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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**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

- **Context and reasons for the proposal**

The European Union is working towards an integrated, sustainable and holistic EU migration policy based on solidarity and fair sharing of responsibilities and which can function effectively both in times of calm and crisis. Since the adoption of the European Agenda on Migration,<sup>1</sup> the European Commission has been working to implement measures to address both the immediate and the long-term challenges of managing migration flows effectively and comprehensively.

The Common European Asylum System is based on rules determining the Member State responsible for applicants for international protection (including an asylum fingerprint database), common standards for asylum procedures, reception conditions, recognition and protection of beneficiaries of international protection. In addition, a European Asylum Support Office supports Member States in the implementation of the Common European Asylum System.

Notwithstanding the significant progress that has been made in the development of the Common European Asylum System, there are still notable differences between the Member States in the types of procedures used, the reception conditions provided to applicants, the recognition rates and the type of protection granted to beneficiaries of international protection. These divergences contribute to secondary movements and asylum shopping, create pull factors and ultimately lead to an uneven distribution among the Member States of the responsibility to offer protection to those in need.

Recent large scale arrivals have shown that Europe needs an effective and efficient asylum system able to assure a fair and sustainable sharing of responsibility between Member States, to provide sufficient and decent reception conditions throughout the EU, to process quickly and effectively asylum claims lodged in the EU, and to ensure the quality of the decisions made so that those who are in need of international protection effectively obtain it. At the same time, the EU needs to address irregular and dangerous movements and to put an end to the business model of smugglers. To this end asylum applications of those who are not entitled to international protection must, on the one hand, be dealt with quickly and these migrants must then be returned quickly. On the other hand, safe and legal ways to the EU for those from third countries who need protection need to be opened. It is also part of a wider partnership with priority countries of origin and transit.

On 6 April 2016, the Commission set out its priorities for a structural reform of the European asylum and migration framework in its Communication 'Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe',<sup>2</sup> outlining the different steps to be taken towards a more humane, fair and efficient European asylum policy as well as a better managed legal migration policy.

On 4 May 2016, the Commission presented a first set of proposals to reform the Common European Asylum System delivering on three priorities identified in its Communication: establishing a sustainable and fair Dublin system for determining the Member State

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<sup>1</sup> COM(2015) 240 final.

<sup>2</sup> COM(2016) 197 final.

responsible for examining asylum applications,<sup>3</sup> reinforcing the Eurodac system to better monitor secondary movements and facilitate the fight against irregular migration<sup>4</sup> and establishing a genuine European Agency for Asylum to ensure the well-functioning of the European asylum system.<sup>5</sup> These proposals were the first building blocks to reform the structure of the Common European Asylum System.

With the second package, the Commission is completing the reform of the Common European Asylum System by adopting four additional proposals: a proposal replacing the Asylum Procedures Directive with a Regulation,<sup>6</sup> harmonising the current disparate procedural arrangements in all Member States and creating a genuine common procedure; a proposal replacing the Qualification Directive<sup>7</sup> with a Regulation,<sup>8</sup> setting uniform standards for the recognition of persons in need of protection and the rights granted to beneficiaries of international protection as well as a proposal revising the Reception Conditions Directive<sup>9</sup> to further harmonise reception conditions in the EU, increase applicants' integration prospects and decrease secondary movements. Finally, following-up on the commitment to enhance legal avenues to the EU as announced on 6 April 2016, the Commission is also proposing a structured Union resettlement framework, moving towards a more managed approach to international protection within the EU, ensuring orderly and safe pathways to the EU for persons in need of international protection, with the aim of progressively reducing the incentives for irregular arrivals.<sup>10</sup>

These proposals are an indispensable part of the comprehensive reform of the Common European Asylum System and are closely interlinked. With this second stage of legislative proposals reforming the asylum *acquis*, all the elements of a solid, coherent and integrated Common European Asylum System, based on common, harmonised rules that are both effective and protective, fully in line with the Geneva Convention, are now on the table.

The Common European Asylum System that we are further developing is both effective and protective and is designed to ensure full convergence between the national asylum systems, decreasing incentives for secondary movements, strengthening mutual trust between Member States and leading overall to a well-functioning Dublin system.

It guarantees that, wherever they are in the EU, asylum seekers are treated in an equal and appropriate manner. It provides for the tools needed to ensure quick identification of persons in genuine need of international protection and return of those who do not have protection needs. It is generous to the most vulnerable and strict towards potential abuse, while always respecting fundamental rights. The common system is finally cost-effective and flexible enough to adapt to the complex challenges Member States have in this area.

- **Objectives of this proposal**

The aim of this proposal is to establish a truly common procedure for international protection which is efficient, fair and balanced. By choosing the form of a Regulation, which is directly applicable in all Member States, and by removing elements of discretion as well as simplifying, streamlining and consolidating procedural arrangements, the proposal aims at achieving a higher degree of harmonisation and greater uniformity in the outcome of asylum

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<sup>3</sup> COM(2016) 270 final.

<sup>4</sup> COM(2016) 272 final.

<sup>5</sup> COM(2016) 271 final.

<sup>6</sup> OJ L 180, 29.6.2013, p. 60.

<sup>7</sup> OJ L 337, 20.12.2011, p. 9.

<sup>8</sup> OJ L [...], [...], p. [...].

<sup>9</sup> OJ L [...], [...], p. [...].

<sup>10</sup> OJ L [...], [...], p. [...].

procedures across all Member States, thereby removing incentives for asylum shopping and secondary movements between Member States.

The proposal promotes the objective of ensuring fast but high quality decision making at all stages of the procedure. It requires Member States to invest in their asylum systems as from the administrative stages of the procedure, providing competent authorities with the necessary means for taking quick but solid decisions, so that persons who are in need of protection get their status recognised quickly while swiftly returning those not in need of protection. A rapid and effective decision making process is in the interest of both the applicants, enabling them to get clarity on their legal status, and of the Member States leading to savings in reception and administrative costs.

A fair and efficient procedure common throughout the Union, means:

- **Simpler, clearer and shorter procedures** which replace the current disparate procedural arrangements in the Member States. This proposal provides for short but reasonable time-limits for an applicant to accede to the procedure and for concluding the examination of applications both at the administrative and the appeal stages. The six-month benchmark for a first decision is maintained, while significantly shorter time-limits are foreseen for dealing with manifestly unfounded and inadmissible claims. Member States also have possibility to prioritise and examine quickly any application. Time-limits for registering, lodging and examining applications are set up but may be exceptionally extended when Member States receive a disproportionate number of simultaneous applications. To plan for such eventualities, Member States should rather regularly review and anticipate their needs to ensure that they have adequate resources in place to manage their asylum system efficiently. Where necessary, Member States may also rely on the assistance of the European Union Agency for Asylum. In addition, the use of the admissibility procedure and the accelerated examination procedure becomes mandatory and the provisions on subsequent applications are clarified allowing for exceptions from the right to remain at the end of or during the administrative procedure.
- **Procedural guarantees safeguarding the rights of the applicants** to ensure that asylum claims are adequately assessed within the framework of a streamlined and shorter procedure. This is ensured by informing all applicants, at the start of the procedure, of their rights, obligations and consequences of not complying with their obligations. The applicants need to be given an effective opportunity to cooperate and properly communicate with the responsible authorities so as to present all facts at their disposal to substantiate their claim. This proposal provides applicants with adequate procedural guarantees to pursue their case throughout all stages of the procedure, in particular the right to be heard in a personal interview, interpretation as well as free legal assistance and representation. Furthermore, as a rule, they enjoy a right to remain pending the outcome of the procedure. The applicants have the right to appropriate notification of a decision, the reasons for that decision in fact and in law and, in the case of a negative decision, they have the right to an effective remedy before a court or a tribunal. Reinforced safeguards are foreseen for applicants with special procedural needs and unaccompanied minors, such as more detailed rules on assessing, documenting and addressing the applicant's special procedural needs.
- **Stricter rules to prevent abuse of the system, sanction manifestly abusive claims and remove incentives for secondary movements** by setting out clear obligations for applicants to cooperate with the authorities throughout the procedure and by attaching strict consequences to non-compliance with obligations. In this respect, the

examination of an application for international protection is made conditional upon lodging an application, fingerprinting, providing the necessary details for the examination of the application as well as presence and stay in the Member State responsible. Failure to comply with any of these obligations may lead to an application being rejected as abandoned in accordance with the procedure for implicit withdrawal.

The current optional procedural instruments for sanctioning abusive behaviour of applicants, secondary movements and manifestly unfounded claims are made compulsory and further reinforced. In particular, the proposal provides for clear, exhaustive and compulsory lists of grounds where an examination must be accelerated and where applications must be rejected as manifestly unfounded or as abandoned. Moreover, the ability to respond to subsequent applications abusing the asylum procedure has been reinforced, in particular by enabling the removal of such applicants from Member States' territories before and after an administrative decision is taken on their applications. At the same time, all guarantees are in place, including the right to an effective remedy, to ensure that the rights of applicants are always guaranteed.

- **Harmonised rules on safe countries** are a critical aspect of an efficient common procedure and this proposal provides for the harmonisation of procedural consequences of applying safe country concepts. Where applicants are manifestly not in need of international protection because they come from a safe country of origin, their applications must be quickly rejected and a swift return organised. Where applicants have already found a first country of asylum where they enjoy protection or where their applications can be examined by a safe third country, applications must be declared inadmissible. The Commission proposes to progressively move towards full harmonisation in this area, and to replace national safe country lists with European lists or designations at Union level within five years of entry into force of the Regulation.
- **Consistency with existing policy provisions in the policy area**

This proposal is fully consistent with the first proposals to reform the Common European Asylum System presented on 4 May 2016 concerning the Dublin Regulation, the Eurodac system and the European Union Agency for Asylum, as well as with proposals for reforming a Qualification Regulation and a recast Reception Conditions Directives and a proposal for a structured Union resettlement system.

As regards the proposal for a recast of the Dublin Regulation, this proposal applies to applicants undergoing a Dublin procedure. In particular, this proposal is coherent with the rules set out in the proposal for the recast of the Dublin Regulation, while further specifying them, such as the admissibility examination of an application, the accelerated examination procedure, subsequent applications, and guarantees for minors and special guarantees for unaccompanied minors. This proposal is also aligned to the recast of the Eurodac Regulation as regards the taking of fingerprints and facial images of applicants and their relevance for applications for international protection.

As regards the proposal on the European Union Agency for Asylum, this proposal recalls the importance of the operational and technical support that can be offered by the Agency to the Member States to ensure the efficient management of applications for international protection, as well as the provision of capacity building by the Agency in accordance with the new proposed mandate for the Agency.

As regards the proposal for the Qualification Regulation, the two proposals are complementary to one another in so far as the proposal for the Qualification Regulation establishes the standards for the qualification of the third-country nationals or stateless persons as beneficiaries of international protection while this proposal establishes common procedural rules for granting and withdrawing international protection.

This proposal is also linked closely to the proposal for a recast of the Reception Conditions Directive. In order to ensure a timely and effective assessment of applications for international protection, it is necessary for applicants to comply with their reporting obligations as set out in the proposal for a recast of the Reception Conditions Directive and this proposal sets out the procedural consequences for those applicants who do not comply with those reporting obligations.

- **Consistency with other Union policies**

This proposal is consistent with the comprehensive long-term policy on better migration management as set out by the Commission in the European Agenda on Migration,<sup>11</sup> which developed President Juncker's Political Guidelines into a set of coherent and mutually reinforcing initiatives based on four pillars. Those pillars consist of reducing the incentive for irregular migration, securing external borders and saving lives, a strong asylum policy and a new policy on legal migration. This proposal, which further implements the European Agenda on Migration as regards the objective of strengthening the Union's asylum policy should be seen as part of the broader policy at EU level towards building a robust and effective system for sustainable migration management for the future that is fair for host societies and EU citizens as well as for the third country nationals concerned and countries of origin and transit.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

The legal basis for the proposal is Article 78(2)(d) of the Treaty on the Functioning of the European Union, which foresees the adoption of measures for common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status.

- **Subsidiarity**

The objective of this proposal is to establish a common procedure for granting and withdrawing international protection which replaces the various asylum procedures in the Member States ensuring the timeliness and effectiveness of the procedure. Applications made by the third-country nationals and stateless persons for international protection should be examined in a procedure which is governed by the same rules, regardless of the Member State where the application is lodged to ensure equity in the treatment of applications for international protection, clarity and legal certainty for the individual applicant. Furthermore, Member States cannot individually establish common rules which will reduce incentives for asylum shopping and secondary movements between Member States. Therefore, action by the Union is required.

This objective 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. Therefore, 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

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<sup>11</sup> COM(2015) 240.

proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

- **Proportionality**

In accordance with the principle of proportionality, as set out in Article 5 of the Treaty on European Union, this Regulation does not go beyond what is necessary in order to achieve its objectives.

As regards the establishment of a common procedure for granting and withdrawing international protection, all elements of the proposal are limited to what is necessary to set up and enable such a common procedure, to streamline and simplify it, to ensure equality of treatment in terms of rights and guarantees for applicants and avoid discrepancies in national procedures which have the undesired consequence of encouraging secondary movements.

The introduction of the time limits at all stages of the procedure, including at the appeal stage, and the tightening of the time limit for the administrative stage of the procedure, are necessary changes in order to streamline the procedures and enhance their effectiveness. The time limits proposed for the stage of appeal allow for all pertinent procedural safeguards to be respected, including the right to an oral hearing and respect of the equality of arms. In proposing these time-limits, the Commission endeavoured to strike a balance between the right of applicants to have their case adjudicated within a reasonable time and their right to effective remedy and defence, including through the provision of free legal assistance and representation.

- **Choice of the instrument**

This is a proposal for a regulation which is intended to repeal and replace a directive. The degree of harmonisation of national procedures for granting and withdrawing international protection that was achieved through Directive 2013/32/EU has not proven to be sufficient to address differences in the types of procedure used, the time-limits for the procedures, the rights and procedural guarantees for the applicant, the recognition rates and the type of protection granted. It is only a Regulation establishing a common asylum procedure in the Union, and whose provisions shall be directly applicable, that can provide the necessary degree of uniformity and effectiveness needed in the application of procedural rules in Union law on asylum.

### **3. CONSULTATION WITH INTERESTED PARTIES**

- **Stakeholder consultations**

In preparation of this second package of proposals, the Commission held targeted consultations with the Member States, the United Nations High Commissioner for Refugees and civil society which were guided by the objectives for the Common European Asylum System reform that were set out in the Commission Communication of 6 April 2016. The Commission has carefully assessed the arguments brought forward and sought to reflect those that are more largely shared by all parties concerned in this proposal. In June 2016, an informal exchange of views was held with the European Parliament on the second package of proposals.

- The choice of instrument by the Commission to replace the current Directive with a Regulation was received positively by most Member States except for some that expressed concern over compatibility with their national administrative legal system. Some have consistently held, since the debate on the proposal for the Asylum Procedures Directive, that a Regulation laying out provisions which are directly

applicable is the most effective legal instrument for securing the rights of applicants and equality of treatment across the Member States. However, some stakeholders warned against the risk of lowering protection standards to reach a common denominator, especially as the Union is a principal model to look up to in this area of international refugee law.

- Most Member States recognised the need for simplification and clarification of the current procedural rules, and expressed support for the further harmonisation of asylum procedures across the Union. Member States acknowledged the need to clarify and simplify the grounds for admissibility, the use of border and accelerated procedures, and the treatment of subsequent applications.

There was general support among Member States for the introduction of maximum time-limits at the different stages of the procedure, including at the appeal stage. Most Member States were satisfied with the current timeline for the normal administrative procedure, but acknowledged the need to establish tighter deadlines and streamline procedures. However, several Member States pointed out the need for a measure of flexibility to be able to deal with situations of large influx of migrants and a disproportionate number of simultaneous applications. Member States generally supported the introduction of mandatory time-limits for the appeal stage but called for differentiated time-limits depending on whether appeals are brought against decisions taken in normal procedures or in fast-track procedures.

Most stakeholders from civil society called for simplification of the current procedural rules. However, they were more sceptical about the effectiveness of compulsory time-limits for the various stages of the procedure. Further concerns were expressed about how to ensure that the proposed time limits are compatible with the effective exercise of procedural guarantees.

- The accelerated examination procedure, the border procedure and the admissibility procedure are considered by most Member States as necessary tools to deal more efficiently with the examination of applications that are clearly fraudulent, manifestly unfounded or inadmissible. Differing views were expressed on rendering mandatory the use of the concepts of first country of asylum and safe third country for rejecting applications as inadmissible, and to render mandatory the use of the accelerated examination procedure and border procedure. Most Member States perceive the need for measures aimed to render the system more effective, and are in favour of establishing EU common lists of safe countries of origin and safe third countries, while expressing a preference to also maintain the possibility to have national lists.

