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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

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This document includes new Presidency compromise proposals for the whole text, including in Article 4(1)(l) on ‘final decision’ and in Article 41 on 'Border Procedure'. The footnotes for all Articles have been updated in line with the previous discussions during JHA Counsellors meeting on 26 February 2019.

Please note that an alternative proposal for definition of ‘final decision’ is presented in document 7447/19.

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 compared to the Commission proposal is in [...]
- deleted Presidency text compared to the previous version is in ~~**bold strikethrough**~~.

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

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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/EU<sup>1</sup>**

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,

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<sup>1</sup> **HU, IT, NL:** parliamentary reservation. **BE, BG CZ, DE, EE, EL, ES, FI, FR, HU, IE, IT, LT, NL, PL, PT, SE, SI:** scrutiny reservation. **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 Council<sup>2</sup> 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 [...] 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 [...] **third country nationals and stateless persons who** 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 (**CEAS**) is based on common standards for asylum procedures, recognition and protection offered at Union level, reception conditions and **establishes** a system for determining the Member State responsible for asylum seekers. Notwithstanding **the** progress [...] **made in the** development of the [...] **CEAS**, there are still significant disparities between the Member States [...] **as regards** 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. [...] **Those disparities** are important drivers of secondary movements and undermine the objective of ensuring that in a [...] **CEAS** all applicants are equally treated wherever they apply in the Union.

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<sup>2</sup> 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,<sup>3</sup> **“Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe”**, the Commission set out [...] **priority areas** options for **structurally** improving the [...] **CEAS**, namely [...] **the establishment of** a sustainable and fair system for determining the Member State responsible for [...] **applicants for international protection**, [...] **the reinforcement of** the Eurodac system, [...] **the achievement of** greater convergence in the [...] asylum system, [...] **the prevention of** secondary movements within the Union and **the development of an enhanced** [...] mandate for the European Union Agency for Asylum. That Communication is **in** line with calls by the European Council on 18-19 February 2016<sup>4</sup> to make progress towards reforming the [...] **Union's** existing framework so as to ensure a humane, **fair** and efficient asylum policy. [...] **The Communication** also proposes a way forward in line with the holistic approach to migration set out by the European Parliament in its own initiative report **“The situation in the Mediterranean and the need for a holistic EU approach to migration”** of 12 April 2016.
- (5) For a well-functioning [...] **CEAS**, 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)<sup>5</sup>, ensuring the timeliness and effectiveness of the procedure. Applications **for the international protection** made by [...] third-country nationals and stateless persons [...] 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.

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<sup>3</sup> COM(2016) 197 final.

<sup>4</sup> EUCO 19.02.2016, SN 1/16.

<sup>5</sup> 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 [...] **streamlining procedures** and by clarifying the rights and obligations of applicants [...] **as well as** 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. [...]
- (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 [...] register [...] applications for international protection **and to assist the determining authority in the performance of its tasks including as regards the examination of 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 **fully** and properly communicate with the **competent [...]** authorities so as, **in particular**, 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 [...] elements [...] **available to him or her which substantiate the application or are relevant for the procedures in accordance with this Regulation** to the **competent** [...] authorities[...]. 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. **In case the applicant is unfit to attend his or her personal interview, the authorities could ask for a medical certification to be provided by the applicant.** For the right to a personal interview to be effective, the applicant should be assisted by an interpreter **where necessary to ensure appropriate communication** and be given the opportunity to provide his or explanations concerning [...] 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 **other** counsellor (**legal adviser**), and he or she may be assisted by the legal adviser [...] during the interview. The personal interview should be conducted under conditions which ensure appropriate **privacy and** 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. [...]



(14) It is in the interests of both Member States and applicants **that applicants receive at a very early stage comprehensive information on the procedure to be followed and on their rights and obligations. [...]** **In addition, it is essential** 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, [...] applicants should, upon their request [...] be provided with free **information on legal and procedural aspects [...]** during the administrative procedure. [...] **Furthermore, to ensure the effective protection of the applicant's rights, particularly the right of defence and the principle of fairness, applicants should, upon their request and subject to limited exceptions, be provided with free legal assistance and representation [...]** in the appeal procedure. **It should also be possible for Member States to provide for free legal assistance and representation at the administrative stage in accordance with national law. [...]**

- (15) Certain applicants may be in need of special procedural guarantees due, *inter alia*, to their age, sex [...], sexual orientation, gender identity, disability, serious **physical or mental** illness or [...] disorders, **including when these are [...]** a consequence of torture, rape or other serious forms of psychological, physical, sexual or gender-based violence. It is necessary to [...] assess whether any individual applicant is in need of special procedural guarantees. [...]
- (16) [...] **The relevant** personnel of the **competent** authorities **of Member States assessing the need for special procedural guarantees [...]** should be adequately trained to **recognise that applicants may be in need of special procedural guarantees and address those needs when identified [...]** [...]. [...]
- (17) [...]
- (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 **freely** about their past experiences, **including** in cases involving [...] persecution **based on sex, gender identity or sexual orientation**. For this purpose, [...] [...] **applicants** should be given an effective opportunity to be interviewed separately from their spouse, partner or other family members. [...]

- (19) **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<sup>6</sup>, 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. [...]**
- (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, **where the determining authority considers it is in the best interests of the child and necessary for the examination of the application, it should organise [...]** a personal interview **for a minor taking into account in particular his or her age and maturity [...]**.

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<sup>6</sup> **NL:** replace with “*For matters covered by this Regulation*” (align with Art. 7)

(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 [...]. [...] **Since** a disproportionate number of [...] applications **made within the same period of time** may risk delaying access to the procedure and the examination of the applications, a measure of flexibility to exceptionally extend those time-lines 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 [...] **for** the functioning of [...] **the CEAS**, the Agency may, based on a[...] **Council implementing act following a proposal by [...]** 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 **need** [...] to receive international protection from a Member State. **It should be possible to express such a [...] need to the competent authorities of the Member State in question, which should include at least border guards, police and authorities responsible for detention facilities.** Such a [...] **need** 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)<sup>7</sup> as soon as he or she makes an application.

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<sup>7</sup> OJ L [...], [...], p. [...].

- (23) An application should be registered [...] **promptly**. At this stage, the authorities responsible for [...] registering applications [...] should register the application together with the personal details of the [...] 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 information may be provided also by organisations working with the authorities and assisting them.** 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.
- (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 [...] **the** opportunity to do so. At this stage he or she is required to submit **as soon as possible** all the elements **and documents** at his or her disposal needed to substantiate and complete the application. [...] **Shortly after the application is lodged**, the applicant should be given a document which certifies his or her status as an applicant[...].
- (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, **in particular**, not providing the elements necessary for the examination of the application [...] **or** by not providing his or her fingerprints or facial image, [...] the application [...] **is** rejected as [...] **implicitly withdrawn**, it is necessary that the applicant [...] [...] **has been** informed of the consequences for not complying with those obligations.<sup>8</sup>

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<sup>8</sup> **IT:** it would be preferable to take stock and declare the application as implicitly withdrawn; therefore "*considered*" instead of "*rejected*".

- (26) To be able to fulfil their obligations [...], the personnel of the authorities **applying this Regulation** [...] should have [...] **sufficient** knowledge and **where necessary** should receive [...] 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, **including the necessary competent personnel**, and **guidance** [...] to effectively perform their tasks.
- (27) [...] **Where an application is made** at border crossing points and in detention facilities, [...] communication **should be ensured through interpretation arrangements** [...] to enable the competent authorities to understand if persons declare their wish to receive international protection [...].
- (28) This Regulation should provide for the possibility that applicants lodge an application on behalf of [...] adults **requiring assistance to exercise legal capacity** and minors **where under national law they do not have the legal capacity to lodge an application in their own name**. This option allows for the joint examination of those applications. [...]

(29) To ensure that unaccompanied minors have effective access to the procedure **and are able to benefit from the rights and comply with the obligations under this Regulation, Regulation (EU) No XXX/XXX [Dublin Regulation] and Regulation (EU) No XXX/XXX [Eurodac Regulation]**, they should [...] be appointed a **representative [...]**. The **representative [...]** should [...] assist and guide the minor through the procedure with a view to safeguard the best interests of the child **and should, in particular, assist with the lodging of the application and the personal interview [...]**. Where necessary, the **representative [...]** should **lodge the application on behalf of [...]**the minor. **Unaccompanied minors should be appointed with a person [...]**~~trained~~**to assist them until a representative is designated, including, where applicable, in relation to age assessment processes and the procedures provided for under Regulation (EU) No XXX/XXX [Dublin Regulation] and Regulation (EU) No XXX/XXX [Eurodac Regulation]**. In order to provide effective support to the unaccompanied minors, **representatives [...]** should [...] be placed in charge of a [...]proportionate **and limited** number of unaccompanied minors at the same time. Member States should appoint **administrative or judicial authorities or other entities [...]** responsible for the [...] supervision [...] of the **representative [...]** in the performance of their tasks. An unaccompanied minor should **have the right to** lodge an application in his or her own name **if he or she has the legal capacity according to the national law [...]**. In order to safeguard the rights and procedural guarantees of an unaccompanied minor, **who does not have legal capacity according to the national law, the application shall be lodged by the representative as soon as possible taking into account the best interests of the child [...]**. The fact that an unaccompanied minor [...] lodges an application in his or her own name should not preclude him or her from being assigned a [...] **representative**.



- (29a) **Medical examinations that are considered to be least invasive possible could include physical, dental and x-ray examinations according to the current state of the art. [...] <sup>9</sup> No method involving nudity or the examination, observation or measurement of genitalia or intimate parts should be used for age assessment purposes.**
- (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, [...] **precise** and up-to-date information relating to the situation **prevailing** in the country of origin of the applicant **at the time of taking a decision on the application. That information may be** obtained from the European Union Agency for Asylum and other sources such as the United Nations High Commissioner for Refugees. The determining authority should, **where available**, also take into account [...] **the common analysis [...] on the situation in specific countries** of origin [...] **and the guidance notes** 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.

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<sup>9</sup> **FR:** it should be more flexible and open.

(31) In order to guarantee the rights of the applicant, a decision concerning his or her application should be given in writing **and, in case of a negative decision, the reasons in fact and in law shall be stated in the decision.** [...]The applicant should **also** be [...] **informed of the result of the decision, and in the case of a negative decision [...], how to challenge that decision, in a language that the applicant understands or is reasonably supposed to understand where he or she is not assisted by a legal adviser.** Without prejudice to the applicant's right to remain and to the principle of *non-refoulement*, [...] a return decision **should be issued in accordance with [Directive 2018/0329 (COD) of the European Parliament and of the Council] either together with a decision rejecting international protection or immediately after the adoption of such a decision [...].**<sup>10</sup>

**(31a) In the case of a surrender or transfer from an international criminal court or tribunal to a third country or another Member State, the relevant competent authority could take into account elements considered upon deciding on the surrender or transfer, which may be relevant for an assessment of the risk of direct or indirect *refoulement*.**

(32) It is necessary that decisions on applications for international protection are taken by authorities whose personnel has [...] **sufficient** knowledge and has received [...] **adequate** training in the **relevant standards applicable in the field of [...] asylum and refugee law**, 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.

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<sup>10</sup> 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).

- (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 [...] 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. **The prioritisation of examination of applications should be done** without derogating from normally applicable [...] **procedures, in particular the admissibility procedure or the acceleration examination procedure**, time limits, principles and guarantees.
- (35) [...] **Member State should have the possibility to reject an application as inadmissible for instance** when a country which is not a Member State is considered [...] **to be** 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 [...] **application** without new relevant elements [...]. <sup>11</sup>

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<sup>11</sup> **NL:** why other grounds of Article 36 are not included here? **PRES:** “*for instance*” was included to emphasize that this recital does not refer to all grounds exhaustively.

**(35a) For the application of the concepts of first country of asylum and safe third country, it is essential that the third country in relation to which the concepts are applied is a party to and complies with the 1951 Convention or the New York Protocol, unless that third country otherwise provides for effective protection in law and in practice in accordance with basic human rights standards such as access to means of subsistence sufficient to maintain an adequate standard of living, to emergency healthcare and essential treatment of illnesses and access to elementary education. It should be possible to designate a third country as safe third country with exceptions for specific parts of its territory or clearly identifiable categories of persons.**

**(36) [...] Member States should have the possibility to apply the concept of first country of asylum [...] as a ground for inadmissibility [...] where the applicant enjoyed effective [...] protection and can still avail himself or herself of that protection in [...] a third country, where he or she is neither subject to persecution nor faces a real risk of serious harm as defined in Regulation (EU) No XXX/XXX [Qualification Regulation] and is protected against refoulement and against removal, in violation of the right to protection from torture and cruel, inhuman or degrading treatment or punishment as laid down in international law. [...]**

(37) [...]Member States should have the possibility to apply the concept of safe third country [...] as a ground for inadmissibility where the possibility exists for the applicant[...] to request and, if the conditions are fulfilled, to receive effective protection in a third country, where he or she is neither subject to persecution nor faces a real risk of serious harm as defined in Regulation (EU) No XXX/XXX [Qualification Regulation] and is protected against refoulement and against removal, in violation of the right to protection from torture and cruel, inhuman or degrading treatment or punishment as laid down in international law. Nonetheless, the determining authorities of the Member States should retain the right to assess the merits of an application even if the conditions for regarding it as inadmissible are met, notably when they are compelled to do so according to their national obligations. The concept of safe third country may be applied only where there is [...] a connection between the applicant and [...] the third country, including the fact that [...]he or she has transited [...] in that third country, on the basis of which it would be [...] reasonable[...] for the applicant [...] to go to that country [...]. The connection between the applicant and the safe third country could be considered established in particular where members of the applicant's family are present in that country or where the applicant has stayed in that country, whether legally or not, in a manner that allowed him or her to settle in the country. A previous residence in that country, a stay for the purpose of studies or linguistic or cultural ties could also be taken into consideration. The connection could also be considered established in case of a short stay or a transit, in particular when the applicant deliberately continued his or her journey for reasons of personal convenience.

- (37a) The concepts of first country of asylum and safe third country should not be applied in respect of an applicant who applies and is entitled to benefit, in the Member State that examines the application, from the rights set out in Directive 2003/86/EC or Directive 2004/38/EC as family member of a third country national or of a Union citizen.**
- (37b) When assessing whether the criteria for effective protection as set out in this Regulation are met by a third country, access to means of subsistence sufficient to maintain an adequate standard of living should be understood as including access to food, clothing, housing or shelter and the right to engage in gainful employment under conditions not less favourable than those for non-nationals of the third country generally in the same circumstances.**
- (37c) In order for Member States to be able to reject an application as inadmissible based on the concepts of first country of asylum or safe third country [...]an individual assessment of the particular circumstances of the applicant should be carried out, including of any elements submitted by the applicant explaining why these concepts would not be applicable to him or her. Where the applicant is an unaccompanied minor, the competent authority should take into account the best interests of the minor, in particular the availability of sustainable appropriate care and custodial arrangements.<sup>12</sup>**

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<sup>12</sup> **FR, HU, NL:** scrutiny reservation on the last sentence.

- (37d) **An application should not be rejected as inadmissible based on the concepts of first country of asylum or safe third country where it is already clear at the stage of the admissibility examination that the third country concerned will not admit or readmit the applicant. Furthermore, if the applicant is eventually not admitted or readmitted to the third country after the application has been rejected as inadmissible, the applicant [...] should again have access to the procedure for international protection in accordance with this Regulation.**
- (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 **[or where another Member State is responsible in accordance with Regulation (EU) No XXX/XXX (Dublin Regulation)]. [...]**
- (39) The examination of an application should be accelerated and completed within a maximum of [...] **three months in [...] a limited number of cases** 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 **order** concerns. [...] **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 **external** border or in a transit zone of a Member State **or when apprehended in connection with irregular crossing by land, sea or air of the external border** [...]. Member States should be able to [...] **use a border procedure to decide on the inadmissibility, implicit or explicit withdrawal or [...]the merits of an application in specific cases [...]. Member States should use [...]the border procedure to decide on the merits of an application in [...]cases [...]where applicants provide only irrelevant, clearly inconsistent or contradictory, [...]clearly false or obviously improbable information is [...]or in the cases where the applicant poses a danger to national security or public order. Decisions rejecting an application as inadmissible should be taken within the framework of the border procedure only where a Member State chooses or is required to take a decision on the inadmissibility while the applicant is still within the border procedure. Member States should have the possibility to cease to apply the border procedure after prima facie consideration of the application or later during the administrative procedure. Where an interview is conducted for this purpose, Member States need not conduct a second interview in the border procedure, provided that the requirements of the inadmissibility or substantial interview have been met.**<sup>13</sup>

**(40-a) A border procedure may be applied to unaccompanied minors only in limited circumstances. Member States should ensure that the determining authority does not apply or ceases to apply the border procedure where it is considered that the necessary support for applicants in need of special procedural guarantees cannot be provided within the framework of the border procedure.**

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<sup>13</sup> **HU:** no support. **CZ, NL, PT:** delete last sentence. **NL:** add “*Member States should have the possibility to consider prima facie that the application needs not be carried out at the external border or in the border procedure. Where an interview is conducted for this purpose, Member States need not conduct a second interview in the border procedure.*”



**(40a) A border procedure should only be applied for a limited period of time. After this period, applicants should be granted entry to the territory of the Member State and the examination of their applications or appeals should continue. Member States should designate the locations where applicants subject to the border procedure may be accommodated and notify them to the Commission. When designating the locations, Member States should ensure that the necessary arrangements have been made to accommodate applicants in these locations in accordance with the Reception Conditions Directive and take into account factors such as the number of applications made at the external border, the length and the geographical situation of the border, the number of border crossing points or the availability of the necessary infrastructures. Only in the event of a disproportionate number of applications subject to a border procedure where the operational capacity of the locations at or in proximity of the external border or transit zones is exceeded or impracticable, applicants may be accommodated at other locations.**

**(40ba) Union funding should be made available for developing and equipping locations where applicants are accommodated during the border procedure.**

**(40b) It is recalled that [...] the Reception Conditions Directive [...] applies to border procedure[...] including the provisions on detention, the guarantees for detained applicants, judicial control and conditions of detention. It is recalled also that detention requires an individual assessment of each case.**

**(40c) If an applicant is granted entry to the Member State's territory, he or she may no longer be detained pursuant to Article 8(3)d) of the Reception Conditions Directive, without prejudice to the application of other detention grounds under that Directive.**

- (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** does not comply with **certain** [...] obligations arising from this Regulation, [Regulation (EU) No XXX/XXX (Dublin Regulation)] or Directive XXX/XXX/EU (Reception Conditions Directive) [...], the application should not be further examined and it should be rejected as [...] **implicitly** withdrawn [...], and any **new** application in the Member States by the same applicant [...] after that decision should be considered to be a subsequent application. [...]
- (44) Where an applicant makes a subsequent application without presenting new [...] **elements** 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 [...] **rejected** as inadmissible [...] in accordance with the *res judicata* principle. The preliminary examination shall be carried out on the basis of written submissions [...] **or** a personal interview. [...] **The** personal interview may, **in particular**, be dispensed with in those instances where, from the written submissions, it is clear that the application does not give rise to [...] new elements [...]. In case of subsequent applications, exceptions may be made to the individual's right to remain on the territory of a Member State [...].<sup>14</sup>

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<sup>14</sup> NL: reservation.

- (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) [...] **It should be possible to designate a third country as safe country of origin with exceptions for specific parts of its territory or clearly identifiable categories of persons. In addition, the fact that a third country is [...] included in a list of safe countries of origin cannot establish an absolute guarantee of safety for nationals of that country, even for those who do not belong to a category of persons for which such an exception is made,** 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 **submits [...] serious grounds [...]** 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 [...] **annex** 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 concepts **are** [...] 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. [...]

- (49) The Commission, assisted by the European Union Agency for Asylum, should [...] 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 [...] **significant** change for the worse in the situation of such a third country **and following a substantiated assessment**, 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. **The Commission should continuously review the situation in that third country taking into account *inter alia* information provided by the Member States and the European Agency for Asylum regarding subsequent changes in the situation of that country.** Moreover, in this case, the Commission should propose an amendment [...] to remove that third country from the EU common lists of safe countries[...] **or** 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. [...] 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 [...] 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 **within a period of two years after the date of removal of that third country from the EU common list of safe countries of origin or safe third countries**. 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\*, the former Yugoslav Republic of Macedonia, Montenegro and Serbia should be considered as safe countries of origin within the meaning of this Regulation.

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\* 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.]

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\* 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.

\* 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.

(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) [...]

(64) Decisions taken on an application for international protection **rejecting it as inadmissible, as unfounded or manifestly unfounded in relation to refugee or subsidiary protection status, and as implicitly withdrawn [...]** as well as [...] **decisions to [...]** withdraw[...] 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. **This should be without prejudice to the possibility for applicants or beneficiaries of international protection to benefit from other remedies of general application foreseen at national level which are not specific to the procedure for granting or withdrawing international protection, [...]. [...]**

(64a) **The notion of 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. This regulation should not affect Member States' competence to organize their national court system and determine the number of instances of appeal. Where national law provides for the possibility to lodge further appeals against a first appeal or subsequent appeals decision, the procedure and the suspensive effect of such appeals should be regulated in national law, in accordance with Union law and international obligations.**

(64b) [...]

**(64c) For the purpose of the appeal procedure, Member States could provide that hearings before a court or tribunal of first instance could be held via video conference, provided that the necessary arrangements are in place.**

[...]

(65) [...]

(66) [...]

(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.

**(67a) It should be possible for immigration authorities as defined in Regulation (EU) 2017/2226 to share with the determining authority information registered in the Entry-Exit System established in accordance with that Regulation which is relevant for the procedure for international protection or for the determination of the Member State responsible for examining an application for international protection.**

(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)<sup>15</sup> applies to the processing of personal data by the Member States carried out in application of this Regulation.

(69) Any processing of personal **data** 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,<sup>16</sup> as well as Regulation (EU) No XXX/XXX (EU Asylum Agency Regulation)<sup>17</sup> and it should, in particular, respect the principles of necessity and proportionality.

