such cases and there is no automatic suspensive effect of the appeal.

⁵⁵ **IT:** this must be better coordinated with Art. 19 (2) (c) of RCD. **EL:** reservation, delete it.
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 **DE:** reservation.

⁵⁸ **FI:** delete "*a third country*". **PRES:** this is deleted from (b) and therefore should remain in (ba).

⁵⁹ **IT, PT:** scrutiny reservation. **SE:** the added part is redundant; a Regulation does need to state what a court may take into account.

4a. In the case of a surrender or transfer from an international criminal court to a third country pursuant to paragraph 3(ba), the competent authority may take into account elements considered upon deciding on the extradition, surrender or transfer, which may be relevant for an assessment of the risk of direct or indirect refoulement.⁶⁰

[...]

⁶⁰ **IT:** "shall" instead of "may". **NL:** redraft this sub-para as follows: "*In the case of a surrender or transfer from the international criminal court or another international court or tribunal pursuant to paragraph 3(ba) to a third country or another Member State, the determining authority or a national court or tribunal may afford particular weight to elements in the decision of an international criminal court or tribunal which may be relevant for an assessment of the risk of direct or indirect refoulement.*"