Several stakeholders observed that rendering mandatory the application of the concepts of first country of asylum and safe third country for determining whether applications are admissible, coupled with the introduction of common EU lists of safe third countries, may not be sufficient in order to bring about the desired harmonisation as long as there would still be room for discretion in the application of the concepts to individual cases. Some stakeholders expressed concerns about the possible coexistence of EU and national lists of safe countries of origin, and flagged that the inclusion or exclusion of a country from an EU common list of safe countries of origin would only be reviewable by the European Court of Justice.

Most representatives of civil society cautioned against the mandatory use of concepts first country of asylum and safe third country, and of special procedures in general. Some consider that only applications which are *prima facie* manifestly unfounded or clearly abusive should be subject to accelerated procedures.



In this context, several stakeholders argued that vulnerable applicants, and in particular unaccompanied minors, should be exempted from the application of special procedures. Some of the consulted parties pleaded for stronger guarantees for unaccompanied minors, especially in relation to the prompt appointment of qualified guardians.

- Member States considered it necessary to include in the procedure measures intended to discourage unjustified and secondary movements. Most Member States consider that the proposal should also establish clear responsibilities for the applicants for international protection, and in particular the obligation to cooperate with the authorities at all stages of the procedure and to provide the information that is necessary in order to examine the applications. The applicants should also respect the obligation not to leave the territory of the Member State examining the application, in line with the provisions of the proposed reform of the Dublin Regulation. Most Member States supported the proposal to examine the applications of persons who abscond without justification in the accelerated procedure, while ensuring full respect of the relevant procedural guarantees.

At the same time, some of the main stakeholders from civil society underlined that procedures should not be applied as sanctions, and do not consider it justified to associate the use of the accelerated procedure with absconding.

- **Collection and use of expertise**

Data on the implementation of the Asylum Procedures Directive has been partially collected by the European Asylum Support Office, as part of a process which aims at mapping Member States' legislation and practices as regards the implementation of the Common European Asylum System instruments.

In addition, since the adoption of the Asylum Procedures Directive in 2013, the Commission has organised a series of Contact Committee meeting on that directive, during which the issues faced by Member States in view of the implementation of the Directive have been discussed between the Commission and Member States. The findings of both these processes have informed the current proposal.

- **Fundamental rights**

This proposal respects fundamental rights and observes the principles recognised, in particular, by the Charter of Fundamental Rights of the European Union, as well as the obligations stemming from international law, in particular from the Geneva Convention on the Status of Refugees, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant for Civil and Political Rights, the United Nations Convention against Torture, and the United Nations Convention on the Rights of the Child.

The common procedure for granting and withdrawing international protection shall be carried out in full respect of fundamental rights as enshrined in the Charter, including the right to human dignity (Article 1), prohibition of torture and inhuman or degrading treatment or punishment (Article 4), the right to the protection of personal data (Article 8), the right to asylum (Article 18), the protection from *refoulement* (Article 19), non-discrimination (Article 21), equality of rights between men and women (Article 23), the rights of the child (Article 24) and the right to an effective remedy (Article 47). This proposal fully takes into account the rights of the child and the special needs of vulnerable persons.

The proposal guarantees that the special needs of minors, in particular unaccompanied minors, are properly addressed by ensuring that they are guided and supported throughout all stages of the procedure. The proposal also takes into account Member States' obligations under the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention). In light of the Commission's proposals for Council decisions for the signing and conclusion of the Istanbul Convention, and in view of guaranteeing women in need of international protection who have been subject to gender-based violence with a suitable level of protection, a gender-sensitive approach should be adopted when interpreting and applying this Regulation.

The proposal permits the storage of data collected upon the registration and lodging of an application for international protection, which includes personal details and elements relevant to the application, as well as during the personal interview, including the recording or transcript of the interview. In order to ensure that personal data of applicants are stored only for as long as necessary, the proposal guarantees the right to the protection of personal data by establishing a maximum storage period for those data. Having regard to the fact that those data form an integral part of the applicant's file, the maximum storage period that is considered to be necessary is ten years from a final decision. That storage period is considered to be necessary in the case where international protection is not granted since third-country nationals or stateless persons may try to request international protection in another Member State or submit further subsequent applications in the same or another Member State for years to come. That same storage period is necessary with regard to those who are granted international protection to be able to review their status, in particular in the framework of the regular status review set out in the proposal for the Qualification Regulation, and it is also necessary in view of the take back obligations set out in the proposal for a recast Dublin Regulation with regard to beneficiaries of international protection. After that time, third-country nationals or stateless persons who have stayed in the Union for several years will have obtained a settled status or even citizenship of a Member State. Data relating to a person who has acquired citizenship of any Member State before the expiry of the period of ten years should be erased immediately. In Eurodac, those data shall be erased from the Central System as soon as the Member State of origin becomes aware that the person concerned has acquired such citizenship because the individual is no longer within the scope of Eurodac.

#### **4. BUDGETARY IMPLICATIONS**

This proposal does not impose any financial or administrative burden on the Union. Therefore it has no impact on the Union budget.

#### **5. OTHER ELEMENTS**

- **Monitoring, evaluation and reporting arrangements**

The Commission shall report on the application of this Regulation to the European Parliament and to the Council within two years from its entry into force and every five years after that. Member States shall be required to send relevant information for drafting that report to the Commission and to the European Union Agency for Asylum. The Agency will also be monitoring compliance with this Regulation by Member States through the monitoring mechanism which the Commission proposed to establish in its revision of the mandate of the Agency.<sup>12</sup>

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<sup>12</sup> COM (2016) 271 final.

- **Detailed explanation of the specific provisions of the proposal**

The aim of this proposal is to ensure fast and efficient treatment of applications for international protection by establishing a common procedure for granting and withdrawing international protection, which replaces the various procedures in the Member States, and which is applicable to all applications for international protection made in Member States.

This proposal clarifies and streamlines procedural rules and provides national authorities with the necessary tools to examine and decide upon applications in an efficient manner, and to fight against abuses and secondary movements within the EU, whilst enhancing the necessary procedural guarantees for the individual applicant, thereby rendering the procedure swifter and more effective.

- **Streamlining and simplifying the procedure for international protection**

The proposal streamlines and simplifies the procedure by clarifying the various steps as regards access to the procedure. An application is considered to have been made as soon as a third-country national or stateless person expresses a wish to receive international protection from a Member State (Article 25(1)). That application needs to be registered promptly, or at the latest within three working days from when the national authorities receive it (Article 27(1)). That time-limit remains unchanged when compared to the Asylum Procedures Directive. The individual applicant is then to be provided with an effective opportunity to lodge his or her application and this should be done within ten working days from when the application is registered (Article 28(1)). For unaccompanied minors, that time limit will only start from when the guardian is appointed and meets the child (Article 32(2)). The time-limit for lodging an application is new compared to the Asylum Procedures Directive.

Member States should regularly review and anticipate their needs with a view to ensuring that they have in place adequate resources to be able to manage their asylum system efficiently, including by preparing contingency plans where necessary. The European Union Agency for Asylum is able to provide Member States with the necessary operational and technical assistance to enable them to respect the set time-limits. Where Member States foresee that they would not be able to meet those time-limits, they should request assistance from the European Union Agency for Asylum based on the provisions of the new proposed mandate for the Agency. Where no such request is made, and because of the disproportionate pressure the asylum system in a Member State becomes ineffective to the extent of jeopardising the functioning of the Common European Asylum System, the Agency may, based on an implementing decision of the Commission, take measures in support of that Member State.

The proposal provides for streamlining time-limits for the administrative procedure. Until now, although established in the Asylum Procedures Directive, time-limits vary considerably among Member States and between April 2015 and April 2016, on average 50% of cases in the European Union have been pending for more than six months. The time-limit for the examination of applications under a regular procedure provided for in the proposal is of six months, extendable once by a further period of three months in cases of disproportionate pressure or due to the complexity of a case (Article 34(2) and (3)). As in the Asylum Procedures Directive, the possibility of temporarily suspending the examination of an application due to a change in circumstances in the country of origin remains. However, also in this case, the time-limit for examining an application should not be longer than 15 months (Article 34(5)).

New time-limits are set for the accelerated examination procedure (Article 40(2)) and for the treatment of inadmissible applications (Article 34(1)). Currently no time-limits for these procedures are provided for in the Asylum Procedures Directive with the consequence that time-limits in the Member States vary considerably and range from a few days to a few months. These procedures should be expedient and for this reason the time-limit proposed for an accelerated examination procedure is of two months whereas that for inadmissibility cases is of one month. In cases where the ground for inadmissibility is the fact that an applicant comes from a first country of asylum or a safe-third country, the time-limit for the admissibility check is set at ten working days to make sure that the rules set out in the proposed Dublin reform requiring the first Member State in which an application is lodged to examine the admissibility before applying the criteria for determining a Member State responsible, are applied efficiently (second paragraph of Article 34(1)). The time-limit for the border procedure remains set at four weeks as in the Asylum Procedures Directive (Article 41(2)).

The proposal addresses the overall procedure for international protection, and for this reason it sets out time-limits also for lodging appeals and for decisions at the first appeal stage. This is necessary to ensure equity and effectiveness in the procedure and to meet the overall objective of greater harmonisation in the procedure (Article 55).

The Commission recognises that at times it may be difficult for Member States to respect the time-limits set out in this proposal. However, the need for an individual applicant to have legal certainty as regards his or her situation is of primary concern. In making its proposal, the Commission also took into account its proposal to significantly strengthen the mandate of the European Union Agency for Asylum and on the possibility for Member States to rely on operational and technical assistance from the Agency, other Member States or international organisations.

- **Rights and obligations of applicants**

The proposal contains clear provisions on the rights and obligations of the applicants for the purposes of the procedure for international protection. It provides for the necessary guarantees for the individual applicant to effectively enjoy his or her rights while at the same time providing for a number of obligations for the applicant in an effort to responsabilise the applicant throughout the procedure (Article 7).

In accordance with the Commission's proposal to reform the Dublin Regulation, applicants must make their application in the Member State of first entry or where he or she is legally present in a Member State (Article 7(1)). Applicants are required to cooperate with the responsible authorities for them to be able to establish their identity, including by providing their fingerprints and facial image. Applicants must also bring forward all elements at their disposal which are necessary for the examination of the application (Article 7(2)). The applicant needs to inform the responsible authorities of his or her place of residence and telephone number so that he or she can be reached for the purposes of the procedure (Article 7(4)).

Applicants must be informed of the procedure to be followed, their rights and obligations during the procedure, the consequences of not complying with their obligations, the outcome of the examination and the possibility of challenging a negative decision (Article 8(2)). The obligation on Member States to provide the applicant with all the necessary information becomes all the more important because of the consequences that non-compliance may carry for the applicant. For instance, in case that an applicant refuses to cooperate by not providing

the details necessary for the examination of the application and by not providing his or her fingerprints and facial image may lead to the application being rejected as abandoned subject to the procedure for implicit withdrawal of an application (Article 7(3) and Article 39(1)(c)). At present, the refusal to comply with the obligation to provide fingerprints is a ground for an accelerated examination of the procedure. However, considering that this is an important element for the application to be considered complete, more serious consequences have been attached to non-compliance by the applicant.

Applicants must remain in the Member States in which they are required to be present in accordance with the Dublin Regulation (Article 7(5)) and they must respect any reporting obligations they may have deriving from the Reception Conditions Directive (Article 7(6)). Non-compliance with reporting obligations may also lead to an application being rejected as abandoned (Article 39(1)(f)), and where an applicant does not remain in the Member State where he or she is required to be present, his or her application is dealt with under the accelerated examination procedure (Article 40(1)(g)).

Within three working days from lodging an application, the applicant must be provided with a document certifying that the individual is an applicant, stating that he or she has a right to remain on the territory of the Member State and stating that it is not a valid travel document (Article 29). The main provisions on documents have been taken from the Reception Conditions Directive and incorporated in this proposal as an effort at streamlining the procedure for international protection. The proposal sets out the type of information that should be included in that document and foresees the possibility of having a uniform format for those documents to be established by means of an implementing act so as to ensure that all applicants receive the same document across all Member States (Article 29(5)).

The applicant enjoys the right to remain on the territory of a Member State for the purpose and the duration of the administrative procedure. This right does not constitute an entitlement to residence and it does not give the applicant the right to travel to another Member State without authorisation. As in the Asylum Procedures Directive, the exceptions to the right to remain during the administrative procedure are limited, clearly defined in the proposal and relate to subsequent applications and cases of surrender or extradition to another Member State in accordance with a European Arrest Warrant, to a third country or to an international criminal court or tribunal (Article 9).

- **Procedural guarantees**

Streamlining the procedure is necessary to ensure the efficiency of the procedure across Member States while at the same time guaranteeing that the individual applicant is given a decision, whether positive or negative, in the shortest time possible. This however should not have the undesired consequence of adversely affecting the right of the individual to have his or her application examined in an adequate and comprehensive manner allowing the applicant to bring forward all elements which are relevant to substantiate his or her application in the course of its examination. It is for this reason that the proposal contains important guarantees for the applicant to ensure that, subject to limited exceptions and at all stages of the procedure, an applicant enjoys the right to be heard through a personal interview, is assisted with the necessary interpretation and is provided with free legal assistance and representation.

The proposal guarantees the right of applicants to be heard through a personal interview on the admissibility or on the merits of their applications, irrespective of the type of administrative procedure applied to their case (Article 12(1)). For the right to a personal interview to be effective, the applicant is to be assisted by an interpreter (Article 12(8)) and

given the opportunity to provide his or her explanations concerning the grounds for his or her application in a comprehensive manner. It is important that the applicant be given sufficient time to prepare and consult with his or her legal adviser or counsellor, and he or she may be assisted by the legal adviser or counsellor during the interview. In substantive interviews conducted in relation to the examination of the application on the merits, the applicant is given the opportunity to present all elements needed to substantiate his or her claim, and to explain any missing elements or inconsistencies (Article 11(2)). In the context of an admissibility procedure, the applicant has the right to an admissibility interview whereby he or she is given the opportunity to provide adequate reasons as to why his or her application cannot be rejected as inadmissible (Article 10(2)).

The personal interview should be conducted under conditions which ensure appropriate confidentiality (Article 12(2)) 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 (Article 12(3) and (7)). The personal interview may only be omitted when the determining authority is to take a positive decision on the application or is of the opinion that the applicant is unfit or unable to be interviewed owing to circumstances beyond his or her control (Article 12(5)). Given that the personal interview is an essential part of the examination of the application, the interview should be recorded and the applicants and their legal advisers should be given access to the recording, as well as to the report or transcript of the interview before the determining authority takes a decision, or in the case of an accelerated examination procedure, at the same time as the decision is made (Article 13).

Under the Asylum Procedures Directive applicants are entitled to receive free legal and procedural information during the administrative procedure, and they should receive free legal assistance at the stage of the first level of appeal where they do not have the means to pay for such legal assistance themselves. In this proposal, access to legal assistance and representation throughout all stages of the procedure is considered necessary to enable applicants to fully exercise their rights given the tighter time-limits for the procedure. It therefore provides for the right of applicants to request free legal assistance and representation at all stages of the procedure (Article 15(1)), subject to limited exceptions defined in the proposal. Accordingly, Member States may decide not to provide free legal assistance and representation when the applicant has sufficient resources and where the application or appeal are considered as having no tangible prospect of success (Article 15(3)(a) and (b) and (5)(a)(b)). In the administrative procedure, Member States may also decide to exclude free legal assistance and representation in case of subsequent applications (Article 15(3)(c)), and at the appeal stage, they may do so with regard to second level of appeal or higher (Article 15(5)(c)).

The Commission considers it necessary and appropriate to extend this right to the administrative procedure, in recognition of a practice that is already in place in twenty-two of the Member States. This requires that adequate resources are put into the quality of decision-making during the administrative procedure. Nevertheless, the practice of Member States already providing for this possibility shows that the provision of free legal assistance and representation is useful to ensure good quality assistance, leading to better quality administrative decisions with possibly less appeals.

- **Unaccompanied minors and applicants in need of special procedural guarantees**

The proposal upholds a high level of special procedural guarantees for vulnerable categories of applicants (Article 19), and in particular for unaccompanied minors (Articles 21 and 22). To ensure a fair procedure for these applicants, it is necessary to identify their needs as early

as possible in the procedure and to provide them with adequate support and guidance throughout all stages of the procedure (Article 20(1)). Where it is not possible to provide such adequate support in the framework of an accelerated examination procedure or a border procedure, then those procedures should not be applied (Article 19(3)).

As regards children in general, the best interests of the child as a primary consideration is the prevailing principle when applying the common procedure. All children, irrespective of their age and of whether they are accompanied or not, shall also have the right to a personal interview unless it is manifestly not in the child's best interests (Article 21(1) and (2)).