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<sup>15</sup> OJ L 119, 4.5.2016, p. 1.

<sup>16</sup> 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).

<sup>17</sup> 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. [...]
- (71) In order to ensure uniform conditions for the implementation of this Regulation [...] as regards the **content of the common leaflet of information to be provided to applicants** [...] 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 Council<sup>18</sup> 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.

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<sup>18</sup> 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 [...] **significant** 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), **including as regards appeals in the context of these procedures.**]
- (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 matter<sup>19</sup>**

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

#### *Article 2*

#### **Scope<sup>20</sup>**

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.

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<sup>19</sup> **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). **PRES:** the relationship between the APR and Dublin IV is explained in recital 76.

<sup>20</sup> **IT:** align text with Dublin Regulation.

*Article 3*

**Extension of the scope of application**

[...]

*Article 4*

**Definitions**

1. For the purposes of this Regulation, the following definitions [...] apply:
  - (a) [...];
  - (b) [...];
  - (c) [...];
  - (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) [...];
  - (h) [...].

2. [...] <sup>21</sup>:

- ([...] **i**) 'application for international protection' or 'application' means a request [...] made [...] by a third-country national or a stateless person **for protection from a Member State [...]**, who can be understood [...] **to seek**[...] refugee status or subsidiary protection status <sup>22</sup>;
- ([...] **j**) '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 [...] **taken**;
- ([...] **k**) '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;

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<sup>21</sup> **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.

<sup>22</sup> **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. **ES, IT:** add “*and/or lodged*” after “*made*”. **PRES:** the application exists from the moment of making.

- ([...]**l**) '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 implicitly withdrawn, [...] [...] which has become definitive according to national law and is no longer subject to a remedy within the framework of Chapter V of this Regulation; [...] it also includes a decision [...] as referred to in Art. 38/1b [...], irrespective of whether the applicant has the right to remain in accordance with this Regulation**<sup>23</sup>;
- (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);**<sup>24</sup>
- ([...]**n**) 'determining authority' means any quasi-judicial or administrative body in a Member State responsible for examining **and taking decisions on** applications for international protection [...] **at the administrative stage of the procedure;**

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<sup>23</sup> **PT, CZ, DE, IE, SK, IT:** scrutiny reservation. **CZ:** prefers reference to courts of first instance; no reference to explicit withdrawal. **EL:** too complicated; distinguish between final and definitive; the decisions on withdrawing the status are not mentioned; the reference should be to courts of first instance; proposed wording: "*Final decision means a decision that is adopted after the appeal mentioned in articles 53 et seq. or a decision that cannot be appealed pursuant to these articles because the time-limits have lapsed*". **PL:** reference to courts of first instance or to the fact that it can no longer be subject to a remedy that would provide examination on merits. **SE, EE:** the definition should refer to explicitly withdrawn and not Art. 38 in order to be coherent with the other references.

<sup>24</sup> **EL:** scrutiny reservation. **CY:** reservation.

- ([...].o) [...];
- ([...].p) 'withdrawal of international protection' means the decision by a determining authority **or a competent court or tribunal** to revoke **or end, including by refusing [...]** to renew, **the international protection in accordance with Regulation (EU) No XXX/XXX (Qualification Regulation) [...]**;<sup>25</sup>
- ([...].r) [...];
- ([...].s) [...];
- ([...].t) 'Member State responsible' means the Member State responsible for the examination of an application in accordance with **the criteria laid down in Regulation (EU) No XXX/XXX (Dublin Regulation) [...]**;
- (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).**

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<sup>25</sup> **SK:** better to leave here the references to separate statuses (refugee status or subsidiary protection status) than just have the reference to the international protection because we always withdraw concrete status. In practice when withdrawing refugee status, we also assess need for subsidiary protection. **PRES:** definition aligned with QR.



## Article 5

### [...] Competent authorities

1. [...] 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 [...]**:
  - (a) [...] examining applications for international protection;
  - (b) taking decisions on applications for international protection;
  - (c) taking decisions on [...] **the withdrawal of [...] international protection [...]**.
2. [...]
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.<sup>26</sup>
  - (a) [...]
  - (b) [...]
  - (c) [...]
  - (d) [...]

[...]

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<sup>26</sup> **BE:** reintroduce a reference to "*making*" and "*lodging*" in order to cover all three steps.  
**PRES:** "making" is covered by (3aa), "lodging" is covered by 28(1).

- 3aa. Member States may under national law[...] limit the relevant national authorities entrusted with the task of receiving applications for international protection made in accordance with Article 25. These authorities shall include as a minimum [...] the police, border guards and authorities responsible for detention facilities [...].<sup>27</sup>**
- 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.<sup>28</sup>**
- 3b. Member States may entrust other relevant authorities with the tasks under this Regulation. Those authorities shall not be entrusted with the tasks referred to in paragraph 1 and Article 12(3), with the exception of the taking of decisions on applications which are explicitly withdrawn as referred to in Article 38 or implicitly withdrawn as referred to in Article 39(1).<sup>29</sup>**

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<sup>27</sup> **HU:** reservation. **DE, EL:** scrutiny reservation. **BE:** against inclusion of police. **COM:** very important to have these 3 authorities as minimum, otherwise the right to make applications for international protection would be limited. The authority responsible for receiving applications made by applicant can refer applicant to authority responsible for registration. The application is made from the moment of making the application to the police, border guards, detention guards (or other authority responsible for receiving applications).

<sup>28</sup> **EL:** previous wording is preferable (in line with Directive 2013/32): “*in that Article and on the basis of a reasoned opinion of the determining authority*”.

<sup>29</sup> **DE:** scrutiny reservation. **EL:** reservation; difficult to implement in law and in practice. The determining authority should be exclusively responsible to adopt decisions on explicit or implicit withdrawal of applications. **PRES:** it is a "may" provision, furthermore in some MS rejection as withdrawn not by determining authority, therefore need for flexibility.

4. [...]
  - (a) [...]
  - (b) [...]
- 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 [...]**, have the appropriate knowledge and **where necessary** are provided with [...] training and [...] **guidance** to fulfil their obligations [...].

*Article 5a*  
**Cooperation**

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 [...].**
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. [...].**

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 may be assisted by the personnel of other authorities of that Member State.

3. The relevant competent authorities of the Member States 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).<sup>30</sup>

*Article 5b [former Article 18]*

**The role of the United Nations High Commissioner for Refugees<sup>31</sup>**

**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.

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<sup>30</sup> **BG, HU:** scrutiny reservation. **ES:** reservation.

<sup>31</sup> **DE:** against deletion of para 2

*Article 6*

**Confidentiality principle<sup>32</sup>**

1. The authorities applying this Regulation shall [...] **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.**<sup>33</sup>
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.

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<sup>32</sup> **DE:** how does this provision articulate with the Data Protection Regulation? **PRES:** the text refers to national law. MS are obliged to keep their national legislation in compliance with the GDPR.

<sup>33</sup> **SK:** keep deleted text.

**CHAPTER II**  
**BASIC PRINCIPLES AND GUARANTEES**

**SECTION I**

**RIGHTS AND OBLIGATIONS OF APPLICANTS**

*Article 7*

**Obligations of applicants<sup>34</sup>**

1. The applicant shall make **and lodge** his or her application in the Member State [...] provided for in Article 4(1) **and (1a)** of Regulation (EU) No XXX/XXX (Dublin Regulation).<sup>35</sup>
2. The applicant shall **fully** cooperate with the [...] **competent** authorities [...] **in matters covered by this Regulation, in particular, by:**
  - (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 [...];**

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<sup>34</sup> **DE:** scrutiny reservation.

<sup>35</sup> **ES, FR, SI:** scrutiny reservation linked with Dublin. **EL, HU, IT:** reservation.

- (aa) ~~where available to the applicant,~~ providing his or her identity or travel document, and if not available, providing a reasonable explanation for not being in possession of such documents;<sup>36</sup>
- (ab) providing his or her place of residence or address, and where available, a telephone number and email where he or she may be reached, including any changes thereto;<sup>37</sup>
- (b) providing [...] **biometric data** as referred to in Regulation (EU) No XXX/XXX (Eurodac Regulation);<sup>38</sup>
- (c) lodging his or her application in accordance with Article 28 [...];
- (d) [...] 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 [...] for the procedures in accordance with this Regulation;

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<sup>36</sup> **HR:** delete "*where available to the applicant*"; it is necessary to address the issue of applicants for international protection who are not in possession of identity documents. The wording "*where available to the applicant*" indicates and implies that applicants are not in possession of identity and travel documents. Therefore, we believe that this wording should be deleted. Non-possession of identity documents provides a possibility of manipulation and abuse of the asylum procedure, to the detriment of those in real need of protection, and it also threatens the security of MS and the EU. **PRES:** this refers to travel documents, therefore only if available, and if not available, an explanation is necessary

<sup>37</sup> **HR:** include "*in accordance with national legislation*" in the end. The aim of this proposal is to emphasise that MS themselves can regulate the manners and conditions of registering residence and address of applicants for international protection, in line with their national legislation and current practice. **PRES:** the text allows for sufficient procedural autonomy of MS.

<sup>38</sup> OJ L [...], [...], p. [...].

(da) attending the personal interview;

(db) remaining 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)].

3. [...]

4. [...]The applicant shall accept any communication at the most recent place of residence or address [...] as indicated by himself or herself.<sup>39</sup> Member States shall establish in national law and practice the method of communication and the moment that the communication is considered as received by the applicant [...].

5. [...]<sup>40</sup>

6. [...]<sup>41</sup>.

7. **Without prejudice to any search carried out for security reasons**, [...]where it is necessary for the [...] **processing** of an application, the applicant may be required by the [...] **competent** authorities to be searched or have his or her items searched **in accordance with national law**. [...] **Any** search of the applicant's person [...] 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.<sup>42</sup>

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<sup>39</sup> **HR:** include "*in accordance with national legislation*" in the end. The aim of this proposal is to emphasise that MS themselves can regulate the manners and conditions of registering residence and address of applicants for international protection, in line with their national legislation and current practice. **PRES:** the text allows for sufficient procedural autonomy of MS.

<sup>40</sup> **PRES:** moved to para (2).

<sup>41</sup> **SK:** keep deleted text.

<sup>42</sup> **DE:** scrutiny reservation.



Article 8

**General guarantees for applicants<sup>43</sup>**

1. [...]
2. The determining authority **or, where applicable, other competent authorities or organisations tasked by Member States for that purpose**, shall inform **the applicant**[...], [...] of the following<sup>44</sup>:
  - (a) the **right** to lodge an [...] application;
  - (b) the **time-limits and stages of the procedure** [...];
  - (c) **his or her** [...] 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** [...];<sup>45</sup>
  - (d) [...]the **procedure for submitting elements to substantiate his or her application for international protection**;
  - (e) [...]
  - (f) [...]
  - (g) [...]
  - (h) [...].

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<sup>43</sup> **ES, SE, SI:** scrutiny reservation.

<sup>44</sup> **DE, ES, LV:** scrutiny reservation.

<sup>45</sup> **DE:** scrutiny reservation; keep deleted part.

The information referred to in [...]this paragraph shall be given [...] **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, provided physically or electronically, or [...]if [...] necessary orally.**<sup>46</sup>

**The applicant shall confirm that he or she has received 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, a note of that fact shall be entered in his or her file.**

3. [...]During the administrative procedure, applicants shall be provided with the services of an interpreter **to assist with lodging their application and for the personal interview [...]** whenever appropriate communication cannot **otherwise** be ensured [...]. Those[...] interpretation services shall be paid for from public funds.
4. The [...] **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.

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<sup>46</sup> **CZ:** scrutiny reservation; "*before lodging*" instead of "*upon registration*". **PRES:** the leaflet contains highly relevant information about the lodging process and it should be provided sufficiently in advance. **SE, NL:** "*within a reasonable time*" or "*as soon as possible*" or "*without undue delay*" instead of "*upon registration*"; align with Article 5 in RCD. **PRES:** for the sake of consistency we use the same deadline as in RCD and Dublin. **NL:** unclear how the mentioned leaflet relates to the template in Article 5 of the RCD. If the information on both the procedure and the reception conditions should be given in the same document, the Articles should be aligned. **PRES:** the two documents provided for in APR and RCD contain different types of information which need not be associated within the same document in all situations and for all MS.

5. **Without prejudice to Article 16(2), [...]**the determining authority shall ensure that, applicants and, where applicable, their **representatives [...]** or legal advisers **or other counsellors admitted or permitted as such under national law ("legal advisers") [...]** have access to the information referred to in Article 33(2)( [...]**b) 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 [...] **takes** that information into consideration for the purpose of taking a decision on their application.<sup>47</sup>
6. [...]
- 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).**<sup>48</sup>

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<sup>47</sup> **IT:** include "*their file and, in particular, to*" after "*have access*" and "*requesting*" before "*applicants*". Restriction to the access should only be the one provided for by art. 16(2). The applicant (or representative, etc.) might want to check his/her statement and documentation present in his/her file. Consider, for example, the case under article 13(5): an applicant may have doubts on transcript of a recording. The right to have access to documents should be generally recognised.

<sup>48</sup> . **ES, MT:** EASO work could be used as an alternative to implementing acts. **ES, FR, MT:** annex like in QR instead.

*Article 9*

**Right to remain [...] during the administrative procedure**

[...]<sup>49</sup>

1. [...] **The applicant** shall have the right to 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]]** [...] until [...] a decision **on the application is taken** in [...] the administrative procedure [...]<sup>50</sup>.
2. The right to remain shall not constitute an entitlement to a residence permit [...].
3. [...] Member States may **provide in national law for an exception from [...]** the applicant's right to remain on their territory during **the** administrative procedure where<sup>51</sup>:
  - (a) [...] the conditions laid down in Article 43 **are fulfilled**;
  - (b) [...]<sup>52 53</sup>
    - (ba) **a person is or will be extradited, surrendered or transferred to another Member State, 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 [...]**;

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<sup>49</sup> **DE, EL, ES, IT:** scrutiny reservation.

<sup>50</sup> **HU:** reservation; **IT:** reference could be made instead to Article 7(2)(db).

<sup>51</sup> **SE:** scrutiny reservation.

<sup>52</sup> 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).

<sup>53</sup> **DE:** reservation.

(bb) a person is a danger to public order or national security, without prejudice to Article 12 and 18 of the Regulation (EU) No XXX/XXX (Qualification Regulation).<sup>54</sup>

3a. Member States shall provide in national law for an exception from the applicant's right to remain on their territory during the administrative procedure where the person is subject to a transfer[...] to another Member State pursuant to obligations in accordance with a European arrest warrant.

4. A Member State may extradite, **surrender or transfer** an applicant to a third country pursuant to paragraph[...] 3[...] [...] (ba) only where the [...] **competent** authority **considers** [...] that a [...] decision will not result in direct or indirect *refoulement* in breach of the international and Union obligations of that Member State.

[...]

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<sup>54</sup> **SE:** scrutiny reservation.

**CHAPTER II**  
**BASIC PRINCIPLES AND GUARANTEES**

**SECTION II**

**PERSONAL INTERVIEWS**

*Article 10*

**Admissibility interview<sup>55</sup>**

1. **Without prejudice to Article 42(3), b[...]**efore a decision is taken by the determining authority on the **inadmissibility** of an application [...] **in accordance with Article 36**, the applicant shall be given the opportunity of an **admissibility** interview [...] <sup>56</sup>.
  2. In the admissibility interview, the applicant shall be given an opportunity to [...] **submit all elements explaining** [...] why the **inadmissibility** grounds provided for in Article 36 would not be applicable to [...] **him or her**.
- [2a. **The admissibility interview may be conducted at the same time as the interview conducted to facilitate the determination of the Member State responsible for examining an application for international protection as referred to in Article 7 of Regulation (EU) No XXX/XXX (Dublin Regulation).**<sup>57</sup>]

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<sup>55</sup> **DE, EL, ES, IT:** scrutiny reservation. **IT:** reservation.

<sup>56</sup> **DE:** scrutiny reservation.

<sup>57</sup> **CY, EL, IT:** reservation. **SI:** scrutiny reservation linked with Dublin

- 2b. Where the admissibility interview is conducted in the Member State responsible, that interview may be conducted at the same time as the substantive interview.<sup>58</sup>

*Article 11*

**Substantive interview<sup>59</sup>**

1. Before a decision is taken by the determining authority on [...] **whether the applicant qualifies as a refugee or is eligible for subsidiary protection**, the applicant shall be given the opportunity of a substantive interview on his or her application.
2. In the substantive interview, the applicant shall be given an [...] opportunity to present the elements needed to substantiate his or her application in accordance with Regulation (EU) No XXX/XXX (Qualification Regulation), and he or she shall provide [...] **the elements referred to in Article 4(2) of Regulation (EU) No XXX/XXX (Qualification Regulation)** [...] as completely as possible. The applicant shall be given the opportunity to provide an explanation regarding elements which may be missing or any inconsistencies or contradictions in [...] **his or her** statements.
3. [...]

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<sup>58</sup> **IT:** scrutiny reservation.

<sup>59</sup> **EL:** scrutiny reservation.

## *Article 12*

### **Requirements for personal interviews<sup>60</sup>**

1. [...] **Subject to the conditions established in this Regulation**, applicants shall be given an opportunity of a personal interview on his or her application [...] <sup>61</sup>.
- 1a. **Where an application for international protection is lodged in accordance with Article 30a the applicant may be given the opportunity for a personal interview provided that paragraph (5)(b) is not applicable.**
2. [...]
3. [...] **Without prejudice to Article 5a(2)**, personal interviews shall be conducted by the personnel of the determining authority, [...].
4. [...] **A person who conducts the personal interview shall not wear a military or law enforcement uniform.**
5. The [...] **admissibility interview or the substantive interview, as applicable**, may be omitted [...] **where:**
  - (a) **the determining authority** is able to take a positive decision **on the basis of the evidence available** with regard to **the refugee status or the subsidiary protection status provided that it offers the same rights and benefits as refugee status under Union and national law** [...];
  - (aa) **the determining authority** [...] **considers that the application is not inadmissible** on the basis of evidence available; [...]

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<sup>60</sup> **DE, ES:** scrutiny reservation.

<sup>61</sup> **IT:** this is a repetition of Article 11 (1)



(b) [...]the applicant is unfit, [...], or unable to be interviewed owing to enduring circumstances beyond his or her control;[...]<sup>62</sup>

**(ba) in case of a subsequent application, the preliminary examination referred to in Article 42(3) is carried out on the basis of a written statement.**<sup>63</sup>

The absence of a personal interview pursuant to point (b) shall not adversely affect the decision of the determining authority. **In the absence of such an interview, [...] the determining** authority shall give the applicant an [...] opportunity to submit further information **in writing**. When in doubt as to the condition of the applicant, the determining authority shall **if necessary** consult a medical professional to establish whether [...] the applicant **is temporarily** unfit or unable to be interviewed [...]or **whether his or her situation is of an** enduring nature.

**5a. Applicants shall be present at the personal interview and shall be required to respond in person to the questions asked. By way of derogation, the determining authority may hold the personal interview by video conference provided that the necessary arrangements for the appropriate facilities and interpretation are ensured by the competent authorities.**

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<sup>62</sup> **IT:** reinstate the deleted part regarding the medical certification. **PRES:** reference to medical certification was not welcomed by MS (including FR).

<sup>63</sup> **IT:** delete; contradiction with Article 42(3) where an alternative is foreseen (either written submissions or interview). **PRES:** This provision refers to Article 42(3). Either there is a personal interview or there are written submissions. In the latter case, the personal interview may be omitted according to Article 12(5)(ba). Therefore, PRES does not see contradiction.

- 5b. An applicant shall be allowed to be assisted by a legal adviser in the personal interview, including when it is held by video conference. The absence of the legal adviser shall not prevent the determining authority from conducting the interview. Where a legal adviser participates in the personal interview, he or she shall be given the opportunity to make comments and ask questions, within the framework set by the person who conducts the interview at least at the end of the personal interview.**<sup>64</sup>
6. The person conducting the interview shall be competent to take account of the personal and general circumstances surrounding the application, including the applicant's cultural origin, age, **sex** [...], sexual orientation, gender identity and **special procedural needs** [...]. Personnel interviewing applicants shall also have acquired general knowledge of [...] **factors** which could adversely affect the applicant's ability to be interviewed, such as indications that the person may have been tortured in the past.
7. The personnel interviewing applicants, including experts deployed by the European Union Agency for Asylum, shall have received [...] training in advance which shall include [...] **relevant elements from those** listed in Article 7(4[...]) of Regulation (EU) No XXX/XXX (EU Asylum Agency Regulation), [...].<sup>65</sup>

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<sup>64</sup> **IT:** add "*according to a specific mandate*" at the end of the first sentence.

<sup>65</sup> **IT:** this provision exists in the EUAA Regulation; no need to repeat it here.

8. [...] **Interpretation shall be provided for the personal interview where this is necessary** [...] to ensure appropriate communication between the applicant and the person conducting the interview [...]. The communication shall take place in [...] **a language which [...] the applicant** understands and in which he or she is able to communicate clearly.
- 8a.** Where requested by the applicant **and where possible**, the determining authority shall ensure that the interviewers and interpreters are of the [...] sex **that [...]** the applicant **prefers, [...]** **unless it** has reasons to [...] **consider** that such a request **does [...]** not relate [...] to difficulties on the part of the applicant to present the grounds of his or her application [...].
- 8b.** **The personal interview shall be conducted under conditions which ensure appropriate privacy and confidentiality. Where the determining authority considers it necessary, it may authorise the presence of family members or other persons at the personal interview subject to the consent of the applicant.**
9. The absence of a personal interview, **where it is omitted pursuant to paragraph 5 or where the applicant otherwise does not attend without reasonable justification**, shall not prevent the determining authority from taking a decision on [...] **the** application for international protection.