As regards unaccompanied minors, they should be assigned a guardian as soon as possible and not later than five working days from the moment an unaccompanied minor makes an application (Article 22(1)). Disparities among the various guardianship systems for unaccompanied minors in the Member States may lead to procedural safeguards not being adhered to, to minors not receiving adequate care or to them being exposed to risk or precarious situations and possibly leading them to abscond. This proposal, taking into account a study on guardianship of children carried out by the Fundamental Rights Agency,<sup>13</sup> seeks to standardise guardianship practices to make sure that guardianship becomes prompt and effective across the Union.

The role of the guardian is to assist and represent an unaccompanied minor with a view to safeguarding the best interests of the child and his or her general well-being in the procedure for international protection. Where necessary, and possible under national law, the guardian may exercise legal capacity for the minor (Article 4(2)(f)). In order to make sure that unaccompanied minors receive adequate support, the proposal provides that a guardian should not be made responsible for a disproportionate number of minors (first paragraph of Article 22(4)). In view of the tasks and responsibilities of the guardian, including the time-limits for the various procedural steps under this Regulation, it is necessary for the number of cases assigned to each guardian to be reasonable and that the proposal also provides for an appropriate system to be put in place to monitor the performance of each guardian (second paragraph of Article 22(4)).

- **Use of accelerated examination procedure and border procedure**

In this proposal, the accelerated examination procedure becomes compulsory under certain limited grounds related to *prima facie* manifestly unfounded claims, such as when the applicant makes clearly inconsistent or false representations, misleads the authorities with false information or when an applicant comes from a safe country of origin. Similarly, an application should be examined under the accelerated examination procedure where it is clearly abusive, such as when the applicant seeks to delay or frustrate the enforcement of a return decision or where he or she had not applied for international protection in the Member State of first irregular entry or in the Member State where he or she is legally present or where an applicant whose application is under examination and who made an application in another Member State or who is on the territory of another Member State without a residence document is taken back in accordance with the new rules proposed by the Commission under the Dublin Regulation without demonstrating that his or her failure was due to circumstances beyond his or her control (Article 40(1)).

Border procedures, which normally imply the use of detention throughout the procedure, remain optional and can be applied for examining admissibility or the merits of applications

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<sup>13</sup> Report of the Fundamental Rights Agency on Guardianship systems for children deprived of parental care in the European Union: with a particular focus on their role in responding to child trafficking (October 2015); [[http://ec.europa.eu/anti-trafficking/EU+Policy/Guardianship\\_for\\_children\\_deprived\\_of\\_parental\\_care](http://ec.europa.eu/anti-trafficking/EU+Policy/Guardianship_for_children_deprived_of_parental_care)].

on the same grounds as under an accelerated examination procedure. If no decision is taken within four weeks, the applicant gains the right to enter and remain on the territory (Article 41).

Having regard to the fact that the accelerated examination procedure now becomes compulsory, that in most cases detention is involved when applying the border procedure, that the duration for both procedures is short and that there is no automatic suspensive effect following a decision taken in any of these procedures, it is necessary for all the procedural guarantees to apply to the individual applicant, in particular the right to be heard in a personal interview, interpretation and free legal assistance and representation (Article 40(1) and (Article 41(1)). The application of these procedures is limited with regard to unaccompanied minors (Article 40(5) and Article 41(5)) and they cannot be applied to applicants in need of special procedural guarantees unless those applicants can be provided with adequate support in the framework of those procedures (Article 19(3)).

- **Admissibility of applications**

The general rule is that 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).<sup>14</sup> There need not be an examination on the merits where an application should be declared as inadmissible in accordance with this proposal.

This proposal provides that where any of the admissibility grounds set out in the proposal is applicable, then the application should be rejected as inadmissible (Article 36(1)), and that examination should not take longer than one month (Article 34(1)). Before determining the Member State responsible in accordance with the new rules proposed by the Commission under the Dublin Regulation, the first Member State in which an application has been lodged should examine the admissibility of that application when a country which is not a Member State is considered as a first country of asylum or safe third country for the applicant. In order to ensure the efficient functioning of the Dublin system, the proposal foresees that the duration of the examination of the grounds relating to first country of asylum or safe third country should not take longer than ten working days (second paragraph of Article 34(1)).

An application should be considered to be inadmissible when it is a subsequent application without new relevant elements or findings or when a separate application by a spouse, partner, or accompanied minor is not considered to be justified (Article 36(1)(c) and (d)).

The grounds relating to first country of asylum and safe third country should not be applied to beneficiaries of subsidiary protection who are resettled in accordance with Regulation (EU) No XXX/XXX (Resettlement Regulation)<sup>15</sup> in case they decide to apply for refugee status once they are on the territory of the Member States.

Those cases which fall under the Dublin Regulation, including where another Member State has granted international protection as provided for in the proposed Dublin reform, should be dealt with under the Dublin system (Article 36(2)).

Where from a *prima facie* assessment it is clear that an application may be rejected as manifestly unfounded, the application may be rejected on that ground without examining its admissibility.

Having regard to the fact that the duration of the admissibility procedure is very short, and that in certain cases a decision, such as that taken on the ground related to first country of

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<sup>14</sup> OJ L [...], [...], p. [...].

<sup>15</sup> OJ L [...], [...], p. [...].



asylum, has no automatic suspensive effect, it is necessary to ensure that the individual applicant enjoys all the procedural guarantees, in particular the right to be heard in a personal interview, interpretation and free legal assistance (Article 36(1)). However, exceptions to these procedural guarantees are made in the case of subsequent applications.

- **Treatment of subsequent applications**

This proposal clarifies and simplifies the procedure as regards the treatment of subsequent applications, while providing the necessary tools to prevent abuse of using the possibility provided by subsequent applications. A subsequent application is one that is brought by the same applicant in any Member State after a previous application is rejected by means of a final decision (Article 42(1)). A subsequent application is subject to a preliminary examination which will determine whether or not the applicant brings forward relevant new elements or findings which could significantly increase the likelihood for him or her to qualify as a beneficiary of international protection (Article 42(2)). If this is not the case, then the subsequent application is to be dismissed as inadmissible or as manifestly unfounded where the application is so clearly without substance or abusive that it has no tangible prospect of success (Article 42(5)).

This proposal provides that the preliminary examination should be carried out on the basis of written submissions and a personal interview. However, the personal interview may be dispensed with in those instances where, from the written submissions, it is clear that the application does not give rise to relevant new elements or findings or that it is clearly without substance and has no tangible prospect of success (Article 42(3)). Furthermore, an applicant will not enjoy free legal assistance during the preliminary examination phase (Article 15(3)(c)).

In case of subsequent applications, there is no automatic suspensive effect and exceptions may be made to the individual's right to remain on the territory of a Member State when a subsequent application is rejected as inadmissible or manifestly unfounded, or in the case of a second or further subsequent applications, as soon as an application is made in any Member States following a final decision which had rejected a previous subsequent application as inadmissible, unfounded or manifestly unfounded (Article 43). The Commission considers this approach to be justified considering that the individual applicant would have already had his or her application examined under the administrative procedure as well as by a court or tribunal and where the applicant would have enjoyed procedural guarantees including a personal interview, interpretation and free legal assistance and representation.

- **Safe country concepts**

In its Communication of 6 April 2016, the Commission considered that a critical aspect of a common approach concerns the use of the 'safe country' mechanisms. In particular, the Commission announced that it would harmonise the procedural consequences of the concept and remove the discretion on whether or not to use it.

The use of the concepts of first country of asylum and safe third country enables certain applications to be declared inadmissible where protection could be availed of in a third country (Article 36(1)(a) and (b)). The two concepts may be applied with respect to an applicant following an individual examination which includes an admissibility interview.

This proposal clarifies the two concepts. Both are based on the existence of sufficient protection as defined in the proposal (Article 44 and Article 45). The main difference between the two concepts concerns the individual applicant. Whereas under the concept of first country of asylum, the applicant has enjoyed protection in accordance with the Geneva Convention or sufficient protection in that third country, and can still avail himself or herself

of that protection, under the safe third country concept there is the possibility for the applicant to receive protection in accordance with the substantive standards of the Geneva Convention or sufficient protection in accordance with this proposal. This difference is the reason why this proposal, as under the current legislative framework, provides for automatic suspensive effect of appeal with regard to a decision taken based on the ground of safe third country but not on the ground of first country of asylum (Article 53(2)(b)). It is considered that there is a higher risk of a possible violation of Article 3 of the European Convention on Human Rights (ECHR) when applying the concept of safe third country and therefore the suspensive effect of the appeal remains necessary to ensure an effective remedy in accordance with Article 13 of the ECHR.

As regards the concept of safe third country, in its Communication of 10 February 2016,<sup>16</sup> the Commission encouraged all Member States to foresee and require its use in their national legislation. In this proposal, the Commission proposes a harmonised EU approach to its use, in full respect for the international obligations enshrined in the Charter, the ECHR and the Geneva Convention so as to guarantee that it is applied in the same manner in all Member States, and proposes that safe third countries should be designated at Union level through a future amendment of 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 (Article 46). However, the concept of safe third country may also be applied in individual cases directly on the basis of the conditions set out in the regulation.

The use of the safe country of origin concept allows a Member State to examine an application on the basis of a rebuttable presumption that his or her country of origin is safe. The use of this concept enables applications to be dealt with under the accelerated examination procedure (Article 40(1)(e)) and where an application is rejected as manifestly unfounded on this ground, there is no automatic suspensive effect of the appeal (Article 53(2)(a)).

In September 2015, the Commission proposed the adoption of a Regulation establishing an EU common list of safe countries of origin<sup>17</sup> in order to facilitate the swift processing of applications of persons from these countries.<sup>18</sup> The Commission considers that the EU common list of safe countries of origin should be an integral part of this draft Regulation. It is for this reason that this proposal incorporates the Commission's proposal for a Regulation establishing an EU common list of safe countries of origin including the same list of countries based on the same justifications as in that proposal, with slight modifications to the text taking into account ongoing discussions between the co-legislators (Article 48). Once there is agreement between the co-legislators on the Commission proposal establishing an EU common list of safe countries of origin, that proposal should be adopted. The final text of that new Regulation would then need to be incorporated in the Asylum Procedure Regulation before the latter is adopted and the Regulation establishing an EU common list of safe countries of origin should be repealed.

The objective is to move towards fully harmonised designations of safe countries of origin and safe third countries at Union level, based on proposals by the Commission, assisted by the

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<sup>16</sup> COM(2016) 85 final.

<sup>17</sup> Proposal for a Regulation of the European Parliament and of the Council establishing an EU common list of safe countries of origin for the purposes of Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection, and amending Directive 2013/32/EU (COM(2015) 452 final).

<sup>18</sup> The proposed EU common list of safe countries of origin includes Albania, Bosnia and Herzegovina, former Yugoslav Republic of Macedonia, Kosovo, Montenegro, Serbia and Turkey.

European Union Agency for Asylum. It is for this reason, that this proposal includes a 'sunset' clause whereby Member States should continue to retain national designations of safe countries of origin or safe third countries only for up to five years from entry into force of this draft Regulation (Article 50(1)).

- **Right to an effective remedy**

As a general rule, for an applicant to be able to exercise his or her right to an effective remedy, he or she has the right to remain until the time-limit for lodging a first level of appeal expires and where the applicant exercises such right, pending the outcome of the remedy (Article 54(1)). It is only in limited cases that the suspensive effect of an appeal might not be automatic and the individual applicant would need to request the court or tribunal to stay the execution of a return decision or the court would act of its own motion to this effect. In cases where a negative decision rejects an application as manifestly unfounded or unfounded in cases subject to the accelerated examination procedure or the border procedure, as inadmissible because the applicant comes from a first country of asylum or the application is a subsequent application, where an application is rejected as explicitly withdrawn or abandoned, a court or tribunal may allow the applicant to remain subject to a request from the applicant or acting *ex officio* to stay the execution of a return decision (Article 54(2)). Where an applicant lodges a further appeal against a first or a subsequent appeal decision, he or she shall, in principle, not have a right to remain on the territory of Member States (Article 54(5)).

Where an exception is made to the right to a remedy with automatic suspensive effect, the applicant's rights should be adequately guaranteed by providing him or her with the necessary interpretation and legal assistance, as well as by allowing sufficient time for the applicant to prepare and submit his or her request to the court or tribunal. Furthermore, as found by the European Court of Human Rights (ECtHR) in *M.S.S. v Belgium and Greece*,<sup>19</sup> in such a framework, the court or tribunal should be able to examine the negative decision of the determining authority in terms of fact and law. In these cases, taking into account the ruling of the ECtHR in *I.M. v. France*<sup>20</sup> and that of the Court of Justice of the European Union in *Dörr*,<sup>21</sup> and in view of the strict time-limits for lodging an appeal, the Commission proposes to extend the guarantees which, in the Asylum Procedures Directive, were only applicable to the border procedure, to all cases where an applicant is required to apply separately for interim protection (Article 54(3)). The applicant should be allowed to remain on the territory pending the outcome of the procedure to rule on whether or not he or she may remain. However, that decision should be taken within one month from the lodging of the appeal (Article 54(4)).

- **Withdrawal of international protection**

In its proposal for a Qualification Regulation, the Commission is proposing to strengthen rules on status review to check whether the eligibility criteria continue to be met by introducing systematic and regular reviews. Such reviews are to be carried out when there is a significant relevant change in the country of origin which is reflected in Union level country of origin information and common analysis prepared by the European Union Agency for Asylum and when residence permits are renewed for the first time for refugees and for the first and second time for beneficiaries of subsidiary protection. The determining authorities will revoke, end or refuse to renew the status when protection needs cease to exist or when

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<sup>19</sup> Judgment of the ECtHR (Grand Chamber) of 21 January 2011, *M.S.S. v. Belgium and Greece* (Application No 30696/09).

<sup>20</sup> Judgment of the ECtHR (Fifth Chamber) of 2 February 2012, *I.M. v. France* (Application No 9152/09).

<sup>21</sup> Judgment of the Court of Justice of the European Union, *Dörr*, C-136/03.

exclusion grounds come into being after the protection has been granted. The procedure for withdrawal of international protection in this proposal remains largely unchanged when compared to the current legislative framework. However, in view of the proposed regular status review, it was considered necessary to enhance the procedural guarantees of the individual by providing him or her with the opportunity to submit his or her case in a personal interview and not only by means of written submissions as is currently the case, and by providing the necessary interpretation (Article 52(1)(b) and Article 52(4)). The individual will continue to enjoy the right to free legal assistance and representation (Article 52(4)).

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**

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,

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>22</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, including a Common European Asylum System which is based on the full and inclusive application of the Geneva Convention Relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967 (Geneva Convention), is a constituent part of the European Union's objective of establishing progressively an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Union. Such a policy should be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States.
- (3) The Common European Asylum System is based on common standards for asylum procedures, recognition and protection offered at Union level, reception conditions and a system for determining the Member State responsible for asylum seekers. Notwithstanding progress achieved so far in the progressive development of the Common European Asylum System, there are still significant disparities between the Member States in the types of procedures used, the recognition rates, the type of protection granted, the level of material reception conditions and benefits given to applicants and beneficiaries of international protection. These divergences are important drivers of secondary movements and undermine the objective of ensuring that in a Common European Asylum System all applicants are equally treated wherever they apply in the Union.

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<sup>22</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>23</sup> the Commission set out its options for improving the Common European Asylum System, namely to establish a sustainable and fair system for determining the Member State responsible for asylum seekers, to reinforce the Eurodac system, to achieve greater convergence in the EU asylum system, to prevent secondary movements within the Union and a new mandate for the European Union Agency for Asylum. That Communication is in line with calls by the European Council on 18-19 February 2016<sup>24</sup> to make progress towards reforming the EU's existing framework so as to ensure a humane and efficient asylum policy. It also proposes a way forward in line with the holistic approach to migration set out by the European Parliament in its own initiative report of 12 April 2016.
- (5) For a well-functioning Common European Asylum System, substantial progress should be made regarding the convergence of national asylum systems. The current disparate asylum procedures in all Member States should be replaced with a common procedure for granting and withdrawing international protection applicable across all Member States pursuant to Regulation (EU) No XXX/XXX of the European Parliament and of the Council (Qualification Regulation)<sup>25</sup> ensuring the timeliness and effectiveness of the procedure. Applications made by the third-country nationals and stateless persons for the international protection should be examined in a procedure, which is governed by the same rules, regardless of the Member State where the application is lodged to ensure equity in the treatment of applications for international protection, clarity and legal certainty for the individual applicant.
- (6) A common procedure for granting and withdrawing international protection should limit the secondary movements of applicants for international protection between Member States, where such movements would be caused by differences in legal frameworks, by replacing the current discretionary provisions with harmonised rules and by clarifying the rights and obligations of applicants and the consequences of non-compliance with those obligations, and create equivalent conditions for the application of Regulation (EU) No XXX/XXX (Qualification Regulation) in Member States.
- (7) This Regulation should apply to all applications for international protection made in the territory of the Member States, including those made at the external border, on the territorial sea or in the transit zones of Member States, and the withdrawal of international protection. Persons seeking international protection who are present on the territorial sea of a Member State should be disembarked on land and have their applications examined in accordance with this Regulation.
- (8) This Regulation should apply to applications for international protection in a procedure where it is examined whether the applicants qualify as beneficiaries of international protection in accordance with Regulation (EU) No XXX/XXX (Qualification Regulation). In addition to the international protection, the Member States may also grant under their national law other national humanitarian statuses to those who do not qualify for the refugee status or subsidiary protection status. In order to streamline the procedures in Member States, the Member States should have the possibility to apply this Regulation also to applications for any kind of such other protection.

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<sup>23</sup> COM(2016) 197 final.

<sup>24</sup> EUCO 19.02.2016, SN 1/16.

<sup>25</sup> OJ L [...], [...], p. [...].

- (9) With respect to the treatment of persons falling within the scope of this Regulation, Member States are bound by obligations under instruments of international law to which they are party.
- (10) The resources of the Asylum, Migration and Integration Fund should be mobilised to provide adequate support to Member States' efforts in applying this Regulation, in particular to those Member States which are faced with specific and disproportionate pressures on their asylum and reception systems.
- (11) The European Union Agency for Asylum should provide Member State with the necessary operational and technical assistance in the application of this Regulation, in particular by providing experts to assist national authorities to receive, register, and examine applications for international protection and by providing updated information on third countries, including country of origin information and guidance on the situation in specific countries of origin. When applying this Regulation, Member States should take into account operational standards, indicators, guidelines and best practices developed by the European Union Agency for Asylum.
- (12) In the interests of a correct recognition of those persons in need of protection as refugees within the meaning of Article 1 of the Geneva Convention or as persons eligible for subsidiary protection, every applicant should have an effective access to the procedure, the opportunity to cooperate and properly communicate with the responsible authorities so as to present the relevant facts of his or her case and sufficient procedural guarantees to pursue his or her case throughout all stages of the procedure.
- (13) The applicant should be provided with an effective opportunity to present all relevant elements at his or her disposal to the determining authority. For this reason, the applicant should, subject to limited exceptions, enjoy the right to be heard through a personal interview on the admissibility or on merits of his or her application, as appropriate. For the right to a personal interview to be effective, the applicant should be assisted by an interpreter and be given the opportunity to provide his or explanations concerning the grounds for his or her application in a comprehensive manner. The applicant should be given sufficient time to prepare and consult with his or her legal adviser or counsellor, and he or she may be assisted by the legal adviser or counsellor during the interview. The personal interview should be conducted under conditions which ensure appropriate confidentiality and by adequately trained and competent personnel, including where necessary, personnel from authorities of other Member States or experts deployed by the European Union Agency for Asylum. The personal interview may only be omitted when the determining authority is to take a positive decision on the application or is of the opinion that the applicant is unfit or unable to be interviewed owing to enduring circumstance beyond his or her control. Given that the personal interview is an essential part of the examination of the application, the interview should be recorded and the applicants and their legal advisers should be given access to the recording, as well as to the report or transcript of the interview before the determining authority takes a decision, or in the case of an accelerated examination procedure, at the same time as the decision is made.
- (14) It is in the interests of both Member States and applicants to ensure a correct recognition of international protection needs already at the stage of the administrative procedure by providing good quality information and legal support which leads to more efficient and better quality decision-making. For that purpose, access to legal assistance and representation should be an integral part of the common procedure for

international protection. In order to ensure the effective protection of the applicant's rights, particularly the right of defence and the principle of fairness, and to ensure the economy of the procedure, applicants should, upon their request and subject to conditions set out in this Regulation, be provided with free legal assistance and representation during the administrative procedure and in the appeal procedure. The free legal assistance and representation should be provided by persons competent to provide them under national law.

- (15) Certain applicants may be in need of special procedural guarantees due, *inter alia*, to their age, gender, sexual orientation, gender identity, disability, serious illness, mental disorders or as a consequence of torture, rape or other serious forms of psychological, physical, sexual or gender-based violence. It is necessary to systematically assess whether an individual applicant is in need of special procedural guarantees and identify those applicants as early as possible from the moment an application is made and before a decision is taken.
- (16) To ensure that the identification of applicants in need of special procedural guarantees takes place as early as possible, the personnel of the authorities responsible for receiving and registering applications should be adequately trained to detect signs of vulnerability signs and they should receive appropriate instructions for that purpose. Further measures dealing with identification and documentation of symptoms and signs of torture or other serious acts of physical or psychological violence, including acts of sexual violence, in procedures covered by this Regulation should, *inter alia*, be based on the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).
- (17) Applicants who are identified as being in need of special procedural guarantees should be provided with adequate support, including sufficient time, in order to create the conditions necessary for their effective access to procedures and for presenting the elements needed to substantiate their application for international protection. Where it is not possible to provide adequate support in the framework of an accelerated examination procedure or a border procedure, an applicant in need of special procedural guarantees should be exempted from those procedures. The need for special procedural guarantees of a nature that could prevent the application of accelerated or border procedures should also mean that the applicant is provided with additional guarantees in cases where his or her appeal does not have automatic suspensive effect, with a view to making the remedy effective in his or her particular circumstances.
- (18) With a view to ensuring substantive equality between female and male applicants, examination procedures should be gender-sensitive. In particular, personal interviews should be organised in a way which makes it possible for both female and male applicants to speak about their past experiences in cases involving gender-based persecution. For this purpose, women should be given an effective opportunity to be interviewed separately from their spouse, partner or other family members. Where possible, women and girls should be provided with female interpreters and interviewers. Medical examinations on women and girls should be carried out by female medical practitioners, in particular having regard to the fact that the applicant may have been a victim of gender-based violence. The complexity of gender-related claims should be properly taken into account in procedures based on the concept of first country of asylum, the concept of safe third country, the concept of safe country of origin and in the notion of subsequent applications.



- (19) When, in the framework of an application being processed, the applicant is searched, that search should be carried by a person of the same sex. This should be without prejudice to a search carried out, for security reasons, on the basis of national law.
- (20) The best interests of the child should be a primary consideration of Member States when applying this Regulation, in accordance with Article 24 of the Charter and the 1989 United Nations Convention on the Rights of the Child. In assessing the best interests of the child, Member States should in particular take due account of the minor's well-being and social development, including his or her background. In view of Article 12 of the United Nations Convention on the Rights of the Child concerning the child's right to be heard, the determining authority shall provide a minor the opportunity of a personal interview unless this is manifestly not in the minor's best interests.
- (21) The common procedure streamlines the time-limits for an individual to accede to the procedure, for the examination of the application by the determining authority as well as for the examination of first level appeals by judicial authorities. Whereas a disproportionate number of simultaneous applications may risk delaying access to the procedure and the examination of the applications, a measure of flexibility to exceptionally extend those time-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 to the extent of jeopardising the functioning of Common European Asylum System, the Agency may, based on an implementing decision of the Commission, take measures in support of that Member State.
- (22) Access to the common procedure should be based on a three-step approach consisting of the making, registering and lodging of an application. Making an application is the first step that triggers the application of this Regulation. A third-country national or stateless person is considered to have made an application when expressing a wish to receive international protection from a Member State. Such a wish may be expressed in any form and the individual applicant need not necessarily use specific words such as international protection, asylum or subsidiary protection. The defining element should be the expression by the third country national or the stateless person of a fear of persecution or serious harm upon return to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence. In case of doubt whether a certain declaration may be construed as an application for international protection, the third-country national or stateless person should be expressly asked whether he or she wishes to receive international protection. The applicant should benefit from rights under this Regulation and Directive XXX/XXX/EU (Reception Conditions Directive)<sup>26</sup> as soon as he or she makes an application.
- (23) An application should be registered as soon as it is made. At this stage, the authorities responsible for receiving and registering applications, including border guards, police,

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<sup>26</sup> OJ L [...], [...], p. [...].

immigration authorities and authorities responsible for detention facilities should register the application together with the personal details of the individual applicant. Those authorities should inform the applicant of his or her rights and obligations, as well as the consequences for the applicant in case of non-compliance with those obligations. The applicant should be given a document certifying that an application has been made. The time limit for lodging an application starts to run from the moment an application is registered.

- (24) The lodging of the application is the act that formalises the application for international protection. The applicant should be given the necessary information as to how and where to lodge his or her application and he or she should be given an effective opportunity to do so. At this stage he or she is required to submit all the elements at his or her disposal needed to substantiate and complete the application. The time-limit for the administrative procedure starts to run from the moment an application is lodged. At that time, the applicant should be given a document which certifies his or her status as an applicant, and which should be valid for the duration of the his or her right to remain on the territory of the Member State responsible for examining the application.
- (25) The applicant should be informed properly of his or her rights and obligations in a timely manner and in a language that he or she understands or is reasonably meant to understand. Having regard to the fact that where, for instance, the applicant refuses to cooperate with the national authorities by not providing the elements necessary for the examination of the application and by not providing his or her fingerprints or facial image, or fails to lodge his or her application within the set time limit, the application could be rejected as abandoned, it is necessary that the applicant be informed of the consequences for not complying with those obligations.
- (26) To be able to fulfil their obligations under this Regulation, the personnel of the authorities responsible for receiving and registering applications should have appropriate knowledge and should receive the necessary training in the field of international protection, including with the support of the European Union Agency for Asylum. They should also be given the appropriate means and instructions to effectively perform their tasks.
- (27) In order to facilitate access to the procedure at border crossing points and in detention facilities, information should be made available on the possibility to apply for international protection. Basic communication necessary to enable the competent authorities to understand if persons declare their wish to receive international protection should be ensured through interpretation arrangements.
- (28) This Regulation should provide for the possibility that applicants lodge an application on behalf of their spouse, partner in a stable and durable relationship, dependant adults and minors. This option allows for the joint examination of those applications. The right of each individual to seek international protection is guaranteed by the fact that if the applicant does not apply on behalf of the spouse, partner, dependant adult or minor within the set time-limit for lodging an application, the spouse or partner may still do in his or her own name, and the dependant adult or minor should be assisted by the determining authority. However, if a separate application is not justified, it should be considered as inadmissible.
- (29) To ensure that unaccompanied minors have effective access to the procedure, they should always be appointed a guardian. The guardian should be a person or a representative of an organisation appointed to assist and guide the minor through the

procedure with a view to safeguard the best interests of the child as well his or her general well-being. Where necessary, the guardian should exercise legal capacity for the minor. In order to provide effective support to the unaccompanied minors, guardians should not be placed in charge of a disproportionate number of unaccompanied minors at the same time. Member States should appoint entities or persons responsible for the support, supervision and monitoring of the guardians in the performance of their tasks. An unaccompanied minor should lodge an application in his or her own name or through the guardian. In order to safeguard the rights and procedural guarantees of an unaccompanied minor, the time-limit for him or her to lodge an application should start to run from when his or her guardian is appointed and they meet. Where the guardian does not lodge the application within the set time limit, the unaccompanied minor should be given an opportunity to lodge the application on his or her name with the assistance of the determining authority. The fact that an unaccompanied minor chooses to lodge an application in his or her own name should not preclude him or her from being assigned a guardian.

- (30) In order to guarantee the rights of the applicants, decisions on all applications for international protection should be taken on the basis of the facts, objectively, impartially and on an individual basis after a thorough examination which takes into account all the elements provided by the applicant and the individual circumstances of the applicant. To ensure a rigorous examination of an application, the determining authority should take into account relevant, accurate and up-to-date information relating to the situation in the country of origin of the applicant obtained from the European Union Agency for Asylum and other sources such as the United Nations High Commissioner for Refugees. The determining authority should also take into account any relevant common analysis of country of origin information developed by the European Union Agency for Asylum. Any postponement of concluding the procedure should fully comply with the obligations of the Member States under Regulation (EU) No XXX/XXX (Qualification Regulation) and with the right to good administration, without prejudice to the efficiency and fairness of the procedure under this Regulation.
- (31) In order to guarantee the rights of the applicant, a decision concerning his or her application should be given in writing. Where the decision does not grant international protection, the applicant should be given reasons for the decision and information on the consequences of the decision as well as the manner in which to challenge that decision. Without prejudice to the applicant's right to remain and to the principle of *non-refoulement*, such a decision may include, or may be issued together with, a return decision issued in accordance with Article 6 of Directive 2008/115/EC of the European Parliament and of the Council.<sup>27</sup>
- (32) It is necessary that decisions on applications for international protection are taken by authorities whose personnel has the appropriate knowledge and has received the necessary training in the field of international protection, and that they perform their activities with due respect for the applicable ethical principles. This should apply to the personnel of authorities from other Member States and experts deployed by the European Union Agency for Asylum deployed to assist the determining authority of a Member State in the examination of applications for international protection.

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<sup>27</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 as well as for the first level of appeal should be established to streamline the procedure for international protection. In this way, applicants should be able to receive a decision on their application within the least amount of time possible in all Member States thereby ensuring a speedy and efficient procedure.
- (34) In order to shorten the overall duration of the procedure in certain cases, Member States should have the flexibility, in accordance with their national needs, to prioritise the examination of any application by examining it before other, previously made applications, without derogating from normally applicable procedural time limits, principles and guarantees.
- (35) Before determining the Member State responsible in accordance with Regulation (EU) No XXX/XXX of the European Parliament and of the Council (Dublin Regulation),<sup>28</sup> the first Member State in which an application has been lodged should examine the admissibility of that application when a country which is not a Member State is considered as a first country of asylum or safe third country for the applicant. In addition, an application should be considered to be inadmissible when it is a subsequent applicant without new relevant elements or findings and when a separate application by a spouse, partner, dependent adult or minor is not considered to be justified.
- (36) The concept of first country of asylum should be applied as a ground for inadmissibility where it can reasonably be assumed that another country would grant protection in accordance with the substantive standards of the Geneva Convention or the applicant would be provided sufficient protection in that country. In particular, the Member States should not examine the merits of an application where a first country of asylum has granted the applicant refugee status or otherwise sufficient protection. Member States should proceed on that basis only where they are satisfied including, where necessary or appropriate, based on assurances obtained from the third country concerned, that the applicant has enjoyed and will continue to enjoy protection in that country in accordance with the Geneva Convention or has otherwise enjoyed and will continue to enjoy sufficient protection, particularly as regards the right of legal residence, appropriate access to the labour market, reception facilities, healthcare and education, and the right to family reunification in accordance with international human rights standards.
- (37) The concept of safe third country should be applied as a ground for inadmissibility where the applicant, due to a connection to the third country including one through which he or she has transited, can reasonably be expected to seek protection in that country, and there are grounds for considering that the applicant will be admitted or readmitted to that country. Member States should proceed on that basis only where they are satisfied including, where necessary or appropriate, based on assurances obtained from the third country concerned, that the applicant will have the possibility to receive protection in accordance with the substantive standards of the Geneva Convention or will enjoy sufficient protection, particularly as regards the right of legal residence, appropriate access to the labour market, reception facilities, healthcare and

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<sup>28</sup> OJ L [...], [...], p. [...].

education, and the right to family reunification in accordance with international human rights standards.

- (38) An application for international protection should be examined on its merits to determine whether an applicant qualifies for international protection in accordance with Regulation (EU) No XXX/XXX (Qualification Regulation). There need not be an examination on the merits where an application should be declared as inadmissible in accordance with this Regulation. However, where from a *prima facie* assessment it is clear that an application may be rejected as manifestly unfounded, the application may be rejected on that ground without examining its admissibility.
- (39) The examination of an application should be accelerated and completed within a maximum of two months in those instances where an application is manifestly unfounded because it is an abusive claim, including where an applicant comes from a safe country of origin or an applicant is making an application merely to delay or frustrate the enforcement of a removal decision, or where there are serious national security or public concerns, where the applicant does not apply for international protection in the first Member State of entry or in the Member State of legal residence or where an applicant whose application is under examination and who made an application in another Member State or who is on the territory of another Member State without a residence document is taken back under the Dublin Regulation. In the latter case, the examination of the application should not be accelerated if the applicant is able to provide substantiated justifications for having left to another Member State without authorisation, for having made an application in another Member State or for having otherwise been unavailable to the competent authorities, such as for instance that he or she was not informed adequately and in a timely manner of his or her obligations. Furthermore, an accelerated examination procedure may be applied to unaccompanied minors only within the limited circumstances set out in this Regulation.
- (40) Many applications for international protection are made at the border or in a transit zone of a Member State prior to a decision on the entry of the applicant. Member States should be able to provide for an examination on admissibility or an examination on the merits which would make it possible for such applications to be decided upon at those locations in well-defined circumstances. The border procedure should not take longer than four weeks and after that period applicants should be allowed entry to the territory of the Member State. It is only where a disproportionate number of applicants lodge their applications at the borders or in a transit zone, that the border procedure may be applied at locations in proximity to the border or transit zone. A border procedure may be applied to unaccompanied minors only within the limited circumstances set out in this Regulation.
- (41) The notion of public order may, *inter alia*, cover a conviction of having committed a serious crime.
- (42) As long as an applicant can show good cause, the lack of documents on entry or the use of forged documents should not *per se* entail an automatic recourse to an accelerated examination procedure or a border procedure.
- (43) Where an applicant either explicitly withdraws his or her application of his or her own motion, or does not comply with the obligations arising from this Regulation, Regulation (EU) No XXX/XXX (Dublin Regulation) or Directive XXX/XXX/EU (Reception Conditions Directive) thereby implicitly withdraws his or her application, the application should not be further examined and it should be rejected as explicitly

withdrawn or abandoned, and any application in the Member States by the same applicant further after that decision should be considered to be a subsequent application. However, the implicit withdrawal should not be automatic but the applicant should be allowed the opportunity to report to the determining authority and demonstrate that the failure to comply with those obligations was due to circumstances beyond his control.