Article 13

**Report and recording of personal interviews**

1. The determining authority or any other authority or experts assisting it [...] **with** conducting the personal interview shall make a thorough and factual report containing all substantive elements **of the personal interview, or a transcript of the interview** or a transcript **of the recording** of [...] **such an interview to be included in the applicant's file.**
2. The personal interview [...] **may** be recorded using audio or audio-visual means of recording. The applicant shall be informed in advance of such recording. **Where a recording is made, the determining authority shall ensure that the recording or the transcript of the recording is included in the applicant's file.**<sup>66</sup>
3. The applicant shall be given the opportunity to make comments or provide clarification orally or in writing with regard to any incorrect translations or misunderstandings appearing in the report **or the transcript of the interview** [...], at the end of the personal interview or within a specified time limit before the determining authority takes a decision. To that end, the applicant shall be informed of the entire content of the report **or the transcript of the interview** [...], with the assistance of an interpreter, where necessary. [...]

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<sup>66</sup> **DE:** scrutiny reservation; it should be possible to use recording for voice recognition. **IT:** there may be a contradiction between paras (1) and (2); unclear if the transcript is compulsory or not. **PRES:** the relation between para (1) and (2) has been clarified by indicating what needs to be in the applicant's file. It is now also clearer that a transcript of the recording is not compulsory provided that the recording and a factual report/transcript of the interview are included in the applicant's file.

4. **The applicant shall be requested to confirm that the content of the report or the transcript of the interview correctly reflects the personal interview<sup>67</sup>. Where [...] he or she refuses to confirm that the content of the report [...] or the transcript of the interview correctly reflects the personal interview, the reasons for his or her refusal shall be entered in [...] his or her file. That refusal shall not prevent the determining authority from taking a decision on the application.**
- 4a. The applicant does not have to be requested to make comments or to provide clarifications on the report or the transcript of the interview, nor to confirm that the content of the report or the transcript of the interview correctly reflects the interview where:**
- (a) the personal interview is recorded and according to national law the recording may be admitted as evidence in the appeal procedure, or**
  - (b) is it clear to the determining authority that the applicant will be granted refugee status or subsidiary protection status provided that it offers the same rights and benefits as refugee status under Union and national law.**

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<sup>67</sup> **NL:** reservation, increase of administrative burden, possibility of abuse; there should be an opportunity to make corrections but no confirmation. **PRES:** this is a safeguard for both the authority and the applicant and it is necessary for a complete and adequate examination of the case.

5. **Without prejudice to Article 16(1), [...] applicants or [...], where applicable, their legal advisers [...] shall have access to the report, the transcript of the interview, [...] the transcript of the recording [...] or the recording before the determining authority takes a decision. [...] Where a recording is made [...], access to either the recording or the transcript thereof or the transcript of the interview has [...] to be provided in the administrative procedure. In such cases, access to the recording shall be nevertheless provided in the appeal procedure.** <sup>68</sup>
6. Where the application is examined in accordance with the accelerated examination procedure, the determining authority may grant access to the report, **the transcript of the interview** or the transcript of the recording at the same time as the decision is made.<sup>69</sup>
7. [...]

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<sup>68</sup> **DE, IE:** scrutiny reservation. **PL:** scrutiny reservation regarding the access before the decision is taken.

<sup>69</sup> **SE:** add "*in exceptional cases*" after "*where*" and "*and it is necessary to without delay take a decision*" after "*procedure*".

## SECTION III<sup>70</sup>

### [...]INFORMATION ON LEGAL AND PROCEDURAL ASPECTS, LEGAL ASSISTANCE AND REPRESENTATION

#### *Article 14*

#### **Right to legal assistance and representation<sup>71</sup>**

1. An [...]applicant[...] shall have the right, **at his or her own costs**, to consult, **be assisted or represented by** a legal adviser [...] on matters relating to [...] **his or her** application[...] [...].
2. Without prejudice to **paragraph 1** [...], an applicant may request **and is entitled to receive free information on legal and procedural aspects** [...] **in the administrative procedure and free legal assistance and representation in the appeal procedure subject to the exceptions set out in Articles 15 (3) and 15a(2), respectively** [...]<sup>72</sup>.
- 2a. **Member States may provide for free legal assistance and representation in the administrative procedure in accordance with national law.**

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<sup>70</sup> **DE, ES:** scrutiny reservation. **DE:** how do these provisions relate to Directive 2003/8/EC to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes? **PRES:** they have different scope.

<sup>71</sup> **IT:** scrutiny reservation. **SI:** reservation.

<sup>72</sup> **DE:** scrutiny reservation. **EL, ES:** reservation.

*Article 15*

**Free information on legal and procedural aspects [...] <sup>73</sup>**

1. [...]
2. [...] **In the administrative procedure, Member States shall, upon the request of the applicant and following the lodging of the application, ensure that he or she is provided with [...] free information on legal and procedural aspects [...] in the light of the applicant's particular circumstances [...], which shall, at least, include <sup>74</sup>:**
  - (a) **explanations of the procedure that needs to be followed [...];**
  - (b) **where an application is rejected with regard to refugee status or subsidiary protection status, the reasons for such decision and information on how to challenge it [...] in accordance [...] with Article 35 (2) and (2a). [...]**
  - (c) [...]

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<sup>73</sup> **DE, ES, NL, SK, SI:** scrutiny reservation.

<sup>74</sup> **DE:** scrutiny reservation. **FR, IT:** clarify in a recital that legal assistance free of charge may also be provided as part of the reception conditions.



3. The provision of free **information on legal and procedural aspects** [...] in the administrative procedure may be excluded **by Member States** [...] <sup>75</sup>:

(a) [...]

(b) [...]

(c) [...];

[...] **where [...] the determining authority considers that the applicant will be granted refugee status or subsidiary protection status provided that it offers the same rights and benefits as refugee status under Union and national law or the application has no sufficient prospect of success.** <sup>76</sup>

**3a. Where Member States provide for [...] legal assistance and representation in the administrative procedure in accordance with national law, this Article [...] may not be applied by Member States.**

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<sup>75</sup> **DE:** scrutiny reservation.

<sup>76</sup> **NL:** reservation. **EL:** delete reference. Impossible for the determining authority to make that kind of assessment before actually adopting a decision on the case. **PRES:** this is "may" provision therefore the authority does not have to make that assessment if free information is not excluded for this case (prospect of success) by MS. **NL:** the prospect of success generally emerges from the substantive interview. **PT, SI:** "*prospect of success*" is problematic.

## Article 15a

### Free legal assistance and representation in the appeal procedure

- [...]1. [...]In the appeal procedure, **Member States shall, upon the request of the applicant, ensure that he or she is provided with [...] free legal assistance and representation which shall [...] include the preparation of the [...] procedural documents required under national law, the preparation of the appeal and, in the event of a hearing, participation in [...] that hearing before a court or tribunal [...].**
- [...]2. The provision of free legal assistance and representation in the appeal procedure may be excluded **by the Member States** where<sup>77</sup>:
- (a) **the applicant, who shall disclose his or her financial situation, [...] is considered to have sufficient resources to afford legal assistance and representation at his or her own costs;**
  - (b) [...]it is considered [...] **that the appeal [...] has no sufficient prospect of success or is clearly [...]abusive;**<sup>78</sup>
  - (c) the appeal or review is at a second level of appeal or higher as provided for under national law, including re-hearings or reviews of appeal.
3. [...].

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<sup>77</sup> **DE, IT:** scrutiny reservation. **SK:** add a new point (d) drafted as follows: "*where the applicant already has legal assistance or representation.*" (e.g. pro bono)

<sup>78</sup> **EL:** scrutiny reservation, difficult to assess, see comment under Article 15 (3). **EL, IT, HR, NL, PT, SI:** "*no sufficient prospect of success*" is problematic. **PRES:** As Article 15a(2) is a may provision, MS are not obliged to assess the prospect of success. But MS having those assessments of the prospect of success according to their current national legislation are provided with the necessary flexibility to keep their current practice.

*Article 16*

**[...]Access of the legal adviser**

1. A legal adviser [...], who assists or represents an applicant under the terms of national law, shall be granted access to the information in the applicant's file upon the basis of which a decision is or shall be [...] **taken**.
  
2. **By way of exception from paragraph 1, [...]access to the information or to the sources in the applicant's file may be denied in accordance with national law** where the disclosure of information or sources would jeopardise national security, the security of the organisations or persons providing the information or the security of the persons to whom the information relates [...]. **In such cases, access to such information or sources shall be made available to the courts or tribunals in the appeal procedure. Access to the information or to the sources in the applicants file may also be denied in accordance with the national law [...], where the disclosure will harm the** investigative interests relating to the examination of applications for international protection by the competent authorities of the Member States or the international relations of the Member States would be compromised **or where the information or sources are classified under national law. In such cases, access to information will be subject to the national law. [...]**<sup>79</sup>

**Member States shall ensure that the necessary measures are in place for [...]** the applicant's right of defence [...] **to be respected. [...]**

---

<sup>79</sup> **DE:** reservation on (2), delete it or delete second sentence. **ES:** delete this para. **PRES:** this text only states that such information should be made available to courts or tribunals and does not foresee the procedure to be followed to this end which is decided by MS according to national law.

3. The legal adviser [...] who assists or represents an applicant shall have access to closed areas, such as detention facilities and transit zones, [...] in accordance with Directive XXX/XXX/EU (Reception Conditions Directive).
4. [...]
5. [...]
6. [...]

*Article 17*

**Conditions for [...]free information on legal and procedural aspects and free legal assistance and representation<sup>80</sup>**

- 1. **Free information on legal and procedural aspects in the administrative procedure may be provided by the relevant competent authorities of the Member State or by non-governmental organisations entrusted by the Member State with the task of providing such information.**
1. Free legal assistance and representation **referred to in Article 14(2a) and Article 15a** shall be provided by legal advisers [...] permitted under national law to assist or represent the applicants [...].
2. Member States shall lay down specific procedural rules concerning the modalities for filing and processing requests for the provision of **free information on legal and procedural aspects and of free legal assistance and representation** in relation to applications for international protection or they shall apply the existing rules for domestic claims of a similar nature, provided that those rules do not render access **to free information on legal and procedural aspects and** to free legal assistance and representation impossible or excessively difficult.

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<sup>80</sup> **ES:** reservation. **SI:** scrutiny reservation.

- 2a. **Member States shall lay down specific rules concerning the exclusion of the provision of free information on legal and procedural aspects and of free legal assistance and representation in accordance with Article 15(3) and Article 15a(2), respectively.**
3. Member States may also impose monetary limits or time limits on the provision of **free information on legal and procedural aspects and of** free legal assistance and representation, provided that such limits do not arbitrarily restrict access **to free information on legal and procedural aspects and** to free legal assistance and representation. As regards fees and other costs, the treatment of applicants shall not be less favourable than the treatment generally given to their nationals in matters pertaining to legal assistance<sup>81</sup>.
4. Member States may request total or partial reimbursement of any costs made if and when the applicant's financial situation considerably improves or where the decision to make such costs was taken on the basis of false information supplied by the applicant. **For that purpose, applicants shall immediately inform the competent authorities of any significant change in their financial situation.**

*Article 18*

**The role of the United Nations High Commissioner for Refugees**

1. [...]
- (a) [...]
- (b) [...]
- (c) [...]
2. [...]

---

<sup>81</sup> **DE:** in the first sentence introduce "*or make the provision of free legal assistance and representation subject to a small contribution by the applicant*" after "*provision of free legal assistance and representation*" and "*or contributions*" after "*limits*".

## CHAPTER II

### BASIC PRINCIPLES AND GUARANTEES

#### SECTION IV

##### SPECIAL GUARANTEES<sup>82</sup>

*Article [...] 19 [former Article 20]*

[...]Assessment of special procedural needs<sup>83</sup>

- 1. **The competent authorities shall assess whether an applicant is in need of special procedural guarantees. That assessment may be integrated into existing national procedures and need not take the form of an administrative procedure.**
  
1. **The assessment referred to in paragraph -1 shall be initiated as early as possible after an application is made by [...] identifying whether an applicant presents first indications that he or she may require [...]special procedural [...] guarantees [...].<sup>84</sup> The identification shall be based on visible signs, the applicant's statements or behaviour, or any relevant documents. In the case of minors, statements of the parents, adult responsible or representative of the applicant shall also be taken into account.**

**The competent authorities shall include information on any such first indications in the applicant's file and they shall make this information available to the determining authority.<sup>85</sup>**

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<sup>82</sup> **DE:** scrutiny reservation.

<sup>83</sup> **DE:** scrutiny reservation.

<sup>84</sup> **DE:** scrutiny reservation

<sup>85</sup> **DE:** scrutiny reservation.

2. [...]

3. [...]

**The assessment referred to in paragraph -1 shall be continued [...] after the application is lodged, including where those needs become apparent at a later stage of the procedure, taking into account any information in the applicant's file as referred to in paragraph 1. The assessment shall be reviewed in case of any relevant changes in the applicant's circumstances.**

**3a. The [...]competent authority may, [...]refer the applicant, subject to his or her prior consent, to the appropriate medical practitioner or psychologist for psychological advice on the applicant's need for special procedural guarantees. The result may be taken into account by the determining authority when deciding on the type of special procedural guarantees which may be provided to the applicant.<sup>86</sup>**

**Where applicable, this assessment may be integrated with the medical assessments referred to in Article 23 and Article 24.**

4. [...]

---

<sup>86</sup> **CZ:** reservation, it should be the determining authority.

- 4a. The relevant personnel of the competent authorities assessing the need for special procedural guarantees shall receive [...]training [...]to enable them to recognise that an applicant may need special procedural guarantees and address those needs when identified [...].
- 4b. The Commission may, in accordance with Article 12 of Regulation XXX/XXX [EUAA Regulation], request the European Union Agency for Asylum to develop operational standards on measures for assessing and addressing the special procedural needs of applicants.<sup>87</sup>

Article [...]20 [former Article 19]

#### Applicants in need of special procedural guarantees

1. [...]
2. Where applicants have been identified as [...] **being** in need of special procedural guarantees, they shall be provided with **the necessary** [...]support **allowing** them to benefit from the rights and comply with the obligations under this Regulation [...].
3. Where **the determining authority, including on the basis of the assessment of another relevant national authority, considers that [...]**the necessary support cannot be provided within the framework of the accelerated examination procedure referred to in Article 40 or the border procedure referred to in Article 41[...] the determining authority shall not apply or shall cease to apply those procedures to the applicant.<sup>88</sup>

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<sup>87</sup> **DE,:** scrutiny reservation. **CY:** reservation. **CZ:** "guarantees" instead of "needs". **PRES:** the two possible drafting options are the assessment of special procedural needs or assessing the need for special procedural guarantees.

<sup>88</sup> **CZ:** the second para does not state that the support has to be provided by the determining authority, delete it. **PRES:** the determining authority applies the border procedure and considers in the framework of the border procedure if support can be provided or not



4. [...]

*Article 21*

**Guarantees for minors<sup>89</sup>**

1. The best interests of the child shall be a primary consideration for **the competent authorities** [...] when applying this Regulation.
2. **Where the determining authority considers it is in the best interests of the child and necessary for the examination of the application for international protection, it shall organise a personal interview for a minor taking into account in particular the age and maturity of that minor. The determining authority may also organise such an interview at the request of the minor, the adult responsible or the representative of the minor.** [...] <sup>90</sup>
- 2a. [...] **The personal interview of a minor** shall be conducted by a person who has the [...] **appropriate** knowledge of the rights and special needs of minors. [...] **It shall be conducted in a child-sensitive [...] manner that takes into consideration the age, maturity and best interests of the child.** <sup>91</sup>

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<sup>89</sup> **ES, IT:** reservation.

<sup>90</sup> **HU:** "may" not "shall". **PRES:** only if the two conditions (necessity + best interest of the child) are fulfilled, the interview should take place.

<sup>91</sup> **DE:** scrutiny reservation on para (2) and (2a). **HU:** reservation on para (2) and (2a).

3. The relevant personnel of the determining authority [...] shall receive appropriate training [...] on the rights and special needs of minors.

*Article 22*

**Special guarantees for unaccompanied minors<sup>92</sup>**

- 1. The competent authorities shall ensure that unaccompanied minors are represented and assisted in such a way so as to enable them to benefit from the rights and comply with the obligations under this Regulation, [Regulation (EU) No XXXX/XXXX [Dublin Regulation]] and Regulation (EU) No XXXX/XXXX [Eurodac Regulation].<sup>93</sup>
1. [...]Where an application is made by a person who claims to be a minor<sup>94</sup>, or in relation to whom there are objective grounds to believe that he or she is a minor, and who is unaccompanied, the competent authorities shall [...] designate:
- [(a) a [...] person with the necessary skills and expertise to provisionally assist the minor in order to safeguard his or her best interest and general well-being which enables the minor to benefit from the rights under this [...]Regulation until a representative has been designated [...];<sup>95</sup>

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<sup>92</sup> **BE, ES:** reservation. **BG, CZ, DE, FR, PT, SE, SI:** scrutiny reservation. **PRES:** this text is aligned with RCD.

<sup>93</sup> **DE:** clarify if the youth welfare offices are included in the competent authorities. **PRES:** competent authority could include welfare offices.

<sup>94</sup> **SK:** scrutiny reservation, not acceptable for a minor to make an application on his/her own. **FR:** add “*and without prejudice to situations where the applicant is found to be a minor after the application is lodged*” after “*that he or she is a minor*”.

<sup>95</sup> **EL:** scrutiny reservation. **BE:** “*assist the minor*”. **PRES:** this para is in square brackets because of the discussions in RCD.

(b) a representative as soon as possible but not later than fifteen working days from when the application is made.<sup>96</sup> [...]

The representative and the person referred to in point (a) may be the same as that provided for in Article 23 of Directive (EU) No XXXX /XXXX [Reception Conditions Directive]. He or she shall take into account the minor's own views about his or her needs in accordance with the age and maturity of the minor.

[...] <sup>97</sup>

Where the competent authority has assessed that an applicant [...] who claims to be a minor [...] is without any doubt [...] above the age of eighteen years, it need not designate a representative in accordance with this paragraph.<sup>98</sup>

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<sup>96</sup> **DE:** fifteen days is too short. **CZ:** delete the 15 days (consistency with RCD). **FR:** replace this para with the following text: "*Where the age needs to be assessed in accordance with article 24, no representative shall be designated prior to the positive outcome of this assessment. The tasks of the person mentioned in point (a) and of the representative may be carried out by the same person.*" **ES:** add reference to Article 8(2) of Dublin.

<sup>97</sup> **DE:** why has the text been deleted? **PRES:** this subparagraph was shifted to new Paragraph 1aa in order to gain a better and clearer structure of this Article.

<sup>98</sup> **PRES:** according to Art. 24 age assessment is only carried out in case of doubt. Therefore, the age of an applicant will not be assessed if he or she is without any doubt above the age of eighteen years. **IT:** delete this subpara; according to para. 1, a representative shall be designated "*where an application is made by a person who claims to be a minor*". Furthermore, to assess the age a representative shall be designated as foreseen in article 24(4). Taking into consideration the content of the following subparagraph, on the cessation of the duties of the representative in case of assessed majority, this subpara. may be deleted. Alternatively, redraft as follows: "*Where the competent authority has assessed on the basis of statements by the applicant or other relevant indications, that the applicant is with no doubt above the age of 18, it needs not designate a representative in accordance with this paragraph*" (drafting supported by **LU**). **SI:** how does this work in practice?

The duties of the representative or the person referred to in paragraph 1(a) shall cease where the competent authorities, following the age assessment referred to in Article 24 (1), do not assume that the applicant is a minor or consider that the applicant is not a minor or where the applicant is no longer an unaccompanied minor.<sup>99</sup>

1aa. In case of a disproportionate number of applications made by unaccompanied minors or in other exceptional situations, the time limit for designating a representative may be extended by ten working days.<sup>100</sup>

1a. Where an organisation is [...] **designated** as a representative, it shall designate a **natural** person [...] for carrying out the [...] **tasks of a representative in respect of the unaccompanied minor**.<sup>101</sup>

[...]

1c. The [...] **competent** authority[...] shall **immediately**:

- (a) inform the unaccompanied minor [...], **in a child-friendly manner and in a language he or she can reasonably be expected to understand, of the designation of the person referred to in paragraph 1 (a) and of his or her representative and about how to lodge a complaint against the representative in confidence and safety**.<sup>102</sup>
- (b) **inform the determining authority that a representative has been designated for the unaccompanied minor**<sup>103</sup>; and

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<sup>99</sup> **DE:** scrutiny reservation.

<sup>100</sup> **ES:** delete "*made by UAMs*"

<sup>101</sup> **DE:** add "*unless the representative is designated by law*".

<sup>102</sup> **IT:** difficult to understand the added value of "*and about how to lodge a complaint against any of them in confidence and safety*". **DE:** add "*or organisation*" after "*the person*" and "*unless the representative is designated by law*" in the end.

<sup>103</sup> **FR:** add "*authority in charge of registering the claim as well as the*". **DE:** add "*unless the representative is designated by law*" in the end.

(c) inform the person referred to in paragraph 1 (a) and the representative of the relevant facts, procedural steps and time-limits pertaining to the application of the unaccompanied minor.<sup>104</sup>

1d. The person referred to in paragraph 1 (a) shall meet with the unaccompanied minor and carry out the following tasks, unless ~~provided~~performed by the legal adviser:

(a) provide him or her with relevant information in relation to the procedures provided for in this Regulation;<sup>105</sup>

(b) where applicable, assist him or her in relation to the age assessment procedure referred to in Article 24;<sup>106</sup>

(c) where applicable, provide him or her with the relevant information and assist him or her in relation to the procedures provided for in [Regulation (EU) No XXXX/XXXX [Dublin Regulation]] and Regulation (EU) No XXXX/XXXX [Eurodac Regulation].<sup>107</sup>

1da. As long as a representative has not been designated, Member States may authorise the person referred to in paragraph 1 (a) [...]to assist with the lodging of the application or lodge the application on behalf of the applicant in accordance with Article 32.<sup>108</sup>

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<sup>104</sup> **DE:** add "*or organisation*" after "*the person*".

<sup>105</sup> **DE:** scrutiny reservation.

<sup>106</sup> **DE:** add "*and represent*" (comment also valid for point (d) and for para (1d) (a) and (d)).

<sup>107</sup> **DE:** scrutiny reservation.

<sup>108</sup> **FR:** reservation; include registration. **EL:** scrutiny reservation on the notion of "*suitable person*". **BG:** delete from "*or lodge*" onwards.

- 1e. The representative shall meet the unaccompanied minor and shall carry out the following tasks, unless ~~provided~~performed by the legal adviser:<sup>109</sup>
- (a) where applicable, provide him or her with relevant information in relation to the procedures provided for in this Regulation;
  - (b) where applicable, assist with the age assessment procedure referred to in Article 24;<sup>110</sup>
  - (c) where applicable, assist with the lodging of the application or lodge the application on his or her behalf in accordance with Article 32;<sup>111</sup>
  - (d) where applicable, assist with and be present for the personal interview and inform about possible consequences of the personal interview and about how to prepare for that interview;

---

<sup>109</sup> **DE:** scrutiny reservation on the changes introduced in points (a) - (d). **SI:** no support for the tasks for the representative (especially when it comes to information with regard to 22.1d.(a) and (c), 1e.). The representative does not have relevant knowledge with regard to the procedure. Red line. **PRES:** According to Paragraph 2, MS may regulate in national law that these tasks can also be carried out by the legal adviser.

<sup>110</sup> **DE:** "*represent and assist*". **PRES:** the representative can assist with the age assessment but cannot represent the applicant in the age assessment. **FR:** add a new point (ba) as follows: "where applicable assist with the registering of the application". **PRES:** the assistance for registering is covered by point (e). **FR, IT:** include "*(ba) where applicable, assisting with the registration of the application;*"; the registration includes identification operations. Therefore, a representative should be necessarily there to assist a UAM.

<sup>111</sup> **SK:** scrutiny reservation. **EL:** the national legislation requires the minor to be present at the moment of lodging; exceptions could be applied only in cases of *force majeure*.

- (e) where applicable, provide him or her with the relevant information and assist him or her in relation to the procedures provided for in [Regulation (EU) No XXXX/XXXX [Dublin Regulation]] and Regulation (EU) No XXXX/XXXX [Eurodac Regulation].

In the personal interview, the representative shall have an opportunity to ask questions or make comments within the framework set by the person conducting the interview.<sup>112</sup>

The absence of the representative shall not prevent the determining authority from conducting the interview if the unaccompanied minor has legal capacity according to the national law of the Member State concerned or the legal adviser is present and the best interest of the child is considered.<sup>113</sup>

2. [...]

3. [...]

---

<sup>112</sup> **NL**, supported by **FR, PL**: reservation; this paragraph leaves no room for the determining authority to continue the procedure if the guardian fails to be present at the interview. **CY**: scrutiny reservation. **NL**: clarify that the representative should ask questions at the end of the interview. **PRES**: the current wording provides for enough flexibility to organise the intervention of the representative.

<sup>113</sup> **DE**: scrutiny reservation. **CZ**: delete reference to "best interest of the child".

4. The [...] **representative** shall perform his or her [...] **tasks** in accordance with the principle of the best interests of the child. **A representative** shall have the necessary [...] **knowledge of the rights and special needs of minors**, and shall not have a verified record of child-related crimes [...] **and offences, or crimes and offences that lead to serious doubts about their ability to assume a role of responsibility with regard to minors**<sup>114</sup>.
- 4a. The [...] **representative** shall be changed **where necessary, in particular** [...] when the [...] **competent** authorities consider that he or she has not adequately performed his or her tasks [...]. Organisations or [...] **natural persons** whose interests conflict [...] with those of the unaccompanied minor shall not be [...] **designated** as [...] **representative**.
5. The [...] **competent** authorities shall [...] place a [...] **representative** in charge of a [...] **proportionate and limited** number of unaccompanied minors at the same time [...] **to ensure that he or she is able** to perform his or her tasks effectively.<sup>115</sup>
- 5a. Member States shall [...] **ensure that there are administrative or judicial authorities or other** entities [...] responsible [...] **to supervise** [...] that [...] **the representative properly** performs [...] **his or her** tasks [...]. Those **administrative or judicial authorities or other** entities [...] shall review complaints lodged by unaccompanied minors against [...] **his or her representative**.<sup>116</sup>
6. [...]

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<sup>114</sup> **PL:** add "*or pose a threat to the national security*"; current drafting is too strict, it should refer only to intentional crimes. **EL:** the representative should not have a criminal record at all. **DE:** add "*unless the representative is designated by law*" (also valid for paras (4a) and (5)).

<sup>115</sup> **SK:** this should be regulated at national level, delete it. **IE:** replace "*and*" with "*or*"; preferable to delete this para as it refers more to operational matters which are outside the scope of APR.

<sup>116</sup> **IT, SI:** reservation. **DE, FR:** scrutiny reservation. **MT:** reference to UAM should be in the singular.



## SECTION V

### MEDICAL EXAMINATION[...] AND AGE ASSESSMENT

#### *Article 23*

#### **Medical examination<sup>117</sup>**

1. Where the determining authority deems it relevant for the [...] **examination** of an application for international protection in accordance with Regulation (EU) No XXX/XXX (Qualification Regulation), [...] **it may**, subject to the applicant's consent, [...] **request** a medical examination of the applicant concerning signs and symptoms that might indicate past persecution or serious harm.<sup>118</sup>

**In the case of a minor, the medical examination shall only be carried out where the parents, the adult responsible, the representative or the ~~trained~~ person referred to in Article 22 1 (a) and, where provided for by national law, the applicant consent.**

[...] **That** medical examination[...] shall be **free of charge** [...].

3. When no medical examination is carried out in accordance with paragraph 1, the determining authority shall inform applicants that they may, on their own initiative and at their own cost, arrange for a medical examination concerning signs and symptoms that might indicate past persecution or serious harm.

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<sup>117</sup> **DE, SK:** scrutiny reservation.

<sup>118</sup> **DE:** add the representative's consent in case of a minor

4. The results of the medical examination **referred in paragraph 1** shall be submitted to the determining authority as soon as possible and shall be assessed by the determining authority along with the other elements of the application.
- 4a. **The medical examination referred to in paragraph 1 shall be [...]the least invasive possible and be performed only by medical professionals, and in a way that respects the individual's dignity.**
5. An applicant's refusal to undergo a medical examination **or his or her decision to undergo a medical examination on his or her own initiative, when such an examination does not take place within a suitable time-frame**, shall not prevent the determining authority from taking a decision on the application for international protection.

*Article 24*

**[...]Age assessment of [...] minors<sup>119</sup>**

1. **In case of doubt concerning the applicant's age, the competent authorities shall assess whether the applicant is a minor, including on the basis of statements by the applicant or other relevant indications.**<sup>120</sup>

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<sup>119</sup> **DE, SE:** scrutiny reservation. **BE:** reservation.

<sup>120</sup> **FR:** add "*and to determine whether the applicant is in need of a representative*" after "*doubt*".

[...] Medical examinations [...] **shall be used as a measure of last resort** to [...] assess the age of [...] **an applicant**<sup>121</sup> **where, following statements by the applicant, the parents, adult responsible, [...] representative or person referred to in Article 22 1 (a), or other relevant indications, there are still doubts as to whether or not the applicant is a minor [...].**

Where the [...] **outcome of the age assessment referred to in this paragraph is not sufficiently** conclusive, [...] **the competent authorities** shall assume that the applicant is a minor.

2. [...]

3. [...] **The medical examination shall be [...]the least invasive possible and be performed [...] in a way that** respects [...] the individual's dignity[...]. **That examination** shall be carried out by [...] medical professionals allowing for the most reliable result possible.<sup>122</sup>

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<sup>121</sup> **SK:** previous text is preferable instead of "*measure of last resort*".

<sup>122</sup> **DE:** why was "*qualified*" deleted? **PRES:** "*qualified medical professional*" might be redundant and confusing

4. Where medical examinations are used to [...], **assess the age of an applicant**, the [...] **competent** authority shall ensure that [...] **applicants, and their parents, adult responsible or their representatives**, are informed, prior to the examination of their application for international protection, and in a language that they understand or are reasonably [...] **supposed** to understand, of the possibility that their age be [...] assessed by medical examination. This shall include information on the method of examination and possible consequences which the result of the medical examination may have for the examination of the application, as well as on the possibility and consequences of a refusal on their part [...] to undergo the medical examination.<sup>123</sup>
- 4a. **A medical examination to assess the age of an applicant shall only be carried out where [...]the parents, the adult responsible, the representative or the [...] person referred to in Article 22 1 (a) and, where provided for by national law, the applicant consent after having received the information provided for in paragraph 4<sup>124</sup>.**

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<sup>123</sup> **FR:** add "*or of the person mentioned in point (a) of paragraph 1 of Article 22 or his or her representative*" after "*their part*".

<sup>124</sup> **DE:** scrutiny reservation. **FR:** add "*or, when national law so provides, the person mentioned in point (a) of paragraph 1 of Article 22 or*" after "*applicant*".

5. The refusal by [...] **the applicant, the parents, the adult responsible, [...] representative or person referred to in Article 22(1)(a)[...]** of a medical examination **to be carried out for the assessment of the applicant's age [...]** shall not prevent the determining authority from taking a decision on the application for international protection. **Such refusal may only be considered as a rebuttable presumption that the applicant is not a minor.**
6. [...] **The competent authorities may [...] take into account [...] age assessments [...] made by competent authorities in other Member States on the basis of a medical examination carried out in accordance with this Article and based on methods which are recognised under its national law.<sup>125</sup> The competent authorities may also take into account the fact that an applicant has previously declared to be an adult in another Member State and has accordingly been registered as such in that Member State.**

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<sup>125</sup> **DE:** scrutiny reservation. **ES:** delete the second sentence.

## CHAPTER III

### ADMINISTRATIVE PROCEDURE

#### SECTION I

#### ACCESS TO THE PROCEDURE

##### *Article 25*

##### **Making an application for international protection<sup>126</sup>**

1. An application for international protection shall be **considered as** made when a third-country national or stateless person expresses **in person to a competent authority as referred to in Article 5 (3aa) ~~at~~ the** [...] **need to receive** [...] international protection **from a Member State** [...].<sup>127</sup>  
  
[...]
- 1a. **The authorities responsible for the reception facilities in accordance with the Directive XXX/XXX/EU (Reception Conditions Directive) shall, where necessary, be informed that an application has been made.**
2. [...]

---

<sup>126</sup> **CY, DE, HU:** scrutiny reservation.

<sup>127</sup> **DE:** the text of Article 5 (3aa) is not acceptable. **ES:** delete "from a MS". **IT:** "the" instead of "a".

*Article 26*

**Tasks of the responsible authorities when an application is made**

1. [...]
  - (a) [...]
  - (b) [...]
  - (c) [...]
  - (d) [...]
2. [...]

*Article 27*

**Registering applications for international protection**<sup>128</sup>

1. The authorities [...] **responsible for registering applications or experts assisting them with that task** shall register an application promptly, and not later than [...] **seven** days from when it is made. [...] **For that purpose they shall register, at least,** the following information.<sup>129</sup>

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<sup>128</sup> **CY, CZ, DE, HU, SE, SI,:** scrutiny reservation. **DE:** what is the relation with Eurodac Regulation, what are the legal consequences if an application is made but is not formally lodged later? Is it up to MS to specify the files they wish to store this information in? **PRES:** the proposal is linked to the amendments of Article 10(1) of the Eurodac Regulation. The consequences of not lodging an application are envisaged in Art. 39 – implicitly withdrawn. **HU, SE:** the deadlines should be shorter.

<sup>129</sup> **DE:** scrutiny reservation. Would this Article allow the authorities, when registering a request pursuant to Article 26 (1), to collect data for other purposes at the same time, for instance for our Central Register of Foreigners? **PRES:** Biometrics are personal data. Being personal data the rules for purpose limitation apply. **EL,** supported by **ES:** deadline too short. **DE, SE:** deadline too long. **IT:** deadline too short.

- (a) the name, date **and place** of birth, [...] sex, nationality **or statelessness**, [family members as defined in Article 2(g) of Regulation No (EU) XXX/XXX (Dublin Regulation)], and in the case of minors, siblings or relatives as defined in Article 2(h) of Regulation No (EU) XXX/XXX (Dublin Regulation) present in a Member State], where applicable, [...] as well as other personal details of the applicant relevant for the procedure for international protection and for the determination of the Member State responsible;
- (b) **where available to the applicant**, the type and number of any identity or travel document of the applicant **and the country that issued that document**, as well as other documents of the applicant relevant for his or her identification and for the procedure for international protection and for the determination of the Member State responsible;
- (ba) the date of the application, place where the application was made and the authority to which the application was made;<sup>130</sup>
- (bb) the applicant's location or the applicant's place of residence or address and where available a telephone number and an e-mail address where he or she may be reached.
- 1a. The competent authorities shall take biometric data referred to in Regulation (EU) No XXX/XXX (Eurodac Regulation) at the latest upon the registration of an application for international protection and transmit those data in accordance with that Regulation.<sup>131</sup>

[...]

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<sup>130</sup> **ES:** this is not necessary.

<sup>131</sup> **IT:** scrutiny reservation.



- 1b. Where an application is made to an authority which is not responsible for registering applications, that authority shall, if necessary, promptly and at the latest within [...]three days from when the application was made inform the authority responsible for registering applications, and the application shall be registered by the responsible authority as soon as possible and at the latest within [...] seven days from when the information is received by the authority responsible for registering applications.<sup>132</sup>
2. [...]
3. 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 to register applications within **the deadlines provided for in paragraphs 1 and 1b, [...]** the application shall be registered at the latest within [...] twenty-one days.<sup>133</sup>
4. [...] Member States may regulate exceptions from paragraphs 1 (a), (b), (bb) and 1a in cases of subsequent applications, provided that the information referred to in these paragraphs is already available to the competent authority.<sup>134</sup>

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<sup>132</sup> **SE:** too complicated; "*from when the application is made*".

<sup>133</sup> **EL, ES, IT:** deadline too short. **EL, ES:** the deadline should be adapted when it is not possible to keep it. **IT:** "*disproportionate number*" is not determined. **SE:** deadline too long.

<sup>134</sup> **DE:** scrutiny reservation.

Article 28

**Lodging of an application for international protection**<sup>135</sup>

1. The applicant shall lodge the application **with the competent authority of the Member State where the application is made as soon as possible and no later than twenty-one [...]** days from [...] when the application is registered, provided that he or she is given an effective opportunity to do so [...] **in accordance with this Article.**<sup>136</sup> **By way of exception, in the cases referred to in Article 32, the application shall be lodged no later than twenty-one days from when the representative is designated. Where the application is not lodged with the determining authority, the competent authority shall promptly inform the determining authority that an application has been lodged.**
  
- [1a. **Following a transfer in accordance with Article 20(1)(a) of Dublin Regulation, the applicant shall lodge the application with the competent authorities of the Member State responsible as soon as possible and no later than twenty-one days from when the applicant identifies himself or herself to the competent authorities of the Member State responsible[...].**<sup>137</sup>

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<sup>135</sup> **CZ, ES, HU, IE, SE:** scrutiny reservation. **DE:** what are the consequences if the deadlines are not met? **IT:** deadlines too short.

<sup>136</sup> **EL:** reservation, deadline too short. **ES:** deadline too short. **FR:** it should be the MS responsible not the one where the application is made. **SE:** deadline too long.

<sup>137</sup> **HU:** scrutiny reservation. **IT:** scrutiny reservation on deletion, keep it; use "*reports*" instead. **CZ:** take back procedure should also be covered. **DE, FR:** why was the part in the end deleted? **PRES:** it should be regulated in Dublin.

- 1b. The application shall be lodged in person at a designated time and place which shall be communicated to the applicant by the competent authorities.

Alternatively, Member States may provide in national law for the possibility for the applicant to lodge an application by means of a form, including where he or she is unable to appear in person owing to enduring circumstances beyond his or her control, such as imprisonment or hospitalisation. The application shall be considered to have been lodged provided that the applicant submits the form within the time-limit set out in paragraph 1. In such cases, the time-limit for the examination of the application shall start to run from the date on which the competent authority receives the form.<sup>138</sup>

2. [...]

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<sup>138</sup> **MT:** scrutiny reservation; delete the sentence starting with "*The application should be considered....*"; the form should be submitted in person: "*provided that such form is submitted in person to the competent authority within the time-limit set out in paragraph 1. The obligation to submit the form in person shall not apply if the applicant*". Even though this is a 'may' provision, Malta is opposed to the possibility of such a form being submitted by post or electronically since this could lead to abuse (e.g. the applicant might no longer be on the territory of the Member State even though he/she does submit the form by post or electronically). The only exception to this should be cases where the applicant is unable to submit the form through no fault of his/her own (e.g. if the applicant is in hospital). **PRES:** to require the applicant to submit the form in person would defeat the purpose of having this possibility; this is an option for MS and it exists only if it is provided for in national law **EE:** cannot support lodging by form; delete "*alternatively*" and "*including*". **FR:** the deadlines are the same as in the other cases? **PRES:** yes.

3. **For the purposes of the first paragraph of paragraph 1b, [...]**where there is a disproportionate number of third-country nationals or stateless persons that [...] **make an application** for international protection **within the same period of time**, making it difficult in practice to [...] **give the applicant an appointment** within [...] **that** time-limit [...] the applicant [...] **shall be given an appointment** to lodge his or her application **at a date** not later than [...] **two months** from [...] when the application is registered.<sup>139</sup>
4. When lodging an application, applicants are required to submit **as soon as possible** all the elements **and documents at their disposal** referred to in Article 4(2[...]) of Regulation (EU) No XXX/XXX (Qualification Regulation) needed for substantiating their application. [...] **After** the lodging of their application, **in particular [...]****at their personal interview**, applicants shall be [...] **allowed** to submit any additional elements relevant for its examination until a decision under the administrative procedure is taken [...].<sup>140</sup>

[...] <sup>141</sup>

5. [...]

6. [...]

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<sup>139</sup> **EL:** reservation, deadline too short, use the following wording instead: "*whenever this is possible and under priority*". **ES, IT:** no deadline, "*as soon as possible*" instead.

<sup>140</sup> **FR:** delete "*including at their personal interview*".

<sup>141</sup> **DE:** keep deleted para.

- 6aa. An applicant shall not be allowed to lodge an application, where he or she refuses to comply with the obligation to provide biometric data in accordance with Regulation (EU) No XXX/XXX (Eurodac Regulation), provided that the administrative measures set out in Article 2(3) of Regulation (EU) No XXX/XXX (Eurodac Regulation) have been exhausted.<sup>142</sup>
- 6a. Member States may organise the access to the procedure in such a way that making, registering or lodging take place at the same time. [...]

*Article 29*

**Documents for the applicant<sup>143</sup>**

1. The **competent** authorities of the Member State where an application for international protection is made shall, upon registration, provide the applicant with a document [...] **indicating** that an application has been made **and registered which shall be valid until the document referred to in paragraph 2 is issued [...].<sup>144</sup>**
- 1a. The document referred to in paragraph 1 does not have to be provided if it is already possible to issue the document referred to in paragraph 2.
- 1b. The document referred to in paragraph 1 shall be withdrawn when the document referred to in paragraph 2 is issued.

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<sup>142</sup> **ES:** reservation.

<sup>143</sup> **DE, ES, IT:** scrutiny reservation. **NL:** it should be explicitly stated that this is necessary only when the three phases do not coincide or when the applicant remains within the reach of the competent authorities. **PRES:** exceptions in para (1a). If the three phases take place at the same time, the document referred to in paragraph 1 does not have to be provided because the document referred to in paragraph 2 is already issued.

<sup>144</sup> **NL:** letter or written document instead of document. **PRES:** "document" is a generic term which can include a letter/written statement.

2. The **competent** authorities of the Member State where the application is lodged in accordance with Article 28 (1) and (1a) shall, [...] as soon as possible after the lodging of the application, [...] issue a document which shall include<sup>145</sup> at least the following details, to be updated as necessary [...]:
- (a) **the name, date and place of birth, sex, nationality or statelessness**, [...] facial image of the applicant[...] and signature [...];
  - (b) [...] the issuing authority, date and place of issue and period of validity of the document;
  - (c) [...] the status of the individual as an applicant;
  - (d) stating that the applicant has the right to remain on the territory of that Member State and indicating whether the applicant is free to move within all or part of the territory of that Member State;<sup>146</sup>
  - (e) stating that the document is not a [...] travel document [...].<sup>147</sup>
  - (f) [...]

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<sup>145</sup> **IT:** add the following: "*That document shall contain security features necessary to prevent its falsification.*"

<sup>146</sup> **SK:** concerns regarding the practical implications and possible administrative burden in relation to updating of the document in this situation. Especially in cases of suspensive effect when court decides on the right to remain. The concerned person would have to be available and submit document for the update or new document would have to be issued and handed over and the old one would have to be destroyed. This could be misused (applicant can say that he/she has lost the document, new document stating that the freedom of movement is restricted is issued, but he/she can still use the old one).

<sup>147</sup> **IT:** reservation on the deletion.

- 2a. It shall not be necessary to issue the documents referred to in this Article when and for as long as the applicant is in detention, imprisonment or ~~kept at the border in accordance with~~ subject to the procedure referred to in Article 41.<sup>148</sup>
- 2b. In the case of accompanied minors, the documents referred to in this Article issued to one of the parents or adult responsible may also cover the minor, if appropriate.<sup>149</sup>
- 2c. The documents referred to in this Article [...] need not be proof of identity but shall be considered as being sufficient means for applicants to identify themselves in relation to national authorities for the duration of the procedure for international protection.<sup>150</sup>
3. [...]

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<sup>148</sup> **DE, IT:** scrutiny reservation.

<sup>149</sup> **DE:** delete paragraph 2b.

<sup>150</sup> **DE:** scrutiny reservation

4. The document referred to in paragraph 2 shall be valid for [...] **up to [...] twelve months [or until the applicant is transferred to another Member State in accordance with Regulation (EU) XXX/XXX [Dublin Regulation]]. Where the document is issued by the Member State responsible the validity [...]** shall be renewed [...] **so as to cover[...]** the period during which the applicant has a right to remain on [...] **its territory [...]**.<sup>151</sup>

The period of validity [...] **of the document does not constitute a right to remain [...]** in accordance with **this Regulation.**

5. [...]