- (44) Where an applicant makes a subsequent application without presenting new evidence or findings which significantly increase his or her likelihood of qualifying as a beneficiary of international protection or which relate to the reasons for which the previous application was rejected as inadmissible, that subsequent application should not be subject to a new full examination procedure. In those cases, following a preliminary examination, applications should be dismissed as inadmissible or as manifestly unfounded where the application is so clearly without substance or abusive that it has no tangible prospect of success, in accordance with the *res judicata* principle. The preliminary examination shall be carried out on the basis of written submissions and a personal interview however the personal interview may be dispensed with in those instances where, from the written submissions, it is clear that the application does not give rise to relevant new elements or findings or that it is clearly without substance and has no tangible prospect of success. In case of subsequent applications, exceptions may be made to the individual's right to remain on the territory of a Member State after a subsequent application is rejected as inadmissible or unfounded, or in the case of a second or further subsequent applications, as soon as an application is made in any Member States following a final decision which had rejected a previous subsequent application as inadmissible, unfounded or manifestly unfounded.
- (45) A key consideration as to whether an application for international protection is well-founded is the safety of the applicant in his or her country of origin. Having regard to the fact that Regulation (EU) No XXX/XXX (Qualification Regulation) aims to achieve a high level of convergence on the qualification of third-country nationals and stateless persons as beneficiaries of international protection, this Regulation establishes common criteria for designating third countries as safe countries of origin and, in view of the need to strengthen the application of the safe country of origin concept as an essential tool to support the swift processing of applications that are likely to be unfounded, this Regulation sets out an EU common list of safe countries of origin.
- (46) The fact that a third country is on the EU common list of safe countries of origin cannot establish an absolute guarantee of safety for nationals of that country and therefore does not dispense with the need to conduct an appropriate individual examination of the application for international protection. By its very nature, the assessment underlying the designation can only take into account the general, civil, legal and political circumstances in that country and whether actors of persecution, torture or inhuman or degrading treatment or punishment are subject to sanction in practice when found liable in that country. For this reason, where an applicant shows that there are serious reasons to consider the country not to be safe in his or her particular circumstances, the designation of the country as safe can no longer be considered relevant for him or her.
- (47) As regards the designation of safe third countries at Union level, this Regulation provides for having such a designation. Third countries should be designated as safe third countries at Union level by means of an amendment to this Regulation based on

the conditions set out in this Regulation and after carrying out a detailed evidence-based assessment involving substantive research and broad consultation with Member States and relevant stakeholders.

- (48) The establishment of an EU common list of safe countries of origin and an EU common list for safe third countries should address some of the existing divergences between Member States' national lists of safe countries. While Member States should retain the right to apply or introduce legislation that allows for the national designation of third countries other than those designated as safe third countries at Union level or appearing on the EU common list as safe countries of origin, the establishment of such common designation or list should ensure that the concept is applied by all Member States in a uniform manner in relation to applicants whose countries of origin are on the common list or who have a connection with a safe third country. This should facilitate convergence in the application of procedures and thereby also deter secondary movements of applicants for international protection. For that reason, the possibility of using national lists or designations should come to an end within a period of five years from entry into force of this Regulation.
- (49) The Commission, assisted by the European Union Agency for Asylum, should regularly review the situation in third countries designated as safe third countries at Union level or that are on the EU common list of safe countries of origin. In case of sudden change for the worse in the situation of such a third country, the Commission should be able to suspend the designation of that third country as safe third country at Union level or the presence of that third country from the EU common list of safe countries of origin for a limited period of time by means of a delegated act in accordance with Article 290 of the Treaty on the Functioning of the European Union. Moreover, in this case, the Commission should propose an amendment for the third country not to be designated as a safe third country at Union level any longer or to remove that third country from the EU common list of safe country of origin within 3 months of the adoption of delegated act suspending the third country.
- (50) For the purpose of this substantiated assessment, the Commission should take into consideration a range of sources of information at its disposal including in particular, its Annual Progress Reports for third countries designated as candidate countries by the European Council, regular reports from the European External Action Service and the information from Member States, the European Union Agency for Asylum, the United Nations High Commissioner for Refugees, the Council of Europe and other relevant international organisations. The Commission should be able to extend the suspension of the designation of a third country as a safe third country at Union level or the presence of a third country from the EU common list of safe country of origin for a period of six months, with a possibility to renew that extension once. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (51) When the period of validity of the delegated act and its extensions expires, without a new delegated act being adopted, the designation of the third country as safe third country at Union level or from the EU common list of safe countries of origin should no longer be suspended. This shall be without prejudice to any proposed amendment for the removal of the third country from the lists.

- (52) The Commission, with the assistance of the European Union Agency for Asylum, should regularly review the situation in third countries that have been removed from the EU common list of safe countries of origin or safe third countries, including where a Member State notifies the Commission that it considers, based on a substantiated assessment, that, following changes in the situation of that third country, it fulfils again the conditions set out in this Regulation for being designated as safe. In such a case, Member States could only designate that third country as a safe country of origin or a safe third country at the national level as long as the Commission does not raise objections to that designation. Where the Commission considers that these conditions are fulfilled, it may propose an amendment to the designation of safe third countries at Union level or to the EU common list of safe countries of origin so as to add the third country.
- (53) As regards safe countries of origin, following the conclusions of the Justice and Home Affairs Council of 20 July 2015, at which Member States agreed that priority should be given to an assessment by all Member States of the safety of the Western Balkans, the European Union Agency for Asylum organised an expert-level meeting with the Member States on 2 September 2015, where a broad consensus was reached that Albania, Bosnia and Herzegovina, Kosovo\*,<sup>29</sup> the former Yugoslav Republic of Macedonia, Montenegro and Serbia should be considered as safe countries of origin within the meaning of this Regulation.
- (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.

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<sup>29</sup> \* 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.



- (56) As regards Bosnia and Herzegovina, its Constitution provides the basis for the sharing of powers between the country's constituent peoples. The legal basis for protection against persecution and mistreatment is adequately provided by substantive and procedural human rights and anti-discrimination legislation, including membership of all major international human rights treaties. In 2014, the European Court of Human Rights found violations in five out of 1196 applications. There are no indications of any incidents of expulsion, removal or extradition of own citizens to third countries where, inter alia, there is a serious risk that they would be subjected to the death penalty, torture, persecution or other inhuman or degrading treatment or punishment, or where their lives or freedom would be threatened on account of their race, religion, nationality, sexual orientation, membership of a particular social group or political opinion, or from which there is a serious risk of an expulsion, removal or extradition to another third country. In 2014, Member States considered that 4,6 % (330) of asylum applications of citizens from Bosnia and Herzegovina were well-founded. At least nine Member States have designated Bosnia and Herzegovina as a safe country of origin.
- (57) As regards the former Yugoslav Republic of Macedonia, the legal basis for protection against persecution and mistreatment is adequately provided by principle substantive and procedural human rights and anti-discrimination legislation, including membership of all major international human rights treaties. In 2014, the European Court of Human Rights found violations in six out of 502 applications. There are no indications of any incidents of expulsion, removal or extradition of own citizens to third countries where, inter alia, there is a serious risk that they would be subjected to the death penalty, torture, persecution or other inhuman or degrading treatment or punishment, or where their lives or freedom would be threatened on account of their race, religion, nationality, sexual orientation, membership of a particular social group or political opinion, or from which there is a serious risk of an expulsion, removal or extradition to another third country. In 2014, Member States considered that 0,9 % (70) of asylum applications of citizens of the former Yugoslav Republic of Macedonia were well-founded. At least seven Member States have designated the former Yugoslav Republic of Macedonia as a safe country of origin. The former Yugoslav Republic of Macedonia has been designated as a candidate country by the European Council. At the time of designation, the assessment was that the former Yugoslav Republic of Macedonia fulfilled the criteria established by the Copenhagen European Council of 21-22 June 1993 relating to the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. The former Yugoslav Republic of Macedonia will have to continue to fulfil those criteria, for becoming a member in line with the recommendations provided in the Annual Progress Report.
- (58) As regards Kosovo\*, the legal basis for protection against persecution and mistreatment is adequately provided by substantive and procedural human rights and anti-discrimination legislation. The non-accession of Kosovo\* to relevant international human rights instruments such as the ECHR results from the lack of international consensus regarding its status as a sovereign State. There are no indications of any incidents of expulsion, removal or extradition of own citizens to third countries where, inter alia, there is a serious risk that they would be subjected to the death penalty, torture, persecution or other inhuman or degrading treatment or punishment, or where their lives or freedom would be threatened on account of their race, religion, nationality, sexual orientation, membership of a particular social group or political opinion, or from which there is a serious risk of an expulsion, removal or extradition

to another third country. In 2014, Member States considered that 6,3 % (830) of asylum applications of citizens of Kosovo\* were well-founded. At least six Member States have designated Kosovo\* as a safe country of origin.

- (59) This Regulation is without prejudice to Member States' position on the status of Kosovo, which will be decided in accordance with their national practice and international law. In addition, none of the terms, wording or definitions used in this Regulation constitute recognition of Kosovo by the Union as an independent State nor does it constitute recognition by individual Member States of Kosovo in that capacity where they have not taken such a step. In particular, the use of the term "countries" does not imply recognition of statehood.
- (60) As regards Montenegro, the legal basis for protection against persecution and mistreatment is adequately provided by substantive and procedural human rights and anti-discrimination legislation, including membership of all major international human rights treaties. In 2014, the European Court of Human Rights found violations in one out of 447 applications. There are no indications of any incidents of expulsion, removal or extradition of own citizens to third countries where, inter alia, there is a serious risk that they would be subjected to the death penalty, torture, persecution or other inhuman or degrading treatment or punishment, or where their lives or freedom would be threatened on account of their race, religion, nationality, sexual orientation, membership of a particular social group or political opinion, or from which there is a serious risk of an expulsion, removal or extradition to another third country. In 2014, Member States considered that 3,0 % (40) of asylum applications of citizens of Montenegro were well-founded. At least nine Member States have designated Montenegro as a safe country of origin. Montenegro has been designated as a candidate country by the European Council and negotiations have been opened. At the time of designation, the assessment was that Montenegro fulfilled the criteria established by the Copenhagen European Council of 21-22 June 1993 relating to the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. Montenegro will have to continue to fulfil those criteria, for becoming a member in line with the recommendations provided in the Annual Progress Report.
- (61) As regards Serbia, the Constitution provides the basis for self-governance of minority groups in the areas of education, use of language, information and culture. The legal basis for protection against persecution and mistreatment is adequately provided by substantive and procedural human rights and anti-discrimination legislation, including membership of all major international human rights treaties. In 2014, the European Court of Human Rights found violations in 16 out of 11 490 applications. There are no indications of any incidents of expulsion, removal or extradition of own citizens to third countries where, inter alia, there is a serious risk that they would be subjected to the death penalty, torture, persecution or other inhuman or degrading treatment or punishment, or where their lives or freedom would be threatened on account of their race, religion, nationality, sexual orientation, membership of a particular social group or political opinion, or from which there is a serious risk of an expulsion, removal or extradition to another third country. In 2014, Member States considered that 1,8 % (400) of asylum applications of citizens from Serbia were well-founded. At least nine Member States have designated Serbia as a safe country of origin. Serbia has been designated as a candidate country by the European Council and negotiations have been opened. At the time of designation, the assessment was that Serbia fulfilled the criteria established by the Copenhagen European Council of 21-22 June 1993 relating to the

stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. Serbia will have to continue to fulfil those criteria, for becoming a member in line with the recommendations provided in the Annual Progress Report.

- (62) As regards Turkey, the legal basis for protection against persecution and mistreatment is adequately provided by substantive and procedural human rights and anti-discrimination legislation, including membership of all major international human rights treaties. In 2014, the European Court of Human Rights found violations in 94 out of 2 899 applications. There are no indications of any incidents of expulsion, removal or extradition of own citizens to third countries where, inter alia, there is a serious risk that they would be subjected to the death penalty, torture, persecution or other inhuman or degrading treatment or punishment, or where their lives or freedom would be threatened on account of their race, religion, nationality, sexual orientation, membership of a particular social group or political opinion, or from which there is a serious risk of an expulsion, removal or extradition to another third country. In 2014, Member States considered that 23,1 % (310) of asylum applications of citizens of Turkey were well-founded. One Member State has designated Turkey as a safe country of origin. Turkey has been designated as a candidate country by the European Council and negotiations have been opened. At the time, the assessment was that Turkey sufficiently meets fulfilled the political criteria established by the Copenhagen European Council of 21-22 June 1993 relating to stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, and Turkey will have to continue to fulfil those criteria, for becoming a member in line with the recommendations provided in the Annual Progress Report.
- (63) With respect to the withdrawal of refugee or subsidiary protection status, and in particular in view of the regular status review to be carried out on the basis of Regulation (EU) No XXX/XXX (Qualification Regulation), Member States should ensure that persons benefiting from international protection are duly informed of a possible reconsideration of their status and that they are given the opportunity to submit their point of view, within a reasonable time, by means of a written statement and in a personal interview, before the authorities can take a reasoned decision to withdraw their status.
- (64) Decisions taken on an application for international protection, including the decisions concerning the explicit or implicit withdrawal of an application, and the decisions on the withdrawal of refugee or subsidiary protection status should be subject to an effective remedy before a court or tribunal in compliance with all requirements and conditions laid down in Article 47 of the Charter. To ensure the effectiveness of the procedure, the applicant should lodge his or her appeal within a set time-limit. For the applicant to be able to meet those time-limits and with a view to ensuring effective access to judicial review, he or she should be able to be assisted by an interpreter as well as be entitled to free legal assistance and representation.
- (65) For an applicant to be able to exercise his or her right to an effective remedy, he or she should be allowed to remain on the territory of a Member State until the time-limit for lodging a first level of appeal expires, and when such a right is exercised within the set time-limit, pending the outcome of the remedy. It is only in limited cases set out in this Regulation that the suspensive effect of an appeal is not automatic and where the applicant would need to request the court or tribunal to stay the execution of a return decision or the court would act of its own motion to this effect. Where an exception is made to the right to a remedy with automatic suspensive effect, the applicant's rights

of defence should be adequately guaranteed by providing him or her with the necessary interpretation and legal assistance, as well as by allowing sufficient time for the applicant to prepare and submit his or her request to the court or tribunal. Furthermore, in this framework, the court or tribunal should be able to examine the decision refusing to grant international protection in terms of fact and law. The applicant should be allowed to remain on the territory pending the outcome of the procedure to rule on whether or not he or she may remain. However, that decision should be taken within one month.

- (66) Having regard to the need for equity in the management of applications and effectiveness in the common procedure for international protection, time-limits should not only be set for the administrative procedure but they should also be established for the appeal stage, at least insofar as the first level of appeal is concerned. This should be without prejudice to an adequate and complete examination of an appeal, and therefore a measure of flexibility should still be maintained in cases involving complex issues of fact or law.
- (67) In accordance with Article 72 of the Treaty on the Functioning of the European Union, this Regulation does not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.
- (68) Regulation (EU) No 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)<sup>30</sup> applies to the processing of personal data by the Member States carried out in application of this Regulation.
- (69) Any processing of personal by the European Union Agency for Asylum within the framework of this Regulation should be conducted in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council,<sup>31</sup> as well as Regulation (EU) No XXX/XXX (EU Asylum Agency Regulation)<sup>32</sup> and it should, in particular, respect the principles of necessity and proportionality.
- (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 number of years since third-country nationals or stateless persons who request international protection in one Member State may try to request international protection in another Member State or may submit further subsequent applications in the same or another Member State for years to come. Given that most third-country nationals or stateless persons who have stayed in the Union for several years will have obtained a settled status or even citizenship of a Member State after a period of ten years from when they are granted international protection, that period should be considered a necessary period for the storage of personal details, including fingerprints and facial images.
- (71) In order to ensure uniform conditions for the implementation of this Regulation, in particular as regards the provision of information, documents to the applicants and measures concerning applicants in need of special procedural guarantees including

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<sup>30</sup> OJ L 119, 4.5.2016, p. 1.

<sup>31</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>32</sup> OJ L [...], [...], p. [...].

minors, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>33</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.