### *Article 30*

#### **Access to the procedure in detention facilities and at border crossing points**

1. [...]
- (a) [...]
- (b) [...]
- (c) [...]<sup>152</sup>

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<sup>151</sup> **SI:** redraft as follows: "*The document referred to in paragraph 2 shall be valid for a period of six months which shall be renewed accordingly to ensure that the validity of that document covers the period during which as long as the applicant has a right to remain on the territory of the Member State responsible*". - this duration coincides with the duration of procedures until applicant obtains a legal status to stay or has to leave. Delete "*indicated on the document*" in the second sub-para. **DE:** scrutiny reservation on the validity; the text could be amended as follows: "*... for a period not exceeding six months or, in the case of a transfer in accordance with the Dublin Regulation, only until the applicant is transferred to the responsible Member State.*"

<sup>152</sup> **EL:** keep deleted para.



2. **Where an applicant makes an application in detention facilities, in prison or at border crossing points, including transit zones, at external borders, [...]the [...] competent authorities shall make [...] arrangements for interpretation services [...] to the extent necessary to facilitate access to the procedure for international protection.**
3. Organisations and persons **permitted under national law to provide[...]** advice and counselling shall have [...] access to [...] **applicants** held in detention facilities or present at border crossing points, including transit zones, at external borders. **Such access may be subject to a prior agreement with the competent authorities.**

**In addition**, Member States may impose limits to such access [...], by virtue of national law, **where** they are necessary for the security, public order or administrative management of a border crossing point, **including transit zones**, or of a detention facility, provided that access is not severely restricted or rendered impossible.<sup>153</sup>

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<sup>153</sup> **BE:** reinsert previous text "*escort person...*".

*Article 30a*

**Applications on behalf of an adult requiring assistance to exercise legal capacity**

- 1. In the case of an adult requiring assistance to exercise legal capacity in accordance with national law ('dependent adult'), an adult responsible for him or her whether by law or by practice of the Member State concerned ('adult responsible') may make and lodge an application on the behalf of the dependent adult.**
- 2. The dependent adult shall be present for the lodging of the application, [...] except where there are justified reasons for which he or she cannot be present or, where such possibility is provided for in national law, the application is lodged by means of a form.**

[...]

*Article 31*

**Applications on behalf of an [...] accompanied minor**

[...] <sup>154</sup>

- 1 (new). An accompanied minor shall have the right to lodge an application in his or her own name if he or she has the legal capacity according to the national law of the Member State concerned. Where the accompanied minor does not have the legal capacity according to the national law of the Member State concerned, the parents, a parent or another adult responsible for the minor, whether by law or by practice of the Member State concerned, shall lodge the application on his or her behalf.** <sup>155</sup>

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<sup>154</sup> **IT:** scrutiny reservation. **SK:** reservation. **DE:** clarify if an application be lodged only for persons who have (also) requested protection and have been registered.

<sup>155</sup> **FR, SK:** "make and lodge". **PRES:** including "make" would restrict the right to make applications for minors

**2 (new). In the case of an accompanied minor, who does not have legal capacity according to the national law of the Member State concerned, the making and lodging of an application by a parent or another adult responsible for him or her shall be considered to be the making and lodging of an application for international protection on behalf of the minor.<sup>156</sup>**

**3 (new). Where the parent or adult responsible for the accompanied minor lodges the application on behalf of the minor, the minor shall be present for the lodging of the application, except where there are justified reasons for which the minor cannot be present or, where such possibility is provided for in national law, the application is lodged by means of a form.**

[...]

1. [...]

2. [...]

3. [...]

4. [...]

5. [...]

6. [...]

7. [...]

8. [...]

9. [...]

10. [...]

---

<sup>156</sup> **DE:** scrutiny reservation.

Article 32

**Applications of unaccompanied minors<sup>157</sup>**

1. An unaccompanied minor shall **have the right to lodge<sup>158</sup>** an application in his or her own name if he or she has the legal capacity [...] according to the national law of the Member State concerned[...]. **Where the unaccompanied minor does not have the legal capacity according to the national law of the Member State concerned [...] a [...] representative or a [...]person as referred to in Article 22 (1)(a) shall lodge [...] the application** on his or her behalf.  
  
[...]
2. In the case of an unaccompanied minor, **who does not have legal capacity according to the national law of the Member State concerned the application shall be lodged [...] within the time limit set out in Article 28(1) taking into account the best interests of the child [...]<sup>159</sup>.**  
  
[...]
- 2a. **Where the representative of an unaccompanied minor or a [...]person as referred to in Article 22(1)(a) lodges the application on behalf of the minor, the minor shall be present for the lodging of the application, except where there are justified reasons for which the minor cannot be present or, where such possibility is provided for in national law, the application is lodged by means of a form.**
3. [...] [...]

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<sup>157</sup> **DE, FR, SE, SK:** scrutiny reservation.

<sup>158</sup> **SK,** supported by **CZ:** add "*make and*" before "*lodge*".

<sup>159</sup> **SK:** scrutiny reservation.

## SECTION II

### EXAMINATION PROCEDURE

#### *Article 33*

#### **Examination of applications**

1. [...] **The determining authority** shall examine **and take decisions on** applications for international protection in accordance with the basic principles and guarantees set out in Chapter II.
2. [...] <sup>160</sup> The determining authority shall examine applications objectively, impartially and on an individual basis. For the purpose of examining [...] **an application**, [...] **the determining authority** shall take the following into account:
  - (a) the relevant statements and documentation presented by the applicant [...] **in accordance with Article 4(1) and (2) of Regulation No. XXX/XXX [Qualification Regulation]**;
  - (b) [...] relevant, [...] **precise** and up-to-date information relating to the situation prevailing in the country of origin of the applicant at the time of taking a decision on the application, including laws and regulations of the country of origin and the manner in which they are applied, [...], obtained from relevant **and available national, Union and international sources, and where available** [...] the common analysis **on the situation in specific** [...] countries[...] of origin [...] **and the guidance notes** referred to in Article 10 of Regulation (EU) No XXX/XXX [...] [EU Asylum Agency Regulation][...];

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<sup>160</sup> **FR:** scrutiny reservation.

- (ca) **~~when~~ where applying the concepts of first country of asylum or safe third country, relevant, precise and up-to-date information relating to the situation prevailing in the third country being considered as a first country of asylum or a safe third country at the time of taking a decision on the application;**
- (d) the individual position and personal circumstances of the applicant [...] such as background, **sex** [...], age, sexual orientation and gender identity so as to assess whether, on the basis of the applicant's personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious harm;
- (e) whether the activities that the applicant was engaged in since leaving the country of origin were carried out by the applicant for the sole or main purpose of creating the necessary conditions for applying for international protection, so as to assess whether those activities would expose the applicant to persecution or serious harm if returned to that country **as referred to in Article 5 of Regulation No XXX/XXX [Qualification Regulation];**
- (f) whether the applicant could reasonably be expected to avail himself or herself of the protection of another country where he or she could assert citizenship;<sup>161</sup>
- (fa) **whether the internal protection alternative as referred to in Article 8 of Regulation No XXX/XXX [Qualification Regulation] applies.**

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<sup>161</sup> **DE:** scrutiny reservation; according to which provision is this aspect significant for decisions?  
**PRES:** corresponding Art. 4(3)(e) QD transferred to APR.

3. The personnel examining applications and taking decisions shall have sufficient knowledge of **and shall have received adequate training in** the relevant standards applicable in the field of asylum and refugee law. **Such training may be provided with the assistance of the European Union Agency for Asylum or based on the training developed by that Agency, as appropriate.** They shall have the possibility to seek advice, **where available and to the extent [...]** necessary, from experts on particular issues, such as medical, cultural, religious and child-related or gender issues. [...]They may submit queries to the European Union Agency for Asylum in accordance with Article 9(2)(b) of Regulation (EU) No XXX/XXX (EU Asylum Agency Regulation).
4. [...]The determining authority shall, including through oral translation provided by an interpreter, assess which of the documents or parts of the documents presented by the applicant are relevant for the examination of his or her application. Where necessary, the translation of those relevant documents or parts thereof shall be ensured by the competent authorities, or as part of the free legal assistance and representation where this is provided, including through oral translation. Alternatively, the translation of those relevant documents or parts thereof may be provided by other entities and paid for from public funds in accordance with national law.<sup>162</sup>

The applicant may, at his or her own cost, ensure the translation of documents which are not identified by the determining authority as being relevant. In case of subsequent applications, the applicant may [...]be made responsible for the translation of documents.

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<sup>162</sup> ES: concerns.

5. [...] **The determining authority may prioritise the** examination of an application for international protection [...] in particular, where:
- (a) the application is likely to be well-founded;
  - (b) the applicant has special reception needs within the meaning of Article 20 of Directive XXX/XXX/EU (Reception Conditions Directive), or is in need of special procedural guarantees, in particular where he or she is an unaccompanied minor;
  - (c) **there are reasonable grounds to consider the applicant as a danger to the national security or public order of the Member State;**<sup>163</sup>
  - (d) **the application is a subsequent application.**<sup>164</sup>

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<sup>163</sup> **IT:** delete this point; this case is already included in article 40(1)(f), among the cases to which accelerated procedure is applied. Article 40 is compulsory, it thus prevails on this optional provision. **PRES:** the two provisions are separate regimes that are meant to complement each other: the determining authority may choose to examine an application before others (prioritise it) because of these grounds. In examining it, the determining authority will mandatorily apply the accelerated procedure. In other words, point (c) allows the determining authority to choose the moment it examines the application whereas Article 40(1)(f) regulates the type of procedure that should be used for the examination.

<sup>164</sup> **IT:** what is the aim underlying the inclusion of subsequent applications here and in article 36(1aa) on inadmissibility? Is it to enable the determining authority to pull subsequent applications out of the pile of inadmissible applications and process them earlier? **PRES:** on the basis of this provision the determining authority may examine earlier a subsequent application which has not been declared inadmissible.



Article 34

**Duration of the examination procedure<sup>165</sup>**

1. The examination to determine **whether an application is inadmissible** [...] in accordance with Article 36[...] **1a) and (1aa)(a) and (c) shall be concluded as soon as possible and not later than** [...] **two months** from the lodging of an application.<sup>166</sup>

**In the case referred to in Article 36[...] (1a)(g), the determining authority shall conclude the examination within [...]ten [...]days.**<sup>167</sup>

[...]<sup>168</sup>

**The application shall not be deemed to be admissible where no decision on inadmissibility is taken within the time-limits set out in this paragraph and in paragraph 1b.**

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<sup>165</sup> **SE:** scrutiny reservation on deadlines. **DE:** scrutiny reservation on the extensions of the deadlines; what are the legal consequences of failing to comply with the deadline? **EL:** reservation. **SE,** supported by **IT:** no support for many and varying time limits. Time limits may create administrative burdens. **BG, IT, SK:** longer deadlines. **HU:** against longer deadlines.

<sup>166</sup> **EL:** reservation regarding the link with Dublin.

<sup>167</sup> **MT:** two weeks instead.

<sup>168</sup> **CZ:** scrutiny reservation on the deletion. **FR:** keep deleted sentence and add the following one: "*By way of exception, in the case referred to in Article 36(1aa), the determining authority shall conclude the preliminary examination referred to in Article 42(2) within fifteen working days.*" **DE:** against deleting the 10-day time limit.

- 1a. The determining authority shall conclude the accelerated examination procedure as soon as possible and not later than three months from the lodging of the application.
- 1b. The determining authority may extend the time-limits provided for in the first paragraph of paragraph 1 and in paragraph 1a by not more than [...] two months where:
  - (a) a disproportionate number of third-country nationals or stateless persons make an application for international protection within the same period of time, making it difficult in practice to conclude the admissibility procedure or the accelerated examination procedure within the set time-limits;
  - (b) complex issues of fact or law are involved.
2. The determining authority shall ensure that an examination [...] on the merits, **which is not subject to an accelerated examination procedure**, is concluded as soon as possible and not later than six months from the lodging of the application[...].<sup>169</sup>
- ~~3.~~ The determining authority may extend that time-limit [...] not more than [...] [...] **nine** months, where:
  - (a) a disproportionate number of third-country nationals or stateless persons **make an application** [...] for international protection **within the same period of time**, making it difficult in practice to conclude the procedure within the six-month time limit;
  - (b) complex issues of fact or law are involved;
  - (c) **the delay can be attributed to the applicant for reasons beyond his or her control.**

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<sup>169</sup> **DE:** does “*concluded*” mean the notification of the decision to the applicant pursuant to Art. 35 (1) of the Asylum Procedures Regulation? **EL:** reservation; extend the deadline if the examination on the merits has been preceded by an admissibility check; keep deleted text.

4. [Where an application is subject to the procedure laid down in Regulation (EU) No XXX/XXX (Dublin Regulation), **and the applicant is already in the Member State responsible in accordance with Regulation (EU) No XXX/XXX (Dublin Regulation)**, the time-limits referred to in paragraphs 1a and 2, **and where applicable in paragraph 1**, shall start to run from the moment **the Member State responsible is determined**]. **If the applicant is not in the Member State responsible, the time limit shall start to run from when the application is lodged in accordance with 28(1a).** [...] <sup>170</sup>

[...] <sup>171</sup>

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<sup>170</sup> **DE:** scrutiny reservation; add "*Article 3(3)(a) and Article 3(3a) remain unaffected*" after "*the MS responsible is determined*". **ES:** it should be always from lodging. **PRES:** if time limit starts to run from lodging and not from when the MS responsible is determined, the determining authority will have a shorter time limit (time limit runs although MS responsible is not determined yet).

<sup>171</sup> **SK:** keep this para.

5. The determining authority may postpone concluding the examination procedure where it cannot reasonably be expected to decide within the time-limits laid down in paragraphs **1a and 2** [...] due to an uncertain situation in the country of origin which is expected to be temporary. In such cases, the determining authority shall:
- (a) conduct reviews of the situation in that country of origin at least every [...] **six months**;<sup>172</sup>
  - (aa) **where available, take into account reviews of the situation in that country of origin carried out by the European Union Agency for Asylum;**
  - (b) inform the applicants concerned within a reasonable time of the reasons for the postponement.

The Member State shall inform the Commission and the European Union Agency for Asylum within a reasonable time of the postponement of procedures [...].

- 5a.** [...] [...]The determining authority shall conclude the examination procedure within [...] **21** [...] months from the lodging of an application.

- 6.** [...] <sup>173</sup>

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<sup>172</sup> **EL:** redraft as follows: "(a) take into consideration ~~conduct~~ reviews of the situation in that country of origin at least every two months; these reviews will be undertaken by competent bodies at EU level."

<sup>173</sup> **BG:** scrutiny reservation on the deletion.

## SECTION III

### DECISIONS ON APPLICATIONS

#### *Article 35*

#### **Decisions [...] on applications**

1. A decision on an application for international protection shall be given in writing and it shall be notified to the applicant **in accordance with national law** without undue delay [...]. **Member States may provide that where a representative or legal adviser is representing the applicant, the [...] competent authority shall notify the decision to the representative or legal adviser instead of the applicant.**<sup>174</sup>
2. Where an application is rejected as inadmissible, as unfounded **or manifestly unfounded** with regard to refugee status or subsidiary protection status, [...] as [...] **implicitly withdrawn or in the case referred to article 38 (1b)**, the reasons in fact and in law shall be stated in the decision.<sup>175</sup>

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<sup>174</sup> **CY:** reservation.

<sup>175</sup> **CY:** reservation. **SK:** scrutiny reservation. **FR:** reservation linked to the reference to explicitly withdrawn. **IT:** delete "*explicitly withdrawn*".

- 2a. **The applicant shall be informed of the result of the decision and [...] of how to challenge a decision [...] rejecting an application as inadmissible, as unfounded or manifestly unfounded with regard to refugee status or subsidiary protection status, or as implicitly withdrawn. [...] That information shall be provided in a language that he or she understands or is reasonably supposed to understand when he or she is not assisted by a legal adviser[...]. Where the applicant is assisted by a legal adviser the information could be provided to that legal adviser without being translated in a language which he or she understands or is reasonably supposed to understand.**<sup>176</sup>
3. **Where applicants belong to the same family, including [...] accompanied minors or dependent adults [...] and whenever the application is based on the same grounds, the determining authority may, following an individual assessment for each applicant, take a single decision, covering all applicants, unless to do so would lead to the disclosure of particular circumstances of an applicant which could jeopardise his or her interests, in particular in cases involving gender, sexual orientation, gender identity or age-based persecution. In such cases, a separate decision shall be issued and notified in accordance with paragraph 1 [...].**

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<sup>176</sup> **CY:** reservation. **SE:** too limited. This delegation is opposing the possibility to limit the right to information in a language the applicant understands in other cases than if he or she has legal assistance free of charge. The applicant cannot be expected to cover those costs themselves. A similar wording can be found in 33(4) regarding translation and SE cannot see a reason not to use it also here.

Article 36

**Decision on the inadmissibility of the application**<sup>177</sup>

1. [...]

1a. **The determining authority may be authorised under national law to reject [...] the application as inadmissible where any of the following grounds applies:**<sup>178</sup>

- (a) a country which is not a Member State is considered to be a first country of asylum for the applicant pursuant to Article 44, unless it is clear **beforehand** that the applicant will not be admitted or readmitted to that country;
- (b) a country which is not a Member State is considered to be a safe third country for the applicant pursuant to Article 45, unless it is clear **beforehand** that the applicant will not be admitted or readmitted to that country;
- (c) [...]
- (d) [...]

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<sup>177</sup> **SE, ES:** scrutiny reservation. **CY, EL:** reservation.

<sup>178</sup> **DE:** reservation on the deletion and on the "may" clause (prefer a "shall" clause). **CZ, HU:** reservation, "shall" clause is preferable. **SI:** reservation.

- (f) an international criminal court or tribunal has provided safe relocation for the applicant to a Member State or third country, or is unequivocally undertaking actions to that extent, unless new relevant circumstances have arisen which have not been taken into account by the court or tribunal or where there was no legal possibility to raise circumstances relevant to internationally recognized human rights standards before that international criminal court or tribunal;
- (g) the applicant, who is issued with a return decision in accordance with Article [...]8 of Directive 2008/115/EC, makes an application only after seven working days from the date on which the applicant receives the return decision and provided that he or she had been informed of the consequences of not making an application within that time-limit and that no new relevant elements have arisen since the end of that period.<sup>179</sup>

1aa. The determining authority shall reject an application as inadmissible where any of the following grounds applies:

- (a) a subsequent application where no new relevant elements as referred to in Article 42 (2) and (3a) relating to the examination of whether the applicant qualifies as a beneficiary of international protection in accordance with Regulation (EU) No XXX/XXX (Qualification Regulation) or relating to the inadmissibility ground previously applied, have arisen or have been presented by the applicant;

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<sup>179</sup> **IT:** scrutiny reservation; should be a "shall" provision. **DE:** what are the consequences of this inadmissibility ground: does this mean that a person who is issued with a return decision in accordance with Article 8 of the Return Directive (e.g. on other grounds than a rejection of an asylum application) has to be notified of the possibility to make an application? This would be opposed, because it would lead to longer and unnecessary asylum procedures and therefore be contradictory to one of objectives of APR. **PRES:** point (g) is a may provision. Therefore, MS do not have to apply it. If a MS wants to apply this inadmissibility ground, the applicant must be informed in advance about the time limit of 7 working days to apply for international protection. But the MS can decide to not apply this inadmissibility ground and does not have to inform the applicant. In this case, an application must be examined also if it is made after 7 working days. **ES:** the reference should to Article 6 not 8. **PRES:** Article 8 in current directive, will be Article 6 according to recent draft of return directive.



[...]

**[(c) a Member State other than the Member State examining the application has granted the applicant international protection.]<sup>180</sup>**

2. [...]

3. [...]<sup>181 182</sup>

4. [...]

5. [...]

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<sup>180</sup> **FI:** scrutiny reservation. **CZ:** very important to have this as an inadmissibility ground. **PRES:** if beneficiaries of international protection are covered by the Dublin IV Regulation, this case would be governed by the Dublin procedure (Dublin transfer). Therefore, it would not be necessary to foresee an inadmissibility ground in the APR for such situations.

<sup>181</sup> OJ L [...], [...], p. [...].

<sup>182</sup> **DE:** scrutiny reservation; clarify the reasons for the deletion.

Article 37

**Decision on the merits of an application**

**-1. An application shall not be examined on the merits where:**

**[(a) another Member State is responsible in accordance with Regulation (EU) No XXX/XXX (Dublin Regulation)];<sup>183</sup> or**

**(b) an application is rejected as inadmissible in accordance with Article 36(1a) and (1aa).<sup>184</sup>**

1. When examining an application on the merits, the determining authority shall **determine** [...] whether the applicant qualifies as a refugee and, if not, it shall determine whether the applicant is eligible for subsidiary protection in accordance with Regulation (EU) No XXX/XXX (Qualification Regulation).

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<sup>183</sup> **CZ:** scrutiny reservation. **SK:** more appropriate to reject application as inadmissible and therefore it should be moved to Article 36

<sup>184</sup> **SK:** reservation on para (-1). **CZ:** add a new point (c) drafted as follows: "*(c) an application is explicitly or implicitly withdrawn*". **PRES:** according to Art. 38(2) and 39(5b), a (negative) decision on the merits is possible also in cases of explicit or implicit withdrawal if the competent authority already found that the applicant does not qualify for international protection.

2. The determining authority shall reject an application as unfounded where it has established that the applicant does not qualify for international protection pursuant to Regulation (EU) No XXX/XXX (Qualification Regulation).
3. The determining authority [...] **may be authorised under national law to declare an unfounded application to be manifestly unfounded, if at the time of the decision, any of the circumstances [...] referred to in Article 40(1) [...] or [...] a decision is [...] taken within the time-limits referred to in Article 34 (1a) and (1b) or in the case referred to in Article 40(4).**<sup>185</sup>

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<sup>185</sup> **DE, SI:** scrutiny reservation on para (3). **DE:** in favour of a "shall" clause. ES+IT: delete reference to complex issues. PRES: manifestly unfounded refers to the substance of the application and not to a prima facie assessment. Therefore, even in complex cases, it should be possible to have an entry ban and no period for voluntary return according to the Return Directive (these are the only consequences for manifestly unfounded applications, there are no consequences in APR). But as the last part of the sentence is only a clarification, it could also be deleted as requested by ES, IT (and FR) and it should still be possible for the determining authority to declare the application manifestly unfounded even in complex cases (as long as the circumstances of Art. 40 apply).

Article 38

**Explicit withdrawal of applications**<sup>186</sup>

1. An applicant may, of his or her own motion [...], withdraw his or her application. **The application shall be withdrawn in writing by the applicant in person or delivered by his or her legal adviser in person. [...]**
  - 1a. **The competent authorities shall make sure that the applicant has been informed of the consequences of that withdrawal in a language he or she understands or is reasonably supposed to understand.**
  - 1b. **The competent authorities shall take a decision, [...] stating that the application has been explicitly withdrawn. That decision shall be final and shall not be subject to an appeal as referred to in Chapter V of this Regulation.**<sup>187</sup>
2. [...]Where at the stage that the application is explicitly withdrawn the determining authority already found that the applicant does not qualify for international protection pursuant to Regulation (EU) No XXX/XXX (Qualification Regulation), [...] it may take a decision to reject the application [...] as unfounded [...] or as **manifestly unfounded**.

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<sup>186</sup> **DE:** scrutiny reservation.

<sup>187</sup> **IT:** delete "*decision*" and replace with "*act declaring*". **DE:** there should be remedies in case of explicit withdrawal. **PRES:** this is not acceptable for the rest of the MS. All MS (including DE) had previously agreed that such a decision should be final.

Article 39

**Implicit withdrawal of applications<sup>188</sup>**

1. The [...] **competent** authority shall reject an application as [...] **implicitly withdrawn** where:<sup>189</sup>
  - (a) [...];
  - (b) [...];
  - (ca) **the applicant refuses to cooperate by not providing his or her name, date of birth, nationality or biometric data**<sup>190</sup>
  - (c) [...] **the application is, without due cause, not lodged in accordance with Article[...] 28 (1) [...]**;<sup>191</sup>  
[...]
    - (cb) **the applicant refuses to provide his or her address unless housing is provided by competent authorities**;<sup>192</sup>

[...]

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<sup>188</sup> **BG, DE, IT, SE:** scrutiny reservation. **SI:** reservation.

<sup>189</sup> **ES:** reservation on para (1). **SK:** scrutiny reservation on the chapeau. **IT:** "*declare*" instead of "*reject*".

<sup>190</sup> **BG, EL, FI, IT:** delete "*name*". **NL:** keep reference to Article 7(2) otherwise no sanction anymore for deliberate withholding of documents. **PRES:** in such a case the accelerated procedure should apply (cf Article 40).

<sup>191</sup> **DE:** scrutiny reservation. **HU:** reservation, deadlines too long.

<sup>192</sup> **EL, SE:** delete this, it is disproportionate.

[...]

- (d) the applicant has, **without due cause**, not [...] **attended** a personal interview although he **or she** was required to do so pursuant to Article[...] 12;<sup>193</sup>
- (e) [...]
- (f) [...]
- (h) **the applicant does not remain available to the competent administrative or judicial authorities, such as by leaving for an unknown destination or leaving the territory of the Member State without authorisation from the competent authorities for reasons which are not beyond the applicant's control [...];**
- (i) **[the applicant has lodged the application in a Member State other than provided in article 4(1) and 4(1a) of Regulation (EU) No XXX/XXX (Dublin Regulation) [...] and does not remain present in that State pending the determination of the Member State responsible or the implementation of the transfer procedure, if applicable].**<sup>194</sup>

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<sup>193</sup> **DE:** scrutiny reservation on the deletion.

<sup>194</sup> **ES, FI:** reservation. **ES:** clarification needed. **PRES:** it could be possible that the applicant returns to the “MS responsible” although he should stay in the MS determining the MS responsible. Clarification that this would also be absconding.

2. [...] [...]The competent authority may suspend the procedure to give the applicant the possibility for justification or rectification before rejecting the application as implicitly withdrawn.
3. [...]
4. [...]
5. [...]
- 5a. [...]
- 5b. [...]An application may be rejected as unfounded or as manifestly unfounded where the determining authority has, at the stage that the application is implicitly withdrawn, already found that the applicant does not qualify for international protection pursuant to Regulation (EU) No XXX/XXX (Qualification Regulation).

## SECTION IV

### SPECIAL PROCEDURES

#### *Article 40*

#### **Accelerated examination procedure**<sup>195</sup>

1. **Without prejudice to Article 20(3), [...]**the determining authority shall, in accordance with the basic principles and guarantees provided for in Chapter II, accelerate the examination on the merits of an application for international protection, in the cases where:<sup>196</sup>
  - (a) the applicant, in [...] **lodging** his or her application and presenting the facts, has only raised issues that are not relevant to the examination of whether he or she qualifies as a beneficiary of international protection in accordance with Regulation (EU) No XXX/XXX (Qualification Regulation);<sup>197</sup>
  - (b) the applicant has made clearly [...], inconsistent [...] **or** contradictory, clearly false or obviously improbable representations which contradict [...] **relevant and available** country of origin information, thus making his or her claim clearly unconvincing [...] **as** to whether he or she qualifies as a beneficiary of international protection by virtue of Regulation (EU) No XXX/XXX (Qualification Regulation);

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<sup>195</sup> **CZ, DE, IE, IT, PT, SE, SI:** scrutiny reservation. **EL:** reservation. **EL, ES, IE, IT, MT, SE:** "may" provision is preferable.

<sup>196</sup> **EL:** the determining authority should have the possibility to decide whether an accelerated procedure should be applied, based on the merits of the individual case. Either it should not be obligatory to apply the accelerated procedure, or the applicable (short) time limits should be extendable. Flexibility is needed to be able to cope with a high influx of manifestly unfounded cases.

<sup>197</sup> **DE:** insert "*clearly*" before "*not relevant*".



- (c) the applicant has misled the authorities by presenting false information or documents or by withholding relevant information [...];<sup>198</sup>
- (ca) **the applicant withheld documents relevant with respect to his or her identity or nationality or he or she has destroyed or disposed of an identity or travel document in order to prevent the establishment of his or her identity or nationality or if the circumstances clearly give reason to believe that this is the case;**
- (d) the applicant [...] **makes** an application merely to delay or frustrate the enforcement of [...] a decision [...] **for** his or her removal from the territory of a Member State;<sup>199</sup>
- (e) a third country may be considered as a safe country of origin for the applicant within the meaning of this Regulation;
- (f) [...] **there are reasonable grounds to consider the applicant as a danger to the national security or public order of the Member States, or the applicant had been forcibly expelled for serious reasons of national security or public order under national law;**<sup>200</sup>
- (g) [...]

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<sup>198</sup> **DE:** delete "*that could have had a negative impact on the decision*"; insert "*clearly*" before "*misled*".

<sup>199</sup> **CZ:** delete "*merely*". **IT:** add "*subject to a return decision, including those in administrative detention in view of removal from the territory of a Member State,*" after "*the applicant*".

<sup>200</sup> **DE:** keep previous drafting in the first sentence, namely "*the applicant may, for serious reasons be considered...*". **IT:** this should be an inadmissibility ground **PRES:** An applicant posing a threat to national security or public order might still be in need of international protection. Grounds for excluding persons from international protection (e.g. based on national security) are regulated in QR. Nevertheless, this would be already an examination on the merits and not an inadmissibility ground. Therefore, the applicant's request might be rejected based on the exclusion grounds in Article 12 and 18 QR (after an examination on the merits). Besides, the principle of *non-refoulement* must be taken into account (also for persons posing a threat to national security or public order).

- (h) the application is a subsequent application **which is not inadmissible [...]**;<sup>201</sup>
- (i) **the applicant entered the territory of Member States unlawfully or prolonged his or her stay unlawfully and, without good reason, has either not presented himself or herself to the competent authorities or not made an application for international protection as soon as possible, given the circumstances of his or her entry.**

2. [...] [...]

[...]

[...]

3. [...]

4. Where the determining authority considers that the examination of the application involves issues of fact or law that are complex to be examined under an accelerated examination procedure, it may continue the examination on the merits in accordance with Articles 34(2) and 37.<sup>202</sup> [...]

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<sup>201</sup> **DE:** reservation on the deletion.

<sup>202</sup> **IT:** delete reference to Article 37.

5. The accelerated examination procedure may be applied to unaccompanied minors only where:<sup>203</sup>
- (a) the applicant comes from a third country **that may be** considered to be a safe country of origin in accordance [...] **within the meaning of this Regulation;**<sup>204</sup>
  - (b) **there are reasonable grounds to consider** the applicant [...] as a danger to the national security or public order of the Member State, or the applicant had[...] been forcibly expelled for serious reasons of [...] **national** security or public order under national law[...];<sup>205</sup>
  - (ba) **the application is a subsequent application which is not inadmissible;**
  - (c) **the applicant withheld documents relevant with respect to his or her identity or nationality or he or she has destroyed or disposed of an identity or travel document in order to prevent the establishment of his or her identity or nationality or if the circumstances clearly give reason to believe that this is the case [...];**<sup>206</sup>

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<sup>203</sup> **DE, ES:** scrutiny reservation; redraft para (5) as follows: “*The accelerated examination procedure shall not be applied to unaccompanied minors.*” **SE:** hesitant. **FR, SE:** prefer previous version.

<sup>204</sup> **IT:** add “*and provided that it is in the best interest of the child*”. **PRES:** covered by Art. 21 (1).

<sup>205</sup> **IT:** this should be an inadmissibility ground **PRES:** An applicant posing a threat to national security or public order might still be in need of international protection. Grounds for excluding persons from international protection (e.g. based on national security) are regulated in QR. Nevertheless, this would be already an examination on the merits and not an inadmissibility ground. Therefore, the applicant’s request might be rejected based on the exclusion grounds in Article 12 and 18 QR (after an examination on the merits). Besides, the principle of *non-refoulement* must be taken into account (also for persons posing a threat to national security or public order).

<sup>206</sup> **EL:** reservation on “*it is likely that...*”. **IT:** delete this.

- (d) the applicant has misled the authorities by presenting false information or documents or by withholding relevant information or documents [...].

Points (c) and (d) shall only be applied where there are serious grounds for considering that the applicant is attempting to conceal relevant elements [...]after he or she has been given an effective opportunity to provide substantiated justifications [...].

*Article 41*

**Border procedure<sup>207</sup>**

1. [...]

[...]

[...].

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<sup>207</sup> **CZ, DE, HU, FR, PT, SE, SI:** scrutiny reservation. **BG, CY, EL, ES, HR, HU, IT, LU, MT:** reservation. **HU:** the entire asylum procedure should take place at the border, only those granted protection should be allowed in the EU.

[...] A Member State may provide for a border procedure ~~may be applied~~ whereby the determining authority of ~~that~~ Member States examines applications made by third country nationals or stateless persons who do not fulfil the conditions for entry in the territory of ~~that~~ Member States when they are at external border crossing points or transit zones or when they are ~~by third country nationals or stateless persons~~ apprehended in connection with irregular crossings of the land, sea or air external border, or when they are disembarked following a search and rescue operation. When applying the border procedure, the determining authority may take decisions on the inadmissibility or, in the cases referred to in Article 40(1), on the merits of applications, while accommodating applicants in the locations referred to in paragraph 12.

[...]

2. [...] From the date referred to in Article 62(4), Member States shall apply the border procedure in respect of applications made by third country nationals or stateless persons who do not fulfill the conditions for entry in the territory of the Member States when they are at external border crossing points or transit zones where the applications are subject to an inadmissibility examination in accordance with Article 36, as applicable, or to an accelerated examination of the merits based on the grounds referred to in Article 40 (1) (a), (b) and (f).

Member States need not to apply the border procedure in relation to applications made at border crossing points or transit zones where less than [XX] applications were made in the preceding [six] month period. Member States shall review such exemptions at least every six months.

[...]

Member States ~~shall need not apply or may shall~~ cease to apply the border procedure at any stage of the procedure where:

a) the necessary support cannot be provided to applicants with special procedural needs in the locations referred to in paragraph 12,

b) there are ~~compelling~~ humanitarian reasons for not applying the border procedure, including related to the medical needs of the applicant, or

c) where the guarantees and conditions for detention for an applicant as provided for in Articles 8-11 of Directive XXX/XXX (Reception Conditions Directive) are not met and there are no alternatives for detention.

In such cases, the applicant shall be granted entry to the Member State's territory.

3. [...] The border procedure may be applied to unaccompanied minors, ~~in accordance with Articles 8 to 11 of Directive XXX/XXX/EU (Reception Conditions Directive)~~ only in cases referred to in Article 36(1a) (a) and (b) and Article 40(5) of this Regulation. Minors, including unaccompanied minors may only be detained in the context of the border procedure provided that the guarantees and conditions in Article 8 to 11 of Directive XXX/XXX/EU (Reception Conditions Directive) are met.
4. [...] In the context of a border procedure, the competent authorities may take a decision on the explicit or implicit withdrawal of the application pursuant to Articles 38 and 39 [and carry out the procedure for determining the Member State responsible for examining the application as laid down in Regulation (EU) No XXX/XXX (Dublin Regulation)].
5. [...] By derogation from Article 28 of this Regulation, applications subject to a border procedure shall be lodged as soon as possible and no later than five days after registration.

6. Where, on the basis of evidence available, the determining authority prima facie or at a later stage during the administrative procedure, considers that the grounds for rejecting an application as inadmissible or for applying the accelerated examination procedure are not applicable, the border procedure shall cease to be applied. In such case, the applicant shall be granted entry to the Member State's territory.
7. A decision on an application subject to a border procedure shall be taken following an adequate and complete examination, ~~including by holding a personal interview, where needed via video conference.~~ By derogation from Article 34, a decision in the administrative procedure shall be taken as soon as possible and no later than ~~four~~ six weeks from when the application is lodged.
8. ~~For the purpose of Chapter V, Member States may provide that hearings before a court or tribunal of first instance may be held via video conference, provided that the necessary arrangements are in place.~~
9. Without prejudice to paragraph 10, where a decision on the application, including a decision by the court or tribunal of first instance on an appeal, is not taken within 12 weeks from when the application is lodged, the applicant shall be granted entry to the territory of the Member State in order for his or her application to be examined.
10. The 12-week period referred to in paragraph 9 may be extended to 16 weeks if the procedure cannot be concluded within that time due to actions of the applicant in order to delay or frustrate the ~~speedy~~ conclusion of the procedure, or where additional time is needed by the determining authority or the court or tribunal of first instance to ensure an adequate and complete examination or an effective remedy.

- ~~11. If an applicant is granted entry to the Member State's territory, he or she may no longer be detained pursuant to Article 8(3)(d) of Directive XXX/XXX/EU (Reception Conditions Directive), without prejudice to the application of other detention grounds under that Directive.~~
12. During the examination of applications subject to a border procedure, the applicants shall be accommodated at locations at or in proximity to the external border or transit zones. In the event of a disproportionate number of applications subject to a border procedure where the operational capacity of the locations at or in proximity of the external border or transit zones is exceeded or ~~impracticable~~ where such locations are not accessible for practical reasons, applicants may be accommodated at other locations. The examination of applications may take place in such locations.
13. While being subject to the border procedure, applicants may be transferred to locations referred to in paragraph 12, or between these locations or from these locations to the premises of the determining authority or to the competent court or tribunal of first instance for the purposes of the procedure.
15. Where the operational capacity is exceeded in all the locations mentioned in paragraph 12, the Member State concerned may suspend the application of the border procedure for new applications until the Member State has restored the operational capacity and in any event for no longer than six months. The suspension shall be notified to the Commission without delay.



*Subsequent applications*<sup>208</sup>

- 1. An application made where a final decision on a previous application by the same applicant has not yet been taken shall be considered as a further representation and not as a new application.<sup>209</sup>

That further representation shall be examined in the Member State responsible in the framework of the ongoing examination in the administrative procedure or in the framework of any ongoing appeal procedure in so far as the competent court or tribunal may take into account the elements underlying the further representation.<sup>210</sup>

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<sup>208</sup> **BE, CY, CZ, DE, NL, PT, SE, SI:** scrutiny reservation. **EL:** reservation on the definition of subsequent application; streamline with the cessation of responsibility clause in Dublin. **NL:** the system has become too complicated, as there are now three possible grounds to reject a subsequent applications with different procedural rules and consequences. **DE:** the subsequent application has to be lodged within three months. This time limit starts on the day, when the person concerned becomes aware of the new circumstances the application is based on.

<sup>209</sup> **ES:** redraft as follows: "*applicant in the MS responsible*" and "*taken by that MS*" (also valid for para (1)). **MT:** reservation; add "*Any further application made by the same applicant in the Member State responsible after a final decision has been taken on a previous application by the same applicant shall be considered as a subsequent application.*" This delegation is concerned about the practical implementation of the provision in paragraph -1 that a new application lodged in any MS before a final decision on the previous application is taken by the MS responsible, is to be considered as a further representation in the MS responsible (i.e. difficulties in sharing of data between MS and added administrative burden on national authorities). Therefore, this delegation is of the opinion that this provision should be deleted. **NL:** add the following text in para (-1): "*Where the court or tribunal is not competent according to national law to examine the further representation in the framework of an ongoing appeal procedure, the further representation shall be examined by the determining authority in accordance with paragraphs 2, 3, 3a and 4 of this Article.*"

<sup>210</sup> **HU:** "may" instead of "shall".

1. [...]Any further application made **by the same applicant** in a[...] Member State **after a final decision has been taken on a previous application by the same applicant** shall be considered [...] **as a subsequent application and shall be examined** by the Member State responsible.<sup>211</sup>
2. A subsequent application shall be subject to a preliminary examination in which the determining authority shall establish whether [...] new elements [...] have arisen or have been presented by the applicant **and** which:
  - (a) significantly increase the likelihood of the applicant **to qualify**[...] as a beneficiary of international protection by virtue of Regulation (EU) No XXX/XXX (Qualification Regulation); or
  - (b) [...] relate to **an inadmissibility ground previously applied, where** [...] the previous application was rejected as inadmissible.<sup>212</sup>

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<sup>211</sup> **EL, MT, NL:** reservation. **EL:** the definition is too broad; between two applications the situation in the country of origin may have deteriorated significantly, especially when the time lapse between the two is long enough. The current understanding of subsequent applications is that they are abusive and are lodged only to delay an eventual return or to prolong the stay in the MS responsible. However, if the applicant is returned/readmitted and becomes again an asylum-seeker, several years later, due to an overall change of circumstances in his/her country of origin/country of readmission, then his/her second application cannot be examined as a subsequent application, i.e. as an abusive one. A more appropriate definition is needed that will not risk restricting the rights of persons in real need; replace "any MS" by "the MS responsible". **MT:** delete para (-1) and redraft para (1) as follows: "After a previous application has been rejected by means of a final decision, any further application made by the same applicant in the MS responsible shall be considered as a subsequent application." Same concern applies in relation to applications lodged in any MS after a final decision has been taken on a previous application by the same applicant, which is to be considered as a subsequent application in the MS responsible. This delegation is concerned that these provisions will lead to a substantial increase in the number of subsequent applications that will have to be examined by the MS responsible. Therefore, this delegation is of the opinion that only further applications lodged in the MS responsible should be considered as subsequent applications. **IT:** it should be clarified how information on subsequent applications are supposed to be shared among Member States, and so how the responsible Member State could have access to a subsequent application in order to take it into account during the administrative or judicial procedure. **ES:** "that MS" instead of "a MS".

<sup>212</sup> **BE:** clarify this point and para (3a).

3. The preliminary examination shall be carried out on the basis of written submissions [...] or a personal interview in accordance with the basic principles and guarantees provided for in Chapter II. **In particular, [...]**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 [...] new elements **as referred to in paragraph 2 [...]**.
- 3a. The elements presented by the applicant shall be considered as being new only where the applicant was unable, through no fault on his or her own part, to present those elements in the context of the earlier application.<sup>213</sup> Any elements which could have been presented earlier by the applicant ~~shall~~need not be taken into account unless the previous application was rejected as implicitly withdrawn in accordance with Article 39 without an examination on the merits.**
4. [...]Where[...] new elements **as referred to in paragraph 2 [...]** have been presented by the applicant **or have arisen, the application shall be further examined on its merits, unless the application may be considered as inadmissible on the basis of another ground provided for in Article 36(1a).**
- (b) [...]

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<sup>213</sup> **IT:** reservation. **HU:** cannot examine new elements if implicitly withdrawn. **SE:** prefers previous text for this para. In 42(3a) there needs to be a possibility to examine a subsequent application even if the new elements could have been presented earlier but nevertheless suggest that the applicant may have a protection need. In this regard also, recital 21b in the Qualification Regulation regarding claims based on sexual orientation, should be noted. In these cases, the authorities must be able to try the application on the merits. SE therefore suggests keeping the wording “unless it is considered unreasonable not to take those elements or findings into account” in 42(3a).

5. Where **no new elements as referred to in paragraph 2 have been presented by the applicant or have arisen, the application shall be rejected** as inadmissible pursuant to Article 36 (1aa)(a) [...].

*Article 43*

**Exception from the right to remain in subsequent applications**

Without prejudice to the principle of *non-refoulement*,<sup>214</sup> Member States may provide an exception from the right to remain on their territory and derogate from Article 54[...] (3)(ba), [...] **as from when:**

- (-a) **a first subsequent application has been lodged, merely in order to delay or frustrate the enforcement of a decision which would result in his or her imminent removal from that Member State and is not further examined pursuant to Article 42(5);**<sup>215</sup>
- (a) a **first** subsequent application [...] **is** rejected by the determining authority as inadmissible, **unfounded** or manifestly unfounded;<sup>216</sup>
- (b) a second or further subsequent application is made in any Member State following a final decision rejecting a previous subsequent application as inadmissible **or** unfounded or manifestly unfounded.<sup>217</sup>

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<sup>214</sup> **EL:** unclear how this principle will be respected while at the same time, denying the right to an effective remedy to all rejected subsequent applications.