- (72) In order to address sudden changes for the worse in a third country designated as a safe third country at Union level or included in the EU common list of safe countries of origin, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of suspending the designation of that third country as safe third country at Union level or the presence of that third country from the EU common list of safe countries of origin for a period of six months where the Commission considers, on the basis of a substantiated assessment, that the conditions set by this Regulation are no longer met. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Inter-institutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (73) This Regulation does not deal with procedures between Member States governed by Regulation (EU) No XXX/XXX (Dublin Regulation).
- (74) This Regulation should apply to applicants to whom Regulation (EU) No XXX/XXX (Dublin Regulation) applies, in addition and without prejudice to the provisions of that Regulation.
- (75) The application of this Regulation should be evaluated at regular intervals.
- (76) Since the objective of this Regulation, namely to establish a common procedure for granting and withdrawing international protection, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Regulation, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (77) [In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, those Member States have notified their wish to take part in the adoption and application of this Regulation]

OR

*[In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without*

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<sup>33</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).

*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**

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**

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.

### *Article 3*

#### **Extension of the scope of application**

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

### *Article 4*

#### **Definitions**

1. For the purposes of this Regulation, the following definitions referred to in Article 2 of Regulation (EU) No XXX/XXX (Qualification Regulation) apply:
  - (a) 'Geneva Convention';
  - (b) 'refugee';
  - (c) beneficiary of subsidiary protection';
  - (d) 'international protection';
  - (e) 'refugee status';
  - (f) 'subsidiary protection status';
  - (g) 'minor';
  - (h) 'unaccompanied minor'.
2. In addition to paragraph 1, the following definitions apply:
  - (a) '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 as seeking refugee status or subsidiary protection status;
  - (b) 'applicant' means a third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been made;
  - (c) '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;
  - (d) 'final decision' means a decision on whether or not a third-country national or stateless person is granted refugee status or subsidiary protection status by virtue of Regulation (EU) No XXX/XXX (Qualification Regulation), including a decision rejecting the application as inadmissible or a decision rejecting an application as explicitly withdrawn or abandoned and which can no longer be subject to an appeal procedure in the Member State concerned;

- (e) 'determining authority' means any quasi-judicial or administrative body in a Member State responsible for examining applications for international protection competent to take decisions at first instance;
- (f) 'guardian' means a person or an organisation appointed to assist and represent an unaccompanied minor with a view to safeguarding the best interests of the child and his or her general well-being in procedures provided for in this Regulation and exercising legal capacity for the minor where necessary;
- (g) 'withdrawal of international protection' means the decision by a determining authority to revoke, end or refuse to renew refugee status or subsidiary protection status of a person;
- (h) 'remain in the Member State' means to remain in the territory, including at the border or in transit zones, of the Member State in which the application for international protection has been made or is being examined;
- (i) 'subsequent application' means a further application for international protection made in any Member State after a final decision has been taken on a previous application including cases where the application has been rejected as explicitly withdrawn or as abandoned following its implicit withdrawal;
- (j) 'Member State responsible' means the Member State responsible for the examination of an application in accordance with Regulation (EU) No XXX/XXX (Dublin Regulation).

#### *Article 5*

#### **Responsible authorities**

1. Each Member State shall designate a determining authority. The determining authority shall have the following tasks:
  - (a) receiving, registering and examining applications for international protection;
  - (b) taking decisions on applications for international protection;
  - (c) taking decisions on revoking, ending or refusing to renew the refugee or subsidiary status of a person as referred to in Regulation (EU) No XXX/XXX (Qualification Regulation).
2. Each Member State shall provide the determining authority with appropriate means, including sufficient competent personnel to carry out its tasks in accordance with this Regulation. For that purpose, each Member State shall regularly assess the needs of the determining authority to ensure that it is always in a position to deal with applications for international protection in an effective manner, particularly when receiving a disproportionate number of simultaneous applications.
3. The following authorities shall have the task of receiving and registering applications for international protection as well as informing applicants as to where and how to lodge an application for international protection:
  - (a) border guards;
  - (b) police;
  - (c) immigration authorities;
  - (d) authorities responsible for detention facilities.



Member States may entrust also other authorities with those tasks.

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

#### *Article 6*

### **Confidentiality principle**

1. The authorities applying this Regulation shall safeguard the confidentiality of any information they obtain in the course of their work.
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.

## **CHAPTER II**

### **BASIC PRINCIPLES AND GUARANTEES**

#### **SECTION I**

#### **RIGHTS AND OBLIGATIONS OF APPLICANTS**

#### *Article 7*

### **Obligations of applicants**

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

2. The applicant shall cooperate with the responsible authorities for them to establish his or her identity as well as to register, enable the lodging of and examine the application by:
  - (a) providing the data referred to in points (a) and (b) of the second paragraph of Article 27(1);
  - (b) providing fingerprints and facial image as referred to in Regulation (EU) No XXX/XXX (Eurodac Regulation).<sup>34</sup>
  - (c) lodging his or her application in accordance with Article 28 within the set time-limit and submitting all elements at his or her disposal needed to substantiate his or her application;
  - (d) hand over documents in his or her possession relevant to the examination of the application.
3. Where an applicant refuses to cooperate by not providing the details necessary for the examination of the application and by not providing his or her fingerprints and facial image, and the responsible authorities have properly informed that person of his or her obligations and has ensured that that person has had an effective opportunity to comply with those obligations, his or her application shall be rejected as abandoned in accordance with the procedure referred to in Article 39.
4. The applicant shall inform the determining authority of the Member State in which he or she is required to be present of his or her place of residence or address or a telephone number where he or she may be reached by the determining authority or other responsible authorities. He or she shall notify that determining authority of any changes. The applicant shall accept any communication at the most recent place of residence or address which he or she indicated accordingly, in particular when he or she lodges an application in accordance with Article 28.
5. The applicant shall remain on the territory of the Member State where he or she is required to be present in accordance with Regulation (EU) No XXX/XXX (Dublin Regulation).
6. The applicant shall comply with obligations to report regularly to the competent authorities or to appear before them in person without delay or at a specified time or to remain in a designated area on its territory in accordance with Directive XXX/XXX/EU (Reception Conditions Directive), as imposed by the Member State in which he or she is required to be present in accordance with Regulation (EU) No XXX/XXX (Dublin Regulation).
7. Where it is necessary for the examination of an application, the applicant may be required by the responsible authorities to be searched or have his or her items searched. Without prejudice to any search carried out for security reasons, a search of the applicant's person under this Regulation shall be carried out by a person of the same sex with full respect for the principles of human dignity and of physical and psychological integrity.

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<sup>34</sup> OJ L [...], [...], p. [...].

## Article 8

### General guarantees for applicants

1. During the administrative procedure referred to in Chapter III applicants shall enjoy the guarantees set out in paragraphs 2 to 8 of this Article.
2. The determining authority shall inform applicants, in a language which they understand or are reasonably meant to understand, of the following:
  - (a) the right to lodge an individual application;
  - (b) the procedure to be followed;
  - (c) their rights and obligations during the procedure, including the obligation to remain in the territory of the Member State in which they are required to be present in accordance with Regulation (EU) No XXX/XXX (Dublin Regulation);
  - (d) the possible consequences of not complying with their obligations and not cooperating with the authorities;
  - (e) the time-frame of the procedure;
  - (f) the means at their disposal for fulfilling the obligation to submit the elements as referred to in Article 4 of Regulation (EU) No XXX/XXX (Qualification Regulation);
  - (g) the consequences of an explicit or implicit withdrawal of the application;
  - (h) the outcome of the decision of the determining authority, the reasons for that decision, as well as the consequence of a decision refusing to grant international protection and the manner in which to challenge such a decision.

The information referred to in the first paragraph shall be given in good time to enable the applicants to exercise the rights guaranteed in this Regulation and for them to adequately comply with the obligations set out in Article 7.

3. The determining authority shall provide applicants with the services of an interpreter for submitting their case to the determining authority as well as to courts or tribunals whenever appropriate communication cannot be ensured without such services. The interpretation services shall be paid for from public funds.
4. The determining authority shall provide applicants with the opportunity to communicate with United Nations High Commissioner for Refugees or with any other organisation providing legal advice or other counselling to applicants in accordance with national law.
5. The determining authority shall ensure that applicants and, where applicable, their guardians, legal advisers or other counsellors have access to the information referred to in Article 33(2)(e) required for the examination of applications and to the information provided by the experts referred to in Article 33(3), where the determining authority has taken that information into consideration for the purpose of taking a decision on their application.
6. The determining authority shall give applicants notice within a reasonable time of the decision taken on their application. Where a guardian, legal adviser or other counsellor is legally representing the applicant, the determining authority may give notice of the decision to him or her instead of to the applicant.

## Article 9

### Right to remain pending the examination of the application

1. Applicants shall have the right to remain in the Member State responsible, for the sole purpose of the procedure, until the determining authority has taken a decision in accordance with the administrative procedure provided for in Chapter III.
2. The right to remain shall not constitute an entitlement to a residence permit and it shall not give the applicant the right to travel to the territory of other Member States without authorisation as referred to in Article 6 of Directive XXX/XXX/EU (Reception Conditions Directive).
3. The responsible authorities of Member States may revoke the applicant's right to remain on their territory during administrative procedure where:
  - (a) a person makes a subsequent application in accordance with Article 42 and in accordance with the conditions laid down in Article 43;
  - (b) a person is surrendered or extradited, as appropriate, to another Member State pursuant to obligations in accordance with a European arrest warrant<sup>35</sup> or to a third country or to international criminal courts or tribunals.
4. A Member State may extradite an applicant to a third country pursuant to paragraph 3(b) only where the determining authority is satisfied that an extradition decision will not result in direct or indirect *refoulement* in breach of the international and Union obligations of that Member State.

## SECTION II

### PERSONAL INTERVIEWS

#### Article 10

##### Admissibility interview

1. Before a decision is taken by the determining authority on the admissibility of an application for international protection, the applicant shall be given the opportunity of an interview on the admissibility of his or her application.
2. In the admissibility interview, the applicant shall be given an opportunity to provide adequate reasons as to why the admissibility grounds provided for in Article 36(1) would not be applicable to his or her particular circumstances.

#### Article 11

##### Substantive interview

1. Before a decision is taken by the determining authority on the merits of an application for international 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 adequate 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

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<sup>35</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).

provide all the elements at his or her disposal 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 the applicant's statements.

3. A person who conducts the substantive interview of an application shall not wear a military or law enforcement uniform.

## *Article 12*

### **Requirements for personal interviews**

1. The applicant shall be given an opportunity of a personal interview on his or her application in accordance with the conditions established in this Regulation.
2. The personal interviews shall be conducted under conditions which ensure appropriate confidentiality and which allow applicants to present the grounds for their applications in a comprehensive manner.
3. Personal interviews shall be conducted by the personnel of the determining authority, which may be assisted by the personnel of authorities of other Member States referred to in Article 5(4)(a) or experts deployed by the European Union Agency for Asylum referred to in Article 5(4)(b).
4. Where simultaneous applications for international protection by a disproportionate number of third-country nationals or stateless persons make it difficult in practice for the determining authority to conduct timely personal interviews of each applicant, the determining authority may be assisted by the personnel of authorities of other Member States referred to in Article 5(4)(a) and experts deployed by the European Union Agency for Asylum referred to in Article 5(4)(b), to conduct such interviews.
5. The personal interview may be omitted in the following situations where the determining authority:
  - (a) is able to take a positive decision with regard to refugee status or a decision declaring the application admissible on the basis of evidence available; or
  - (b) is of the opinion that the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond his or her control.

The absence of a personal interview pursuant to point (b) shall not adversely affect the decision of the determining authority. That authority shall give the applicant an effective opportunity to submit further information. When in doubt as to the condition of the applicant, the determining authority shall consult a medical professional to establish whether the condition that makes the applicant unfit or unable to be interviewed is of a temporary or enduring nature.

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, gender, sexual orientation, gender identity and vulnerability. Personnel interviewing applicants shall also have acquired general knowledge of problems 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 relevant training in advance which shall include the elements listed in Article 7(5) of Regulation (EU) No XXX/XXX

(EU Asylum Agency Regulation), including as regards international human rights law, Union asylum law, and rules on access to the international protection procedure, including for persons who could require special procedural guarantees.

8. An interpreter who is able to ensure appropriate communication between the applicant and the person conducting the interview shall be provided for the personal interview. The communication shall take place in the language preferred by the applicant unless there is another language which he or she understands and in which he or she is able to communicate clearly.

Where requested by the applicant, the determining authority shall ensure that the interviewers and interpreters are of the same sex as the applicant provided that this is possible and the determining authority does not have reasons to believe that such a request is based on grounds which are not related to difficulties on the part of the applicant to present the grounds of his or her application in a comprehensive manner.

9. The absence of a personal interview shall not prevent the determining authority from taking a decision on an application for international protection.

### *Article 13*

#### **Report and recording of personal interviews**

1. The determining authority or any other authority or experts assisting it or conducting the personal interview shall make a thorough and factual report containing all substantive elements or a transcript of every personal interview.
2. The personal interview shall be recorded using audio or audio-visual means of recording. The applicant shall be informed in advance of such recording.
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 in the transcript, 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 of the substantive elements of the transcript, with the assistance of an interpreter, where necessary. The applicant shall then be requested to confirm that the content of the report or the transcript correctly reflects the personal interview.
4. Where an applicant refuses to confirm that the content of the report or the transcript correctly reflects the personal interview, the reasons for his or her refusal shall be entered in the applicant's file. That refusal shall not prevent the determining authority from taking a decision on the application.
5. Applicants and their legal advisers or other counsellors shall have access to the report or the transcript and the recording before the determining authority takes a decision.
6. Where the application is examined in accordance with the accelerated examination procedure, the determining authority may grant access to the report or the transcript of the recording at the same time as the decision is made.
7. The responsible authorities shall store either the recording or the transcript for ten years from the date of a final decision. The recording shall be erased upon expiry of that period or where it is related to a person who has acquired citizenship of any Member State before expiry of that period as soon as the Member State becomes aware that the person concerned has acquired such citizenship.

## SECTION III

### PROVISION OF LEGAL ASSISTANCE AND REPRESENTATION

#### *Article 14*

##### **Right to legal assistance and representation**

1. Applicants shall have the right to consult, in an effective manner, a legal adviser or other counsellor, admitted or permitted as such under national law, on matters relating to their applications at all stages of the procedure.
2. Without prejudice to the applicant's right to choose his or her own legal adviser or other counsellor at his or her own cost, an applicant may request free legal assistance and representation at all stages of the procedure in accordance with Articles 15 to 17. The applicant shall be informed of his or her right to request free legal assistance and representation at all stages of the procedure.

#### *Article 15*

##### **Free legal assistance and representation**

1. Member States shall, at the request of the applicant, provide free legal assistance and representation in the administrative procedure provided for in Chapter III and in the appeal procedure provided for in Chapter V.
2. For the purposes of the administrative procedure, the free legal assistance and representation shall, at least, include:
  - (a) the provision of information on the procedure in the light of the applicant's individual circumstances;
  - (b) assistance in the preparation of the application and personal interview, including participation in the personal interview as necessary;
  - (c) explanation of the reasons for and consequences of a decision refusing to grant international protection as well as information as to how to challenge that decision.
3. The provision of free legal assistance and representation in the administrative procedure may be excluded where:
  - (a) the applicant has sufficient resources;
  - (b) the application is considered as not having any tangible prospect of success;
  - (c) the application is a subsequent application.
4. For the purposes of the appeal procedure, the free legal assistance and representation shall, at least, include the preparation of the required procedural documents, the preparation of the appeal and participation in the hearing before a court or tribunal on behalf of the applicant.
5. The provision of free legal assistance and representation in the appeal procedure may be excluded where:
  - (a) the applicant has sufficient resources;
  - (b) the appeal is considered as not having any tangible prospect of success;

- (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.

Where a decision not to grant free legal assistance and representation is taken by an authority which is not a court or tribunal on ground that the appeal is considered as having no tangible prospect of success, the applicant shall have the right to an effective remedy before a court or tribunal against that decision, and for that purpose he or she shall be entitled to request free legal assistance and representation.

#### *Article 16*

#### **Scope of legal assistance and representation**

1. A legal adviser or other counsellor admitted or permitted as such under national law, 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 made.
2. The determining authority may deny access to the information in the applicant's file 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 or where 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. In those cases, the determining authority shall:
  - (a) make access to such information or sources available to the courts or tribunals in the appeal procedure; and
  - (b) ensure that the applicant's right of defence is respected.

As regards point (b), the determining authority shall, in particular, grant access to information or sources to a legal adviser or other counsellor who has undergone a security check, insofar as the information is relevant for examining the application or for taking a decision to withdraw international protection.

3. The legal adviser or other counsellor who assists or represents an applicant shall have access to closed areas, such as detention facilities and transit zones, for the purpose of consulting that applicant, in accordance with Directive XXX/XXX/EU (Reception Conditions Directive).
4. An applicant shall be allowed to bring to a personal interview a legal adviser or other counsellor admitted or permitted as such under national law. The legal adviser or other counsellor shall be authorised to intervene during the personal interview.
5. The determining authority may require the presence of the applicant at the personal interview, even if he or she is represented under the terms of national law by a legal adviser or counsellor, and may require the applicant to respond in person to the questions asked.
6. Without prejudice to Article 22(5), the absence of a legal adviser or other counsellor shall not prevent the determining authority from conducting a personal interview with the applicant.



#### *Article 17*

##### **Conditions for the provision of free legal assistance and representation**

1. Free legal assistance and representation shall be provided by legal advisers or other counsellors permitted under national law to assist or represent the applicants or non-governmental organisations accredited under national law to provide advisory services or representation.
2. Member States shall lay down specific procedural rules concerning the modalities for filing and processing requests for the provision 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 legal assistance and representation impossible or excessively difficult.
3. Member States may also impose monetary limits or time limits on the provision of free legal assistance and representation, provided that such limits do not arbitrarily restrict access 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.
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.

#### *Article 18*

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

1. Member States shall allow the United Nations High Commissioner for Refugees:
  - (a) to have access to applicants, including those in reception centres, detention, at the border and in transit zones;
  - (b) to have access to information on individual applications for international protection, on the course of the procedure and on the decisions taken, subject to the consent of the applicant;
  - (c) to present its views, in the exercise of its supervisory responsibilities under Article 35 of the Geneva Convention, to any competent authorities regarding individual applications for international protection at any stage of the procedure.
2. Paragraph 1 shall also apply to an organisation which is working in the territory of the Member State concerned on behalf of the United Nations High Commissioner for Refugees pursuant to an agreement with that Member State.

#### **SECTION IV**

##### **SPECIAL GUARANTEES**

#### *Article 19*

##### **Applicants in need of special procedural guarantees**

1. The determining authority shall systematically assess whether an individual applicant is in need of special procedural guarantees. That assessment may be integrated into existing national procedures or into the assessment referred to in Article 21 of Directive XXX/XXX/EU (Reception Conditions Directive) and need not take the form of an administrative procedure.

For the purpose of that assessment, the determining authority shall respect the general principles for the assessment of special procedural needs set out in Article 20.

2. Where applicants have been identified as applicants in need of special procedural guarantees, they shall be provided with adequate support allowing them to benefit from the rights and comply with the obligations under this Regulation throughout the duration of the procedure for international protection.
3. Where that adequate 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, in particular where the determining authority considers that the applicant is in need of special procedural guarantees as a result of torture, rape or other serious forms of psychological, physical, sexual violence or gender-based violence, the determining authority shall not apply, or shall cease to apply those procedures to the applicant.
4. The Commission may specify the details and specific measures for assessing and addressing the special procedural needs of applicants, including of unaccompanied minors, by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58.

#### *Article 20*

##### **General principles for the assessment of special procedural needs**

1. The process of identifying applicants with special procedural needs shall be initiated by authorities responsible for receiving and registering applications as soon as an application is made and shall be continued by the determining authority once the application is lodged.
2. The personnel of the authorities responsible for receiving and registering applications shall, when registering the application, indicate whether or not an applicant presents first indications of vulnerability which may require special procedural guarantees and may be inferred from physical signs or from the applicant's statements or behaviour.

The information that an applicant presents first signs of vulnerability shall be included in the applicant's file together with the description of the signs of vulnerability presented by the applicant that could require special procedural guarantees.

Member States shall ensure that the personnel of the authorities referred to in Article 5 is trained to detect first signs of vulnerability of applicants that could require special procedural guarantees and that it shall receive instructions for that purpose.

3. Where there are indications that applicants may have been victim of torture, rape or of another serious form of psychological, physical, sexual or gender-based violence and that this could adversely affect their ability to participate effectively in the procedure, the determining authority shall refer the applicants to a doctor or a psychologist for further assessment of their psychological and physical state.

The result of that examination shall be taken into account by the determining authority for deciding on the type of special procedural support which may be provided to the applicant.

That examination shall be without prejudice to the medical examination referred to in Article 23 and Article 24.

4. The responsible authorities shall address the need for special procedural guarantees as set out in this Article even where that need becomes apparent at a later stage of the procedure, without having to restart the procedure for international protection.

#### *Article 21*

##### **Guarantees for minors**

1. The best interests of the child shall be a primary consideration for Member States when applying this Regulation.
2. The determining authority shall provide a minor the opportunity of a personal interview, including where an application is made on his or her own behalf in accordance with Article 31(6) and Article 32(1), unless this is manifestly not in the best interests of the child. In that case, the determining authority shall give reasons for the decision not to provide a minor with the opportunity of a personal interview.  

Any such personal interview shall be conducted by a person who has the necessary knowledge of the rights and special needs of minors and it shall be conducted in a child-sensitive and context-appropriate manner.
3. The decision on the application of a minor shall be prepared by personnel of the determining authority who have the necessary knowledge of the rights and special needs of minors.

#### *Article 22*

##### **Special guarantees for unaccompanied minors**

1. The responsible authorities shall, as soon as possible and not later than five working days from the moment when an unaccompanied minor makes an application, appoint a person or an organisation as a guardian.  

Where an organisation is appointed as a representative, it shall designate a person responsible for carrying out the duties of a guardian.

The determining authority shall inform the unaccompanied minor immediately of the appointment of his or her guardian.
2. The determining authority shall inform the guardian of all relevant facts, procedural steps and time-limits pertaining to the unaccompanied minor.
3. The guardian shall, with a view to safeguarding the best interests of the child and the general well-being of the unaccompanied minor:
  - (a) represent and assist the unaccompanied minor during the procedures provided for in this Regulation and
  - (b) enable the unaccompanied minor to benefit from the rights and comply with the obligations under this Regulation.

4. The guardian shall perform his or her duties in accordance with the principle of the best interests of the child, shall have the necessary expertise, and shall not have a verified record of child-related crimes or offences.

The person acting as guardian shall be changed only when the responsible authorities consider that he or she has not adequately performed his or her tasks as a guardian. Organisations or individuals whose interests conflict or could potentially conflict with those of the unaccompanied minor shall not be appointed as guardian.

5. The responsible authorities shall not place a guardian in charge of a disproportionate number of unaccompanied minors at the same time, which would render him or her unable to perform his or her tasks effectively.

Member States shall appoint entities or persons responsible for the performance of guardians' tasks and for supervising and monitoring at regular intervals that guardians perform their tasks in a satisfactory manner. Those entities or persons shall review complaints lodged by unaccompanied minors against their guardian.

6. The guardian shall inform the unaccompanied minor about the meaning and possible consequences of the personal interview and, where appropriate, about how to prepare himself or herself for the personal interview. The guardian and, where applicable, a legal adviser or other counsellor admitted or permitted as such under national law, shall be present at that interview and have an opportunity to ask questions or make comments, within the framework set by the person who conducts the interview. The determining authority may require the presence of the unaccompanied minor at the personal interview, even if the guardian is present.

## **SECTION V**

### **MEDICAL EXAMINATIONS**

#### *Article 23*

##### **Medical examination**

1. Where the determining authority deems it relevant for the assessment of an application for international protection in accordance with Regulation (EU) No XXX/XXX (Qualification Regulation), and subject to the applicant's consent, it shall arrange for a medical examination of the applicant concerning signs and symptoms that might indicate past persecution or serious harm.
2. The medical examination shall be carried out by qualified medical professionals. Member States may designate the medical professionals who may carry out such medical examinations. Those medical examinations shall be paid for from public funds.
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.
4. The results of the medical examination 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.

5. An applicant's refusal to undergo a medical examination shall not prevent the determining authority from taking a decision on the application for international protection.

#### *Article 24*

### **Medical examination of unaccompanied minors**

1. Medical examinations may be used to determine the age of unaccompanied minors within the framework of the examination of an application where, following statements by the applicant or other relevant indications including a psychosocial assessment, there are doubts as to whether or not the applicant is under the age of 18. Where the result of the medical examination is not conclusive, or includes an age-range below 18 years, Member States shall assume that the applicant is a minor.
2. The medical examination to determine the age of unaccompanied minors shall not be carried out without their consent or the consent of their guardians.
3. Any medical examination shall be performed with full respect for the individual's dignity, shall be the least invasive examination and shall be carried out by qualified medical professionals allowing for the most reliable result possible.
4. Where medical examinations are used to determine the age of unaccompanied minors, the determining authority shall ensure that unaccompanied minors are informed, prior to the examination of their application for international protection, and in a language that they understand or are reasonably meant to understand, of the possibility that their age be determined 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 the part of the unaccompanied minor, or of his or her guardian, to undergo the medical examination.
5. The refusal by the unaccompanied minors or their guardians to carry out the medical examination may only be considered as a rebuttable presumption that the applicant is not a minor and it shall not prevent the determining authority from taking a decision on the application for international protection.
6. A Member State shall recognise age assessment decisions taken by 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.

## **CHAPTER III**

### **ADMINISTRATIVE PROCEDURE**

#### **SECTION I**

#### **ACCESS TO THE PROCEDURE**

#### *Article 25*

### **Making an application for international protection**

1. An application for international protection shall be made when a third-country national or stateless person expresses a wish for international protection to officials of the determining authority or other authorities referred to in Article 5(3) or (4).

Where those officials have doubt as to whether a certain declaration is to be construed as an application, they shall ask the person expressly whether he or she wishes to receive international protection.

2. Where a third-country national or stateless person makes an application for international protection, he or she shall be considered as an applicant for international protection until a final decision is taken on that application.

#### *Article 26*

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

1. The authorities responsible for receiving and registering applications shall:
  - (a) inform the applicants of their rights and obligations set out, in particular, in Articles 27, 28 and 31 as regards the registration and lodging of applications, Article 7 as regards the obligations of applicants and consequences of non-compliance with such obligations, Article 9 as regards the right of applicants to remain on the territory of the Member State responsible, and Article 8 as regards the general guarantees for applicants;
  - (b) register the application in accordance with Article 27;
  - (c) upon registration, inform the applicant as to where and how an application for international protection is to be lodged;
  - (d) inform the authorities responsible for the reception conditions pursuant to Directive XXX/XXX/EU (Reception Conditions Directive) of the application.
2. The Commission may specify the content of the information to be provided to applicants when an application is made by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58.

#### *Article 27*

##### **Registering applications for international protection**

1. The authorities responsible for receiving and registering applications for international protection shall register an application promptly, and not later than three working days from when it is made. They shall register also the following information:
  - (a) the name, date of birth, gender, nationality and other personal details of the applicant;
  - (b) the type and number of any identity or travel document of the applicant;
  - (c) the date of the application, place where the application is made and the authority with which the application is made.

Where the data referred to in points (a) and (b) has already been obtained by the Member States before the application is made, it shall not to be requested again.

2. Where the information is collected by the determining authority or by another authority assisting it for the purpose of examining the application, additional data

necessary for the examination of the application may also be collected at the time of registration.

3. Where simultaneous applications for international protection by a disproportionate number of third-country nationals or stateless persons make it difficult in practice to register applications within three working days from when the application is made, the authorities of the Member State may extend that time-limit to ten working days.
4. The responsible authorities shall store each set of data referred to in paragraph 1 and any other relevant data collected under paragraph 2, for ten years from the date of a final decision. The data shall be erased upon expiry of that period or where it is related to a person who has acquired citizenship of any Member State before expiry of that period as soon as the Member State becomes aware that the person concerned has acquired such citizenship.

#### *Article 28*

##### **Lodging of an application for international protection**

1. The applicant shall lodge the application within ten working days from the date when the application is registered provided that he or she is given an effective opportunity to do so within that time-limit.
2. The authority responsible for receiving and registering applications for international protection shall give the applicant an effective opportunity to lodge an application within the time-limit established in paragraph 1.
3. Where there is a disproportionate number of third-country nationals or stateless persons that apply simultaneously for international protection, making it difficult in practice to enable the application to be lodged within the time-limit established in paragraph 1, the responsible authority shall give the applicant an effective opportunity to lodge his or her application not later than one month from the date when the application is registered.
4. When lodging an application, applicants are required to submit all the elements referred to in Article 4(1) of Regulation (EU) No XXX/XXX (Qualification Regulation) needed for substantiating their application. Following the lodging of their application, applicants shall be authorised to submit any additional elements relevant for its examination until a decision under the administrative procedure is taken on the application.

The authority responsible for receiving and registering applications for international protection shall inform the applicant that after the decision is taken on the application he or she may bring forward only 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.

5. The applications for international protection shall be lodged in person and at a designated place. For that purpose, when the application is registered, the applicant shall be given an appointment with the authorities competent for the lodging of the application.
6. The responsible authorities shall store the data referred to in paragraph 4 for ten years from the date of a final decision. The data shall be erased upon expiry of that period or where it is related to a person who has acquired citizenship of any Member

State before expiry of that period as soon as the Member State becomes aware that the person concerned has acquired such citizenship.

#### *Article 29*

##### **Documents for the applicant**

1. The authorities of the Member State where an application for international protection is made shall, upon registration, provide the applicant with a document certifying, in particular, that an application has been made and stating that the applicant may remain on the territory of that Member State for the purposes of lodging his or her application as provided for in this Regulation.
2. The authorities of the Member State where the application is lodged shall, within three working days of the lodging of the application, provide the applicant with a document in his or her own name:
  - (a) stating the identity of the applicant by including at least the data referred to in Article 27(1)(a) and (b), verified and updated where necessary, as well as a facial image of the applicant, signature, current place of residence and the date of lodging of the application;
  - (b) stating the issuing authority, date and place of issue and period of validity of the document;
  - (c) certifying 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;
  - (e) stating that the document is not a valid travel document and indicating that the applicant is not allowed to travel without authorisation to the territory of other Member States until the procedure for the determination of the Member State responsible for the examination of the application in accordance with Regulation (EU) No XXX/XXX (Dublin Regulation) has taken place;
  - (f) stating whether the applicant has permission to take up gainful employment.
3. Where, following a procedure of determination in accordance with Regulation (EU) No XXX/XXX (Dublin Regulation), another Member State is designated as responsible for the examination of the application, the authorities of that Member State shall provide the applicant with a document referred to in paragraph 2 within three working days from the transfer of the applicant to that Member State.
4. 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 the applicant has a right to remain on the territory of the Member State responsible.

The period of validity indicated on the document does not constitute a right to remain where that right was terminated or suspended.
5. The Commission may specify the form and content of the documents to be given to the applicants at registration and lodging by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58.



### *Article 30*

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

1. Where there are indications that third-country nationals or stateless persons held in detention facilities or present at border crossing points, including transit zones, at external borders, may need international protection, the responsible authorities shall inform them of the possibility to apply for international protection, in particular, where:
  - (a) it is likely that the person is an unaccompanied minor;
  - (b) there are obvious indications that the person suffers from mental or other disorders that render him or her unable to ascertain a need for international protection;
  - (c) the person has arrived from a specific country of origin and it is likely that he or she is in need of international protection due to a well-known situation in that third country.
2. The responsible authorities shall make the necessary arrangements for interpretation services to be available to facilitate access to the procedure for international protection.
3. Organisations and persons providing advice and counselling shall have effective access to third-country nationals held in detention facilities or present at border crossing points, including transit zones, at external borders.

Member States may impose limits to such access where, by virtue of national law, they are necessary for the security, public order or administrative management of a border crossing point or of a detention facility, provided that access is not severely restricted or rendered impossible.

### *Article 31*

#### **Applications on behalf of a spouse, partner, minor or dependent adult**

1. An applicant may lodge an application on behalf of his or her spouse or partner in a stable and durable relationship, minors or dependent adults without legal capacity.
2. The spouse or partner referred to in paragraph 1 shall be informed in private of the relevant procedural consequences of having the application lodged on his or her behalf and of his or her right to make a separate application for international protection. Where the spouse or partner does not consent to the lodging of an application on his or her behalf, he or she shall be given an opportunity to lodge an application in his or her own name.
3. Where an applicant does not lodge an application on behalf of his or her spouse or partner as referred to in paragraph 1 within the ten working days referred to in Article 28(1), the spouse or partner shall be given an opportunity to lodge his or her application in his or her own name within another ten working-day period starting from the expiry of the first ten working-day period. Where the spouse or partner still does not lodge his or her application within these further ten working days, the application shall be rejected as abandoned in accordance with the procedure laid down in Article 39.
4. Where an applicant does not lodge an application on behalf of his or her dependent adult as referred to in paragraph 1 within the ten working days referred to in Article

28(1), the determining authority shall lodge an application on behalf of that dependent adult if, on the basis of an individual assessment of his or her personal situation, it is of the opinion that the dependent adult may need international protection.