<sup>215</sup> **SE:** difficult provision; the difference in application between (-a) and (a) is unclear. **PRES:** the cases <sup>covered</sup> by (-a) do not require that the subsequent application is rejected (different moment in time).

<sup>216</sup> **EL:** reservation; according to this provision, there is no suspensive effect of the appeal in cases of subsequent applications that are rejected as inadmissible. This is problematic because it denies the right to an effective remedy. When the appeal will be examined by the court or tribunal and if the inadmissible decision is overturned, the applicant will no longer be in the MS in order to benefit from it.

<sup>217</sup> **EL, ES:** reservation regarding the reference to "any MS" (supported by **IT**) and "final decision". **ES, MT:** replace "any MS" with "the MS responsible".

## SECTION V

### SAFE COUNTRY CONCEPTS<sup>218</sup>

#### *Article 43a*

#### The notion of effective protection<sup>219</sup>

1. A third country that has ratified and respects the Geneva Convention within the limits of the derogations or limitations made by that third country, as permitted under the Convention, shall be considered as ensuring effective protection. In case of geographical limitations made by the third country, the existence of protection for persons who fall outside of the scope of the Convention shall be assessed in accordance with the criteria set out in paragraph 2.<sup>220</sup>

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<sup>218</sup> **BE, DE, EL, ES, SI, SK:** scrutiny reservation. **BG, CY, HU:** reservation. **NL:** the external dimension plays a crucial role when controlling the asylum influx. Based on this awareness, it is important to put the principle of reception and shelter in the region into effect as successful as possible. There should be an appropriate balance between guaranteeing fundamental human rights (safety, shelter and medical care) and putting the principle of reception in the region into effect more successfully.

<sup>219</sup> **FR:** scrutiny reservation. **NL:** suggestion for recital to Art 43a: "*In addition to the requirement of sufficient protection and with a view to effective return and sustainable reception, where the European Union and a third country jointly come to a statement, arrangement or agreement to protect migrants in the third country, the objective should be to offer a higher level of protection in accordance with relevant substantive standards of the Geneva Convention.*" **HU:** reduce the list of conditions.

<sup>220</sup> **ES:** against geographical limitations.

2. In cases other than that referred to in paragraph 1, that third country shall be considered as ensuring effective protection where the following criteria are met as a minimum:

- (a) being allowed to remain on the territory of the third country;<sup>221</sup>
- (b) access to means of subsistence sufficient to maintain an adequate standard of living;<sup>222</sup>
- (c) access to emergency healthcare and essential treatment of illnesses; and
- (d) access to elementary education.

*Article 44*

**The concept of first country of asylum<sup>223</sup>**

1. A third country **may only** [...] be considered to be a first country of asylum for an [...] applicant **where in that country** [...]:
- (a) [...] **the applicant's life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;**

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<sup>221</sup> **LU:** prefers "right to lawfully stay". **PT:** it should right to residence; right to family reunification should be mentioned too.

<sup>222</sup> **HU:** scrutiny reservation; this points generates, together with the recitals, a complex set of conditions which makes it difficult to any third country to meet these conditions.

<sup>223</sup> **BE, BG, DE, NL:** scrutiny reservation. **IT, EL, ES:** reservation linked to Dublin. **ES, IT, LU:** this concept should not apply to UAMs; this should be specified at least in a recital. **HU:** keep "*shall*", red line for this delegation. **SI:** "*shall*" is preferable

- (b) [...] the applicant faces no real risk of serious harm as defined in Article 16 of Regulation (EU) No XXX/XXX (Qualification Regulation);
- (ba) the applicant is protected against refoulement and against removal, in violation of the right to protection from torture and cruel, inhuman or degrading treatment or punishment as laid down in international law;
- (bb) the applicant enjoyed effective protection as defined in Article 43a before travelling to the Union and he or she can still avail himself or herself of that protection.

- 2. [...]
- (a) [...]
- (b) [...]
- (c) [...]
- (d) [...]
- (e) [...]
- (f) [...]
- (g) [...]

- 2a. [...]An individual assessment of the particular circumstances of the applicant shall be carried out taking into account elements submitted by the applicant explaining why the concept of first country of asylum would not be applicable to him or her.
3. [...]
4. [...] <sup>224</sup>
5. [...]
- (a) [...]
- (b) [...]
6. Where the third country in question does not [...] readmit the applicant to its territory **or does not reply within a time limit set by the competent authority**, the applicant shall [...] **have access to the procedure in accordance with the basic principles and guarantees provided for in Chapter II and Section I of Chapter III.** <sup>225</sup>
7. [...]

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<sup>224</sup> **IT:** a para on UAM should be included: “*The determining authority shall examine if the concept of first country of asylum is in the best interest of the child and if there is a connection between the minor and the third country in question.*”

<sup>225</sup> **DE:** scrutiny reservation. **FR, HU:** reservation; in case of non-admission, the file should be managed as a subsequent application. **CZ:** the determining authority should either continue the examination of the application, or new application should be made. **PRES:** both options are possible.



Article 45

**The concept of safe third country<sup>226</sup>**

1. A third country **may only** [...] be designated as a safe third country [...] **where in that country.**<sup>227</sup>
  - (a) **non-nationals'** life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;
  - (b) **non-nationals face** [...] no **real** risk of serious harm as defined in **Article 16 of Regulation (EU) No XXX/XXX (Qualification Regulation)**;
  - (c) **non-nationals are protected against** [...] refoulement [...] **and against** [...] removal, in violation of the right to **protection** [...] from torture and cruel, inhuman or degrading treatment **or punishment** as laid down in international law [...];<sup>228</sup>
  - (e) the possibility exists **to request and, if conditions are fulfilled, receive effective protection as defined in Article 43a** [...].
- 1a. **The designation of a third country as a safe third country may be made with exceptions for specific parts of its territory or clearly identifiable categories of persons.**<sup>229</sup>

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<sup>226</sup> **BE, BG, DE, FR, IT, SE, LU:** scrutiny reservation. **CY:** reservation.

<sup>227</sup> **SI:** prefers "*shall*". **HU:** reservation, "*shall*" instead of "*may*" (red line).

<sup>228</sup> **DE, ES:** add "*and*" at the end of this point. **PRES:** the conditions in para (1) are cumulative.

<sup>229</sup> **FR:** reservation; the exceptions should be individual. **EL, ES, FR, IT, LU:** delete this para.

**1b.** [...] **When assessing** whether a third country [...] is a safe third country in accordance with this Regulation **account shall be taken of [...]** a range of **relevant and available** sources of information, including [...] from Member States, the European Union Agency for Asylum, the European External Action Service, the United Nations High Commissioner for Refugees [...] and other relevant **intergovernmental or international** organisations.<sup>230</sup>

2. The concept of safe third country **may** [...] be applied.<sup>231</sup>

[...] where a third country has been designated as safe third country **at Union or national level** in accordance with Articles **46 or 50**<sup>232</sup> **or**

[...]

(b) [...]

[...] in relation to a specific applicant **where the country has not been designated as safe third country at Union or national level, provided that the conditions set out in paragraph 1 are met with regard to that applicant.**<sup>233</sup>

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<sup>230</sup> **HU:** "*may*" instead of "*account shall be taken of*".

<sup>231</sup> **EL, FR:** "*may*" instead of "*shall*".

<sup>232</sup> **ES, IT, LU:** designation should only be at Union level. **EL:** reservation. Mandatory only upon designation at Union level. **FR:** reservation.

<sup>233</sup> **HU:** reservation, "*shall*" instead of "*may*" (red line).

**2b. The concept of safe third country may only be applied provided that:**

- (a) an [...] individual assessment of the particular circumstances of the applicant has [...] been carried out taking into account elements submitted by the applicant explaining why the concept of safe third country would not be applicable to him or her;<sup>234</sup>**
- (b) there is a connection between the applicant and the third country in question on the basis of which it would be reasonable for that person to go to that country.**

3. [...]

(a) [...]

(b) [...]

4. [...]

5. [...]<sup>235</sup>

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<sup>234</sup> **NL:** add a new point: *"Where the EU and a third country jointly have come to a statement, arrangement or agreement that migrants admitted under this statement, arrangement or agreement will be protected in accordance with the relevant international standards and in respect of the principle of non-refoulement, the conditions of paragraph 2 may be considered fulfilled."*

<sup>235</sup> **ES, LU, IT, PT:** against deletion; this concept should not be applied to UAMs. **IT:** *"The determining authority shall examine if the concept of safe third country is in the best interest of the child and if there is a connection between the minor and the third country in question."*

6. [...]
  - (a) [...]
  - (b) [...]
7. Where the third country in question does not admit or readmit the applicant to its territory **or does not reply within a time limit set by the competent authority**, the **applicant [...]** shall **have [...]** access to the procedure in accordance with the basic principles and guarantees provided for in Chapter II and Section I of Chapter III.<sup>236</sup>

*Article 46*

**Designation of safe third countries at Union level**

1. Third countries **listed in Annex 1a to this Regulation** are [...] designated as safe third countries at Union level, in accordance with the conditions laid down in Article 45(1).

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<sup>236</sup> **HU, IT, PL, SI:** reservation linked to the Dublin Regulation. **DE:** scrutiny reservation. **HU:** reservation, in case of non-admission, the file should be managed as a subsequent application. **NL:** Add a new para 45(8): "*Where a situation of severe crisis as mentioned in Article 34m of [the Dublin Regulation] occurs, paragraphs 1(e) and 2b(b) do not apply, provided that :*

- (a) *the applicant will be admitted to the territory of the third country;*
- (ii) *he or she has access to reception conditions or means of subsistence sufficient to maintain at least a basic standard of living;*
- (iii) *access to emergency healthcare and essential treatment of illnesses; and*
- (iv) *access to elementary education under the same conditions as for the nationals of the third country."*

2. The Commission shall [...] review the situation in third countries that are **on the EU common list of [...]** safe third countries [...] with the assistance of the European Union Agency for Asylum and based on the other sources of information referred to in [...] Article 45(1b).
- 2a. **The European Union Agency for Asylum shall, at the request of the Commission, provide it with information on specific third countries which could be considered for inclusion in the EU common list of safe third countries. The Commission may take into account a request from a Member State[...] to assess whether a third country could be designated as a safe third country at Union level.**<sup>237</sup>
3. The Commission shall be empowered to adopt delegated acts to suspend the designation of a third country as a safe third country at Union level subject to the conditions as set out in Article 49.<sup>238</sup>

*Article 47*

**The concept of safe country of origin**<sup>239</sup>

1. A third country [...] may **only** be designated as a safe country of origin in accordance with this Regulation where, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is generally no persecution as defined in Article 9 of Regulation (EU) No XXX/XXX (Qualification Regulation) [...] **and no real risk of serious harm as defined in Article 16 of Regulation (EU) No XXX/XXX (Qualification Regulation).**<sup>240</sup>

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<sup>237</sup> **BE, NL:** "shall" not "may". **PRES:** such a change would interfere with COM right of initiative.

<sup>238</sup> **CY:** scrutiny reservation. **HU:** delete this para.

<sup>239</sup> **BE, BG:** scrutiny reservation. **CY:** reservation.

<sup>240</sup> **DE:** scrutiny reservation on "that there is generally no persecution". **HU:** "shall" instead of "may" (red line). **SI:** "shall" is preferable.

- 1a. **The designation of a third country as a safe country of origin may be made with exceptions for specific parts of its territory or clearly identifiable categories of persons.**<sup>241</sup>
2. [...] **When assessing** whether a third country [...] is a safe country of origin in accordance with this Regulation **account shall be taken of** [...] a range of **relevant and available** sources of information, including [...] information from Member States, the European Union Agency for Asylum, the European External Action Service, the United Nations High Commissioner for Refugees, [...] **and** other relevant **intergovernmental or international** organisations, and shall take into account **where available** the common analysis of the country of origin information referred to in Article 10 of Regulation (EU) No XXX/XXX (EU Asylum Agency).<sup>242</sup>
3. In making this assessment, account shall be taken, *inter alia*, of the extent to which protection is provided against persecution or [...] **serious harm** by:
- (a) the relevant laws and regulations of the country and the manner in which they are applied;
  - (b) observance of the rights and freedoms laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms or the International Covenant for Civil and Political Rights or the United Nations Convention against Torture, in particular the rights from which derogation cannot be made under Article 15(2) of the said European Convention;

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<sup>241</sup> **FR:** reservation. **IT:** at the end add "*or particular social group*" to align the text to both Geneva Convention and Art. 44(1)(a). **ES, FR, LU:** against geographical limitations.

<sup>242</sup> **FR:** prefers "*shall be based on*". **HU:** "*may*" instead of "*account shall be taken of*".

(c) [...]

(d) the provision for a system of effective remedies against violations of those rights and freedoms.

4. **The concept of [...] a safe country of origin [...] may [...] only be applied provided that [...]:<sup>243</sup>**

(a) **[...] the applicant** has the nationality of that country or he or she is a stateless person and was formerly habitually resident in that country;

[...]

(aa) **the applicant does not belong to a category of persons for which an exception was made when designating the third country as a safe country of origin;<sup>244</sup>**

(b) **an individual assessment of the particular circumstances of the applicant has been carried out taking into account elements submitted by the applicant explaining why the concept of safe country of origin would not be applicable to him or her [...]<sup>245</sup>**

[...]

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<sup>243</sup> **HU:** reservation, "*shall*" instead of "*may*" (red line).

<sup>244</sup> **EL, FR, IT, NL:** reservation. **SK** supported by **NL:** keep reference to "*the applicant does not come from a part of the third country for which an exception was made*". **PRES:** the applicant can go to the safe parts of the third country

<sup>245</sup> **CZ:** scrutiny reservation. **IT:** replace "*serious*" with "*substantive*". **FR:** previous wording is preferable.

Article 48

**Designation of safe countries of origin at Union level<sup>246</sup>**

1. Third countries listed in Annex I<sup>247</sup> to this Regulation are designated as safe countries of origin at Union level, in accordance with the conditions laid down in Article 47.
2. The Commission shall [...] review the situation in third countries that are on the EU common list of safe countries of origin, with the assistance of the **European** Union Agency for Asylum and based on the other sources of information referred to in Article 47[...] (2).
3. [...] **The European** Union Agency for Asylum **shall, at the request of the Commission,** [...] provide it with information on specific third countries which could be considered for inclusion in the common EU list of safe countries of origin.<sup>248</sup> **The Commission may take into account a request from a Member State[...] to assess whether a third country could be included in the common EU list of safe countries of origin.**<sup>249</sup>
4. The Commission shall be empowered to adopt delegated acts to suspend the presence of a third country from the EU common list of safe countries of origin subject to the conditions as set out in Article 49.<sup>250</sup>

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<sup>246</sup> **SK:** scrutiny reservation.

<sup>247</sup> **BE, DE, EE, ES, FR, IE, MT, SE, SK:** scrutiny reservation on Annex I. **CY:** reservation on Annex I. **CY, DE, NL:** deciding whether to include Turkey in the list depends on further developments there and it should be done in close consultation with the European partners and EU institutions. **IT:** the list in Annex I should include all TC relevant for MS.

<sup>248</sup> **NL:** reservation.

<sup>249</sup> **BE, NL:** "*shall*" instead of "*may*".

<sup>250</sup> **CY:** scrutiny reservation. **HU:** delete this para.



Article 49

**Suspension and removal [...] of a third country [...] from the EU common lists of safe third country or of safe country of origin<sup>251</sup>**

1. In case of [...] **significant** changes in the situation of a third country [...] which is on the EU common lists **of safe third country or** of safe countries of origin, the Commission shall conduct a substantiated assessment of the fulfilment by that country of the conditions set in Article 45 or Article 47 and, if the Commission considers that those conditions are no longer met, it shall adopt a delegated act suspending [...] the presence of a third country from the EU common lists **of safe third countries or** of safe countries of origin for a period of six months.<sup>252</sup>
2. The Commission shall continuously review the situation in that third country taking into account *inter alia* information provided by the Member States **and the European Agency for Asylum** regarding subsequent changes in the situation of that country.<sup>253</sup>
3. Where the Commission has adopted a delegated act in accordance with paragraph 1 [...] suspending the presence of a third country from the EU common lists **of safe third countries or** of safe countries of origin, it shall within three months after the date of adoption of that delegated act submit a proposal, in accordance with the ordinary legislative procedure, for amending this Regulation to remove that third country [...] from the EU common lists **of safe third countries or** of safe countries of origin.<sup>254</sup>

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<sup>251</sup> **HU:** reservation.

<sup>252</sup> **HU:** delete from "*the Commission shall...*"

<sup>253</sup> **IT:** delete para (2) as it is redundant.

<sup>254</sup> **IT:** one month instead of three months. **HU:** delete this para.

4. Where such a proposal is not submitted by the Commission within three months from the adoption of the delegated act as referred to in paragraph 1[...], the delegated act [...] suspending the presence of the third country from the EU common lists of **safe third countries or** of safe countries of origin shall cease to have effect. Where such a proposal is submitted by the Commission within three months, the Commission shall be empowered, on the basis of a substantiated[...] assessment, to extend the validity of that delegated act for a period of six months, with a possibility to renew this extension once.<sup>255</sup>

4a. **Without prejudice to paragraph 4, where the proposal submitted by the Commission to amend this Regulation to remove the third country from the EU common lists of safe third countries or of safe countries of origin is not adopted within eighteen months from when the proposal was submitted by the Commission, the suspension of the presence of a third country from the EU common lists of safe third countries or of safe countries of origin shall cease to have effect.**<sup>256</sup>

#### *Article 50*

#### **Designation of third countries as safe third countries or safe country of origin at national level**<sup>257</sup>

1. [...] Member States may retain or introduce legislation that allows for the national designation of safe third countries or safe countries of origin other than those [...] which are on the EU common lists in Annex 1 **and 1a** for the purposes of examining applications for international protection.

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<sup>255</sup> **IT:** one month instead of three months. **HU:** delete this para.

<sup>256</sup> **EL:** scrutiny reservation. **CZ, SK:** 12 months instead of 18. **HU:** delete this para.

<sup>257</sup> **SI:** for this delegation a mandatory and unified application of the safe country concept at the EU level is one of the most important pillars of reaching more convergence and harmonization in the EU asylum acquis. No support for the inclusion of national lists in the regulation.

2. Where [...] the presence of a third country has been suspended from the EU common lists in Annex 1 **or 1a** to this Regulation pursuant to Article 49(1), Member States shall not designate that country as a safe third country or a safe [...] country of origin at national level [...].<sup>258</sup>
3. Where a third country [...] has been removed from the EU common lists in Annex[...] **I or Ia** to the Regulation in accordance with the ordinary legislative procedure, a Member State may notify the Commission that it considers that, following changes in the situation of that country, it again fulfils the conditions set out in Article 45(1) and Article 47.

The notification shall include a substantiated assessment of the fulfilment by that country of the conditions set out in Article 45(1) and Article 47 including an explanation of the specific changes in the situation of the third country, which make the country fulfil those conditions again.

**Following the notification, the Commission shall request the European Union Agency for Asylum to provide it with information on the situation in the third country.**

The notifying Member State may only designate that third country as a safe third country or as a safe country of origin at national level provided that the Commission does not object to that designation. <sup>259</sup>

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<sup>258</sup> **HU:** delete this para.

<sup>259</sup> **DE:** unclear how suspending/removing a country from the common EU list will affect an existing designation at national level. Art. 50(2) and (3) only refer to the subsequent national designation. **PRES:** where a third country is on the EU common list it must be removed from a national list.

**The Commission's right of objection shall be limited to a period of two years after the date of removal of that third country from the EU common lists of safe countries of origin or of safe third countries. Any objection by the Commission shall be issued within a period of three months after the date of notification by the Member State and after due review of the situation in that third country, having regard to the conditions set out in Articles 45(1) and 47 of this Regulation. After the period of two years, the Member State shall consult the Commission on the designation of that third country as a safe third country or as a safe country of origin at the national level.**<sup>260</sup>

**Where it considers that those conditions are fulfilled, the Commission may propose an amendment to this Regulation in order to add that third country to the EU common lists of safe countries of origin or of safe third countries.**<sup>261</sup>

4. Member States shall notify the Commission and the European Union Agency for Asylum of the third countries that are designated as safe third countries or safe countries of origin at national level **upon the date of application of this Regulation and** immediately after [...] **each designation or changes to the designations.** Member States shall inform the Commission and the Agency once a year of the other safe third countries to which the concept is applied [...] in relation to specific applicants **as referred to in Article 45(2a).**<sup>262</sup>

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<sup>260</sup> **ES:** delete last sentence.

<sup>261</sup> **HU:** delete the last two paras.

<sup>262</sup> **NL:** scrutiny reservation. **ES:** in the light of para (1), both newly designated countries and the third countries already designated at national level should be notified on the date of entry into force of this Regulation; it would also be useful to mention a deadline by which Member States should inform the Commission and the European Union Agency for Asylum in relation to the countries to which they apply "ad hoc" (see also the comment under para (2)) the concepts in question (given that this would allow an EU-wide analysis to be carried out in the year in which the information is communicated in this case, and on the basis of this analysis, unitary practices could be stimulated / adopted). **FR:** delete the second sentence (see comment on Art. 44 (7)). **PRES:** MS must notify of any existing list of the time of application of this regulation or of any changes of that list. **SE:** concerned about is reporting on the application in relation to specific applicants and countries, since such information is not readily available.

## CHAPTER IV

# PROCEDURES FOR THE WITHDRAWAL OF INTERNATIONAL PROTECTION<sup>263</sup>

### *Article 51*

#### **Withdrawal of international protection**

The determining authority shall start the examination to withdraw international protection from a **third-country national or stateless** [...] person [...] when new elements or findings arise indicating that there are reasons to reconsider [...] **whether he or she qualifies for international protection.**<sup>264</sup> **Such an examination may also be initiated under other circumstances.**

### *Article 52*

#### **Procedural rules for withdrawal of international protection<sup>265</sup>**

1. Where the [...] **determining authority or, if provided for by national law, a competent court or tribunal** [...] **starts the examination to withdraw** international protection from a third-country national or a stateless person, [...] the person concerned shall enjoy the following guarantees [...]:
  - (a) he or she shall be informed in writing that [...] his or her qualification as a beneficiary of international protection **is being reconsidered** and the reasons for such [...] reconsideration; and

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<sup>263</sup> **SI:** scrutiny reservation.

<sup>264</sup> **DE, FR:** scrutiny reservation.

<sup>265</sup> **DE:** scrutiny reservation.

- (aa) **he or she shall be informed of the obligation to cooperate fully with the determining authority and other competent authorities, the fact that he or she shall be required to make a written statement or appear for a personal interview or a hearing as well as of the consequences of not cooperating with the determining authority and other competent authorities and that failure to submit the written statement or to attend the personal interview or the hearing without due justification shall not prevent the determining authority or the competent court or tribunal from taking a decision to withdraw international protection.**
- (b) **he or she shall be given the opportunity to submit [...] reasons as to why his or her international protection should not be withdrawn by means of a written statement within reasonable time from the date on which he or she receives the information referred to in point (a) [...] or in a personal interview or hearing at a date set by the determining authority or if provided for by national law, the competent court or tribunal [...].**

2. For the purposes of paragraph 1, **the determining authority or the competent court or tribunal [...]:**

- (a) **[...] shall obtain relevant, precise and up-to-date information from relevant and available national, Union and international [...] sources, [...] and where [...] available, take into account the common analysis on the situation in a specific country of origin and the guidance notes referred to in Article 10 of Regulation No XXX/XXX [...] Regulation on the European Union Agency for Asylum] [...]; and**

- (b) [...] **shall** not obtain[...] **information** from the actors of persecution or serious harm in a manner that would result in such actors being directly informed of the fact that the person concerned is a beneficiary of international protection whose status is under reconsideration, or jeopardise the physical integrity of the person or his or her dependants, or the liberty and security of his or her family members still living in the country of origin.
3. The decision [...] to withdraw international protection shall be given in writing. The reasons in fact and in law shall be stated in the decision and information on the manner in which to challenge the decision shall be given in writing.
4. Where the determining authority has taken the decision to withdraw international protection, the provisions of Article [...] **5b**, [...] Articles 15a to [...] **17 and Article 53 (4a)** shall apply.<sup>266</sup>
- 4a. Where the third country national or stateless person does not cooperate, where applicable, by not submitting a written statement or by not attending the personal interview or the hearing without due justification, the absence of the written statement or the personal interview or hearing shall not prevent the determining authority or the competent court or tribunal from taking a decision to withdraw international protection [...]. Such refusal to cooperate may only be considered as a rebuttable presumption that the third country national or stateless person [...] no longer wishes to benefit from [...] [...] international protection.**<sup>267</sup>

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<sup>266</sup> **CZ, DE, EL:** scrutiny reservation.

<sup>267</sup> **BE, EL:** scrutiny reservation. **DE:** reservation on para (4a); add "*If no response is received within this time limit with an adequate excuse, the competent authority shall decide in accordance with national law on how to consider, and the effects of, the failure to cooperate*" and "*If the person concerned does not comply with this request, he or she shall be informed in writing of the time limit of one month and the legal consequences of failure to comply*". **SE:** keep the previous text about "*sufficient elements to consider that the person no longer qualifies for international protection*"

5. [...] **The procedure set out in this Article shall not apply [...]** where the **third country national or stateless person [...]**<sup>268</sup>:
- (a) [...] **explicitly [...]** renounces[...], **in writing**, his or her recognition as **beneficiary of international protection [...]**or
  - (b) **where he or she [...]** has become a national of [...] **a Member State [...]**.<sup>269</sup>

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<sup>268</sup> **SK:** reservation.

<sup>269</sup> **DE:** scrutiny reservation on para (5).



## CHAPTER V

### APPEAL PROCEDURE<sup>270</sup>

#### *Article 53*

#### **The right to an effective remedy<sup>271</sup>**

1. Applicants have the right to an effective remedy before a court or tribunal [...] against the following:<sup>272</sup>
  - (a) a decision taken on their application for international protection [...]:
    - (i) rejecting an application as inadmissible [...];
    - (ii) rejecting an application as unfounded or manifestly unfounded in relation to refugee status or subsidiary protection status [...];
    - (iii) rejecting an application as [...] **implicitly** withdrawn [...];
    - (iv) [...].
  - (b) a decision to withdraw international protection [...].<sup>273</sup>

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<sup>270</sup> **CZ, DE, EL, ES, PT, SK, SI:** scrutiny reservation.

<sup>271</sup> **HU, IT:** scrutiny reservation.

<sup>272</sup> **DE:** scrutiny reservation n para (1).

<sup>273</sup> **DE, EL:** another category of cases should be added, covering disputes between member states and beneficiaries of protection as to whether protection status pursuant to Art. 52 (5) of the Asylum Procedures Regulation has expired by law, i.e. not due to an administrative decision

2. Persons recognised as eligible for subsidiary protection have the right to an effective remedy against a decision considering [...] **the** application unfounded in relation to refugee status. **Without prejudice to paragraph 1(b), where subsidiary protection status granted by a Member State offers the same rights and benefits as refugee status under Union and national law, the appeal against that decision in that Member State may be considered as inadmissible where provided for in national law.**<sup>274</sup>
3. An effective remedy within the meaning of paragraph 1 shall provide for a full and *ex nunc* examination of both facts and points of law, **at least before a court or tribunal of first instance**, including, where applicable, an examination of the international protection needs pursuant to Regulation (EU) No XXX/XXX (Qualification Regulation).<sup>275</sup>
- 3a. **Member States may provide in national law that [...]**the applicant may only bring forward new elements which are relevant for the examination of his or her application and which he or she could not have been aware of at an earlier stage or which relate to changes to his or her situation.<sup>276</sup>

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<sup>274</sup> **EL:** scrutiny reservation. **CZ:** add "*by the court or tribunal*" in the end. **DE:** does "*may*" refer to a legislative option for MS?

<sup>275</sup> **CZ, HU, PL, SK:** it should not mean that the court will have the power to grant international protection itself. **CZ, EL,** clarify "*including, where applicable, an examination of the international protection needs pursuant to Regulation (EU) No XXX / XXX (Qualification Regulation)*", in the context of the preliminary references to the rulings of the European Court of Justice in cases C-586/17 and C-652/16. **PRES:** the court or tribunal should be able to pronounce itself on the international protection needs but it is not required that the court or tribunal formally issues the decision granting international protection if under national law that competence is reserved to the determining authority.

<sup>276</sup> **DE:** the court or tribunal may exclude from the examination of the appeal any elements related to the examination of the application which the applicant could have already brought forward during the administrative procedure as the applicant had been aware of them at the time of the administrative procedure, if the applicant had been duly informed and provides no sufficient justification for not presenting those elements earlier at the time of the administrative procedure.

4. [...] <sup>277</sup>

4a. Applicants shall be provided with interpretation for the purpose of a hearing before the competent court or tribunal where such a hearing takes place and where appropriate communication cannot otherwise be ensured. <sup>278</sup>

5. Where the court or tribunal considers it necessary, it shall ensure the translation of relevant documents which have not already been translated in accordance with Article 33(4). Alternatively, the translation of those relevant documents may be provided by other entities and paid for from public funds in accordance with national law.

**If the applicant agrees that the translation is not needed or the documents are not submitted sufficiently in advance for the court or tribunal to ensure their translation, the court or tribunal may refuse to take those documents into account if they are not accompanied by a translation provided by the applicant.**

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<sup>277</sup> EL: against deletion.

<sup>278</sup> SK: scrutiny reservation.

6. [...] Member States shall lay down in their national law time-limits for applicants to lodge an appeal[...] against [...] a decision referred to in paragraph 1. Those time-limits shall be set:<sup>279</sup>
- (a) [...];
  - (b) [...] between a minimum of two days and a maximum of one week in the case of a decision rejecting an application as inadmissible, as implicitly withdrawn, as unfounded or manifestly unfounded if at the time of the decision any of the circumstances listed in Article 40(1) and (5) apply [...] or in cases where the applicant is held in detention or kept at the border subject to the procedure referred to in Article 41.<sup>280</sup>
  - (c) [...] between a minimum of one week and a maximum of [...]two months in all other cases [...].<sup>281</sup>

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<sup>279</sup> **SK:** reservation on para (6). **EL:** scrutiny reservation on the time-limits. **DE:** this delegation is in favour of time limits for lodging appeals and applications which correspond to those in national law: for appeals, in principle two weeks; time limits of one week for lodging appeals and applications in case of rejection as inadmissible or manifestly unfounded. **HU, SE, SK, ES:** replace para (6) with the following text: "*Member States shall provide for reasonable time limits and other necessary rules for the applicant to exercise his or her right to an effective remedy. The time limits shall not render such exercise impossible or excessively difficult.*"

<sup>280</sup> **LV:** scrutiny reservation. **SK:** at least 2 weeks after appointment of representative. **SE:** deadlines in national law. **ES:** only minimum deadlines. **LV:** maximum of 2 weeks. **DE:** Can the application only be rejected as manifestly unfounded in the accelerated examination procedure or is this only a reference to the specific circumstances of Art. 40 para 1 and 5? DE prefers the second option and wishes clarification. **PRES:** This refers to applications rejected as either unfounded in the specific circumstances of Article 40(1) and (5) or manifestly unfounded in the specific circumstances of Article 40(1) and (5).

<sup>281</sup> **DE:** scrutiny reservation. **HU:** deadline too long. **PRES:** this is a balanced compromise. **ES:** two months or no maximum deadline.

[...] Member States may provide for an *ex officio* review of decisions taken pursuant to a border procedure.<sup>282</sup>

The time-limits [...] **referred to** in this paragraph shall start to run from the date when the decision of the determining authority is notified to the applicant **or his or her representative or legal adviser in accordance with Article 35 (1)[...]**.<sup>283</sup> **The procedure for notification shall be laid down in national law.**

#### Article 54

#### Suspensive effect of appeal<sup>284</sup>

1. [...] Applicants **shall have the right** to remain on **the**[...] territory of [...] **the Member State responsible** until the time limit within which to exercise their right to an effective remedy **before a court or tribunal of first instance** has expired and, when such a right has been exercised within the time limit, pending the outcome of the remedy.<sup>285</sup>

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<sup>282</sup> **ES, HU:** reservation on the *ex officio* reviewing procedure. **PRES:** it is a “*may*” clause. **SE:** scrutiny reservation on the reference to a border procedure. Delete the last part (“*taken pursuant to a border procedure*”).

<sup>283</sup> **DE:** reservation.

<sup>284</sup> **DE, ES, IT, SI:** scrutiny reservation. **ES:** reservation. **EL:** the case-by-case examination of the right to remain should not be part of the asylum procedure but rather part of the return procedure. We risk overburdening the authorities dealing with second instance examination.

<sup>285</sup> **DE:** reservation; in case of a return decision and/or a decision on removal and/or entry ban has been adopted in accordance with Article 6(6) of Directive 2008/115/EC, this decision shall be suspended accordingly. **FR:** the reference to the right to remain on the territory is problematic in case of a border procedure.

2. **The applicant shall not have the right to remain in accordance with paragraph 1 [...] [...]in case of the following [...] decisions by the [...]competent authority.**<sup>286</sup>
- (a) a decision which [...] **rejects** an application [...] **as unfounded or** manifestly unfounded **if at the time of the decision any of the circumstances listed in Article 40(1) and (5) apply or in the cases subject to a border procedure [...]**;<sup>287</sup>
  - (b) a decision which rejects an application as inadmissible pursuant to Article 36(1a)(a), (f) **and (g) and [...] (1aa)(a) [...]**;<sup>288</sup>
  - (c) a decision which rejects an application as [...] **implicitly** withdrawn [...];<sup>289</sup>
  - (ca) **a decision to withdraw international protection in accordance with Article 14(1)(b), (d) and (e) and Article 20(1)(b) of Regulation No XXX/XXX (Qualification Regulation).**

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<sup>286</sup> **DE:** scrutiny reservation; redraft this para as follows: "*The applicant's right to remain on the territory of the Member State in accordance with paragraph 1 shall be excluded: a) in cases where the application is rejected as inadmissible or as manifestly unfounded, b) in cases where international protection is withdrawn pursuant to Article 52 for the following reasons: (i) Article 14 paragraph 1 letter b) in conjunction with Article 12 paragraph 2 of the [Qualification Regulation], (ii) Article 14 paragraph 1 letters d) to f) of the [Qualification Regulation], (iii) Article 20 paragraph 1 letter b) in conjunction with Article 18 paragraph 1 of the [Qualification Regulation] or (iv) Article 20 paragraph 1 letter d) of the [Qualification Regulation]. In cases under sentence 1, a court or tribunal shall have the power to rule whether or not the applicant may remain on the territory of the Member State responsible, either upon the applicant's request or acting ex officio.*" **BE:** against non-automatic suspensive effect because administrative burden for courts to decide.

<sup>287</sup> **SE:** delete "*in the cases subject to an accelerated examination procedure or border procedure.*" **PRES:** this is covered under point (ca) and accelerated procedure.

<sup>288</sup> **IT:** reservation. **DE:** include 36(1a)(b). **CZ:** include also 36(1aa)(c). **PRES:** that point is in square brackets due to discussions on Dublin.

<sup>289</sup> **DE:** scrutiny reservation on the categories in (a)-(c).

- 2a. Member States that apply Article 36 (1a)(b) [...] may exclude the right to remain referred to in paragraph 1 in their national law.<sup>290</sup>
- 2b. In [...] the cases referred to in paragraphs 2 and 2a, a court or tribunal shall have the power to rule following an examination of facts and law whether or not the applicant may remain on the territory of the Member State responsible pending the outcome of the remedy upon the applicant's request. The competent court or tribunal may under national law have the power to decide on this matter *ex officio*. [...] <sup>291</sup> This procedure may be conducted as a part of the appeal procedure and by the same court or tribunal competent to hear the appeal.
3. For the purpose of paragraph 2b, the following conditions shall apply<sup>292</sup> [...]:
- (a) the applicant shall have [...] a time limit of at least 2 days from the date when the decision is notified to the applicant to [...] request [...] to be allowed to remain on the territory pending the outcome of the remedy;<sup>293</sup> [...]

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<sup>290</sup> **ES, IT:** why is this paragraph limited to article 36(1a)(b)? **PRES:** not granting automatic suspensive effect for a decision rejecting an application as inadmissible on the safe third country ground is a very sensitive matter. It should not be added to the acquis but left to the MS.

<sup>291</sup> **SK:** reservation.

<sup>292</sup> **CZ:** delete para (3).

<sup>293</sup> **CZ:** scrutiny reservation. **DE:** this should be regulated in national law.

(aa) the applicant shall be provided with interpretation in the event of a hearing before the competent court or tribunal, where appropriate communication cannot otherwise be ensured;<sup>294</sup>

(ab) the applicant shall be provided, upon request, with free legal assistance and representation in accordance with Article 15a [...] <sup>295</sup>;

(b) [...]

[...] (ba) the applicant shall [...] not be removed from [...] the territory of the Member State responsible:

(i) until the time limit for requesting a court or tribunal to be allowed to remain has expired; and

(ii) where the applicant has requested to be allowed to remain within the set time limit, pending the [...] decision of the court or tribunal on whether or not the applicant may remain on the territory. [...] <sup>296</sup>

5. [...]

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<sup>294</sup> **DE, SI:** scrutiny reservation. **SI:** add "*where relevant*" in the beginning. **SE:** delete

<sup>295</sup> **IT:** add reference to national law.

<sup>296</sup> **CZ:** add "*on condition the request has been submitted together with the appeal*" after "*on the territory*". **DE:** reservation on the deletion; replace with the following: "*That decision should regularly be taken within one month from the lodging of the appeal.*"



Article 55

**Duration of the first level of appeal**

1. **Member States shall lay down in their national law time limits for the court or tribunal to examine the decision of the determining authority.<sup>297</sup> [...]**
  - (a) [...]
  - (b) [...]
  - (c) [...]
2. [...]

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<sup>297</sup> **ES, SE:** "may" instead of "shall"; add "or guidelines" after "time limits". **DE:** scrutiny reservation; add the following: „Without prejudice to an adequate and complete examination of an appeal, the courts or tribunals should regularly decide on the first level of appeal within the following time-limits from when the appeal is lodged:  
a) within two months in the case of a decision rejecting an application as inadmissible, as manifestly unfounded or as explicitly withdrawn or abandoned;  
b) within six months in the case of all other decisions.”

## CHAPTER VI

### FINAL PROVISIONS

#### *Article 56*

#### **Challenge by public authorities**

This Regulation does not affect the possibility for public authorities to challenge the administrative or judicial decisions as provided for in national legislation.

#### *Article 57*

#### **Cooperation<sup>298</sup>**

1. Each Member State shall appoint a national contact point and send its address to the Commission. The Commission shall send that information to the other Member States.
2. Member States shall, in liaison with the Commission, take all appropriate measures to establish direct cooperation and an exchange of information between the responsible authorities.
3. When resorting to the measures referred to in Article 27(3), Article 28(3) and Article 34(1) and (3), Member States shall inform the Commission and the European Union Agency for Asylum as soon as the reasons for applying those exceptional measures have ceased to exist and at least on an annual basis. That information shall, where possible, include data on the percentage of the applications for which derogations were applied to the total number of applications processed during that period.<sup>299</sup>

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<sup>298</sup> **DE:** scrutiny reservation.

<sup>299</sup> **SK:** scrutiny reservation.

*Article 57a*  
**Data storage<sup>300</sup>**

[...]

[...]

[...]

**Member States shall store the data referred to in Articles 13, 27 and 28 for as long as necessary in their national system, in compliance with the Regulation (EU) 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 (General Data Protection Regulation), including the principle of purpose and storage limitation.**

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<sup>300</sup> **DE, ES:** scrutiny reservation.

*Article 57b*

Calculation of time limits<sup>301</sup>

Any period of time prescribed in this Regulation shall be calculated as follows:

- (a) where a period expressed in days, weeks or months is to be calculated from the moment at which an event occurs or an action takes place, the day during which that event occurs or that action takes place shall not be counted as falling within the period in question;
- (b) a period expressed in weeks or months shall end with the expiry of whichever day in the last week or month is the same day of the week or falls on the same date as the day during which the event or action from which the period is to be calculated occurred or took place. If, in a period expressed in months, the day on which it should expire does not occur in the last month, the period shall end with the expiry of the last day of that month;
- (c) time limits shall include Saturdays, Sundays and official holidays in any of the Member States concerned; if a time limit ends on a Saturday, Sunday or official holiday, the next working day shall be counted as last day of the time limit.

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<sup>301</sup> **ES:** delete this article because time limits in EU law are ruled by Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits. **PRES:** this is correct but for clarity purposes it is useful to have the information here as well.

*Article 58*

**Committee Procedure**

1. The Commission shall be assisted by the committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.<sup>302</sup>
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
3. [...]

*Article 59*

**Delegated acts**<sup>303</sup>

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in paragraph 1 shall be conferred on the Commission for a period of five years from the date of entry into force of this Regulation. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

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<sup>302</sup> 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 Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

<sup>303</sup> **DE, ES:** scrutiny reservation.

3. The delegation of power may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect on the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts such a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. Such a delegated act and its extensions shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of one month from notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object.<sup>304</sup>

#### *Article 60*

#### **Monitoring and evaluation**<sup>305</sup>

By [two years from [...]the date of application of this Regulation] and every five years thereafter, the Commission shall report to the European Parliament and the Council on the application of this Regulation in the Member States and shall, where appropriate, propose any amendments.

Member States shall, at the request of the Commission, send it the necessary information for drawing up its report not later than nine months before that time-limit expires.

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<sup>304</sup> **FR:** this delegation strongly opposes the suggestion of the EP to resort to emergency procedures in case of sudden changes in a country that is on the lists of safe countries of origin: in our view, the one-month time-limit is already very short, which makes it a balanced compromise between the need to act quickly and the need to respect the powers of the co-legislators.

<sup>305</sup> **SE:** add the following: "*By [18 months after entry into force], the Commission shall review the application of the lists of safe countries.*"

## Article 61

### Repeal

Directive 2013/32/EU is repealed.

References to the repealed Directive shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex 2.

## Article 62

### Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall start to apply from [...]two years from its entry into force].<sup>306</sup>

**This Regulation shall apply to the procedure for granting international protection in relation to applications lodged [...] as from the date of application of this Regulation. Applications for international protection [...]lodged before that date shall be governed by Directive 2013/32/EU. This Regulation shall apply to the procedure for withdrawing international protection where the examination to withdraw international protection started as from the date of application of this Regulation. Where the examination to withdraw international protection started before the date of application of this Regulation the procedure for withdrawing international protection shall be governed by Directive 2013/32/EU.**<sup>307</sup>

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<sup>306</sup> **DE:** scrutiny reservation.

<sup>307</sup> **NL:** there would be a long period after the date of application in which two different legal systems would exist at the same time. After all, an application which is lodged a day before the date of application will be processed in the same period as an application which is lodged a day after the date of application. NL thinks this is not desirable. It would also have a negative effect on the capacity of the ICT systems that support the decision process. NL would prefer to take the date of the decision as leading. In taking the date of decision as leading, the authorities can anticipate on the date of decision and follow the required procedures accordingly. This would enable them to align the procedures as much as possible.

Each Member State shall notify to the Commission the locations referred to in Article 41(12) as soon as the necessary arrangements have been made to accommodate applicants in these locations during the border procedure and no later than [12] months after the date this Regulation applies. Upon notification from all Member States, the Commission shall inform without delay the Council and the European Parliament. Article 41(2) applies as of [two] months of the transmission of that information to the Council and the European Parliament. The Commission shall publish the date of application of Article 41(2) in the Official Journal of the European Union. In any event, Article 41(2) shall apply no later than [14] months after the date this Regulation applies. Any changes to a Member State's list of locations shall be notified promptly to the Commission.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

*For the European Parliament*

*For the Council*

*The President*

*The President*

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