5. Where a person has lodged an application on behalf of his or her spouse or partner in a stable and durable relationship or dependent adults without legal capacity, each of those persons shall be given the opportunity of a personal interview.
6. A minor shall have the right to lodge an application in his or her own name if he or she has the legal capacity to act in procedures according to the national law of the Member State concerned, or through an adult responsible for him or her, whether by law or by practice of the Member State concerned, including his or her parents or other legal or customary caregiver, or adult family members in the case of an accompanied minor, or through a guardian in the case of an unaccompanied minor.
7. In the case of an accompanied minor, the lodging of an application by the adult responsible for him or her as referred to in paragraph 6 shall also be considered to be the lodging of an application for international protection on behalf of the minor.
8. Where the adult responsible for the accompanied minor does not make an application for himself or herself, the accompanied minor shall be clearly informed of the possibility and procedure for lodging an application in his or her own name at the time of the making of his or her application.
9. Where the adult responsible for the accompanied minor does not lodge an application on behalf of the minor within the ten working days provided for in Article 28(1), the minor shall be informed of the possibility to lodge his or her application in his or her own name and given an opportunity to do so within a further ten working-day period starting from the expiry of the first ten working-day period if he or she has the legal capacity to act in procedures according to the national law of the Member State concerned. Where the minor does not lodge his or her application in his or her own name within these further ten working days, the application shall be rejected as abandoned in accordance with the procedure referred to in Article 39.
10. For the purpose of taking a decision on the admissibility of an application in case of a separate application by a spouse, partner or minor pursuant to Article 36(1)(d), an application for international protection shall be subject to an initial examination as to whether there are facts relating to the situation of the spouse, partner or minor which justify a separate application.

Where there are facts relating to the situation of the spouse, partner or minor which justify a separate application, that separate application shall be further examined to take a decision on its merits. If not, that separate application shall be rejected as inadmissible, without prejudice to the proper examination of any application lodged on behalf of the spouse, partner or minor.

#### *Article 32*

#### **Applications of unaccompanied minors**

1. An unaccompanied minor shall lodge an application in his or her own name if he or she has the legal capacity to act in procedures according to the national law of the Member State concerned, or his or her guardian shall lodge it on his or her behalf.

The guardian shall assist and properly inform the unaccompanied minor of how and where an application is to be lodged.

2. In the case of an unaccompanied minor, the ten working-day period for the lodging the application provided for in Article 28(1) shall only start to run from the moment a guardian of the unaccompanied minor is appointed and has met with him or her. Where his or her guardian does not lodge an application on behalf of the unaccompanied minor within those ten working days, the determining authority shall lodge an application on behalf of the unaccompanied minor if, on the basis of an individual assessment of his or her personal situation, it is of the opinion that the minor may need international protection.
3. The bodies referred to in Article 10 of Directive 2008/115/EC shall have the right to lodge an application for international protection on behalf of an unaccompanied minor if, on the basis of an individual assessment of his or her personal situation, those bodies are of the opinion that the minor may need international protection.

## **SECTION II**

### **EXAMINATION PROCEDURE**

#### *Article 33*

##### **Examination of applications**

1. Member States shall examine applications for international protection in accordance with the basic principles and guarantees set out in Chapter II.
2. The determining authority shall take decisions on applications for international protection after an appropriate examination as to the admissibility or merits of an application. The determining authority shall examine applications objectively, impartially and on an individual basis. For the purpose of examining the application, it shall take the following into account:
  - (a) the relevant statements and documentation presented by the applicant including information on whether the applicant has been or may be subject to persecution or serious harm;
  - (b) all relevant, accurate 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, as well as any other relevant information obtained from the European Union Agency for Asylum, from the United Nations High Commissioner for Refugees and relevant international human rights organisations, or from other sources;
  - (c) the common analysis of the country of origin information referred to in Article 10 of Regulation (EU) No XXX/XXX (EU Asylum Agency Regulation);
  - (d) the individual position and personal circumstances of the applicant, including factors such as background, gender, 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;
  - (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.
3. The personnel examining applications and taking decisions shall have sufficient knowledge of the relevant standards applicable in the field of asylum and refugee law. They shall have the possibility to seek advice, whenever necessary, from experts on particular issues, such as medical, cultural, religious and child-related or gender issues. Where necessary, 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. Documents relevant for the examination of applications by the determining authority shall be translated, where necessary, for such examination.
  5. An examination of an application for international protection may be prioritised in accordance with the basic principles and guarantees of Chapter II, 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.

#### *Article 34*

#### **Duration of the examination procedure**

1. The examination to determine the admissibility of an application in accordance with Article 36(1) shall not take longer than one month from the lodging of an application.  
The time-limit for such examination shall be ten working days where, in accordance with Article 3(3)(a) of Regulation (EU) No XXX/XXX (Dublin Regulation), the Member State of first application applies the concept of first country of asylum or safe third country referred to in Article 36(1)(a) and (b).
2. The determining authority shall ensure that an examination procedure on the merits is concluded as soon as possible and not later than six months from the lodging of the application, without prejudice to an adequate and complete examination.
3. The determining authority may extend that time-limit of six months by a period of not more than three months, where:
  - (a) a disproportionate number of third-country nationals or stateless persons simultaneously apply for international protection, making it difficult in practice to conclude the procedure within the six-month time limit;
  - (b) complex issues of fact or law are involved.
4. Where an application is subject to the procedure laid down in Regulation (EU) No XXX/XXX (Dublin Regulation), the time-limit referred to in paragraph 2 shall start

to run from the moment the Member State responsible is determined in accordance with that Regulation, the applicant is on the territory of that Member State and he or she has been taken in charge in accordance with Regulation (EU) No XXX/XXX (Dublin Regulation).

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 paragraph 2 and in Article 40(4) as regards the accelerated examination procedure 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 two months;
  - (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 for that country of origin. In any event, the determining authority shall conclude the examination procedure within 15 months from the lodging of an application.

### **SECTION III**

## **DECISIONS ON APPLICATIONS**

### *Article 35*

#### **Decisions by the determining authority**

1. A decision on an application for international protection shall be given in writing and it shall be notified to the applicant without undue delay in a language he or she understands or is reasonably meant to understand.
2. Where an application is rejected as inadmissible, as unfounded with regard to refugee status or subsidiary protection status, as explicitly withdrawn or as abandoned, the reasons in fact and in law shall be stated in the decision. Information on how to challenge a decision refusing to grant international protection shall be given in writing, unless otherwise already provided to the applicant.
3. In cases of applications on behalf of spouses, partners, minors or dependent adults without legal capacity, and whenever the application is based on the same grounds, the determining authority may 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 to the person concerned.

### *Article 36*

#### **Decision on the admissibility of the application**

1. The determining authority shall assess the admissibility of an application, in accordance with the basic principles and guarantees provided for in Chapter II, and shall reject an application as inadmissible where any of the following grounds applies:

- (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 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 that the applicant will not be admitted or readmitted to that country;
  - (c) the application is a subsequent application, where no new relevant elements or findings 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;
  - (d) a spouse or partner or accompanied minor lodges an application after he or she had consented to have an application lodged on his or her behalf, and there are no facts relating to the situation of the spouse, partner or minor which justify a separate application.
2. An application shall not be examined on its merits in the cases where an application is not examined in accordance with Regulation (EU) No XXX/XXX (Dublin Regulation), including when another Member State has granted international protection to the applicant, or where an application is rejected as inadmissible in accordance with paragraph 1.
  3. Paragraph 1(a) and (b) shall not apply to a beneficiary of subsidiary protection who has been resettled under an expedited procedure in accordance with Regulation (EU) No XXX/XXX (Resettlement Regulation).<sup>36</sup>
  4. Where after examining an application in accordance with Article 3(3)(a) of Regulation (EU) No XXX/XXX (Dublin Regulation), the first Member State in which the application is lodged considers it to be admissible, the provision of paragraph 1(a) and (b) need not be applied again by the Member State responsible.
  5. Where the determining authority *prima facie* considers that an application may be rejected as manifestly unfounded, it shall not be obliged to pronounce itself on the admissibility of the application.

### *Article 37*

#### **Decision on the merits of an application**

1. When examining an application on the merits, the determining authority shall take a decision on 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).
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 shall declare an unfounded application to be manifestly unfounded in the cases referred to in Article 40(1)(a), (b), (c), (d) and (e).

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<sup>36</sup> OJ L [...], [...], p. [...].

## Article 38

### **Explicit withdrawal of applications**

1. An applicant may, of his or her own motion and at any time during the procedure, withdraw his or her application.
2. Where an application is explicitly withdrawn by the applicant, the determining authority shall take a decision to reject the application as explicitly withdrawn or as unfounded where the determining authority has, at the stage that the application is explicitly withdrawn, already found that the applicant does not qualify for international protection pursuant to Regulation (EU) No XXX/XXX (Qualification Regulation).

## Article 39

### **Implicit withdrawal of applications**

1. The determining authority shall reject an application as abandoned where:
  - (a) the applicant has not lodged his or her application in accordance with Article 28, despite having had an effective opportunity to do so;
  - (b) a spouse, partner or minor has not lodged his or her application after the applicant failed to lodge the application on his or her own behalf as referred to in Article 31(3) and (8);
  - (c) the applicant refuses to cooperate by not providing the necessary details for the application to be examined and by not providing his or her fingerprints and facial image pursuant to Article 7(3);
  - (d) the applicant has not appeared for a personal interview although he was required to do so pursuant to Articles 10 to 12;
  - (e) the applicant has abandoned his place of residence, without informing the competent authorities or without authorisation as provided for in Article 7(4);
  - (f) the applicant has repeatedly not complied with reporting duties imposed on him or her in accordance with Article 7(5).
2. In the circumstances referred to in paragraph 1, the determining authority shall discontinue the examination of the application and send a written notice to the applicant at the place of residence or address referred to in Article 7(4), informing him or her that the examination of his or her application has been discontinued and that the application will be definitely rejected as abandoned unless the applicant reports to the determining authority within a period of one month from the date when the written notice is sent.
3. Where the applicant reports to the determining authority within that one-month period and demonstrates that his or her failure was due to circumstances beyond his or her control, the determining authority shall resume the examination of the application.
4. Where the applicant does not report to the determining authority within this one-month period and does not demonstrate that his or her failure was due to circumstances beyond his or her control, the determining authority shall consider that the application has been implicitly withdrawn.

5. Where an application is implicitly withdrawn, the determining authority shall take a decision to reject the application as abandoned or as 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**

1. 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:
  - (a) the applicant, in submitting 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);
  - (b) the applicant has made clearly inconsistent and contradictory, clearly false or obviously improbable representations which contradict sufficiently verified country of origin information, thus making his or her claim clearly unconvincing in relation to whether he or she qualifies as a beneficiary of international protection by virtue of Regulation (EU) No XXX/XXX (Qualification Regulation);
  - (c) the applicant has misled the authorities by presenting false information or documents or by withholding relevant information or documents with respect to his or her identity or nationality that could have had a negative impact on the decision;
  - (d) the applicant is making an application merely to delay or frustrate the enforcement of an earlier or imminent decision resulting in his or her removal from the territory of a Member State;
  - (e) a third country may be considered as a safe country of origin for the applicant within the meaning of this Regulation;
  - (f) the applicant may, for serious reasons, be considered a danger to the national security or public order of the Member States;
  - (g) the applicant does not comply with the obligations set out in Article 4(1) and Article 20(3) of Regulation (EU) No XXX/XXX (Dublin Regulation), unless he or she demonstrates that his or her failure was due to circumstances beyond his or her control;
  - (h) the application is a subsequent application, where the application is so clearly without substance or abusive that it has no tangible prospect of success.
2. The determining authority shall conclude the accelerated examination procedure within two months from the lodging of the application. By way of exception, in the



cases set out in paragraph (1)(d), the determining authority shall conclude the accelerated examination procedure within eight working days.

3. Where an application is subject to the procedure laid down in Regulation (EU) No XXX/XXX (Dublin Regulation), the time-limits referred to in paragraph 2 shall start to run from the moment the Member State responsible is determined in accordance with that Regulation, the applicant is on the territory of that Member State and he or she has been taken in charge in accordance with Regulation (EU) No XXX/XXX (Dublin Regulation).
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 and 37. In that case, or where otherwise a decision cannot be taken within the time-limits referred to in paragraph 2, the applicant concerned shall be informed of the change in the procedure.
5. The accelerated examination procedure may be applied to unaccompanied minors only where:
  - (a) the applicant comes from a third country considered to be a safe country of origin in accordance with the conditions set out in Article 47;
  - (b) the applicant may for serious reasons be considered to be a danger to the national security or public order of the Member State, or the applicant has been forcibly expelled for serious reasons of public security or public order under national law.

#### *Article 41*

#### **Border procedure**

1. The determining authority may, in accordance with the basic principles and guarantees provided for in Chapter II, take a decision on an application at the border or in transit zones of the Member State on:
  - (a) the admissibility of an application made at such locations pursuant to Article 36(1); or
  - (b) the merits of an application in the cases subject to the accelerated examination procedure referred to in Article 40.
2. A decision referred to in paragraph 1 shall be taken as soon as possible without prejudice to an adequate and complete examination of the application, and not longer than four weeks from when the application is lodged.
3. Where a final decision is not taken within four weeks referred to in paragraph 2, the applicant shall no longer be kept at the border or transit zones and shall be granted entry to the territory of the Member State for his or her application to be processed in accordance with the other provisions of this Regulation.
4. In the event of arrivals involving a disproportionate number of third-country nationals or stateless persons lodging applications for international protection at the border or in a transit zone, making it difficult in practice to apply the provisions of paragraph 1 at such locations, the border procedure may also be applied at locations in proximity to the border or transit zone.

5. The border procedure may be applied to unaccompanied minors, in accordance with Articles 8 to 11 of Directive (EU) No XXX/XXX (Reception Conditions Directive) only where:
- (a) the applicant comes from a third country considered to be a safe country of origin in accordance with the conditions set out in Article 47;
  - (b) the applicant may for serious reasons be considered to be a danger to the national security or public order of the Member State, or the applicant has been forcibly expelled for serious reasons of public security or public order under national law;
  - (c) there are reasonable grounds to consider that a third country is a safe third country for the applicant in accordance with the conditions of Article 45;
  - (d) the applicant has misled the authorities by presenting false information or documents or by withholding relevant information or documents with respect to his or her identity or nationality that could have had a negative impact on the decision.

Point (d) shall only be applied where there are serious grounds for considering that the applicant is attempting to conceal relevant elements which would likely lead to a decision refusing to grant international protection and provided that the applicant has been given an effective opportunity to provide substantiated justifications for his actions.

#### *Article 42*

#### **Subsequent applications**

1. After a previous application had been rejected by means of a final decision, any further application made by the same applicant in any Member State shall be considered to be a subsequent application by the Member State responsible.
2. A subsequent application shall be subject to a preliminary examination in which the determining authority shall establish whether relevant new elements or findings have arisen or have been presented by the applicant which significantly increase the likelihood of the applicant qualifying as a beneficiary of international protection by virtue of Regulation (EU) No XXX/XXX (Qualification Regulation) or which relate to the reasons for which the previous application was rejected as inadmissible.
3. The preliminary examination shall be carried out on the basis of written submissions and a personal interview in accordance with the basic principles and guarantees provided for in Chapter II. The personal interview may be dispensed with in those instances where, from the written submissions, it is clear that the application does not give rise to relevant new elements or findings or that it is clearly without substance and has no tangible prospect of success.
4. A new procedure for the examination of the application for international protection shall be initiated where:
  - (a) relevant new elements or findings as referred to in paragraph 2(a) have arisen or have been presented by the applicant;
  - (b) the applicant was unable, through no fault on his or her own part, to present those elements or findings during the procedure in the context of the earlier

application, unless it is considered unreasonable not to take those elements or findings into account.

5. Where the conditions for initiating a new procedure as set out in paragraph 4 are not met, the determining authority shall reject the application as inadmissible, or as manifestly unfounded where the application is so clearly without substance or abusive that it has no tangible prospect of success.

#### *Article 43*

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

Without prejudice to the principle of *non-refoulement*, Member States may provide an exception from the right to remain on their territory and derogate from Article 54(1), where:

- (a) a subsequent application has been rejected by the determining authority as inadmissible or manifestly unfounded;
- (b) a second or further subsequent application is made in any Member State following a final decision rejecting a previous subsequent application as inadmissible, unfounded or manifestly unfounded.

### **SECTION V**

#### **SAFE COUNTRY CONCEPTS**

#### *Article 44*

#### **The concept of first country of asylum**

1. A third country shall be considered to be a first country of asylum for a particular applicant provided that:
  - (a) the applicant has enjoyed protection in accordance with the Geneva Convention in that country before travelling to the Union and he or she can still avail himself or herself of that protection; or
  - (b) the applicant otherwise has enjoyed sufficient protection in that country before travelling to the Union and he or she can still avail himself or herself of that protection.
2. The determining authority shall consider that an applicant enjoys sufficient protection within the meaning of paragraph 1(b) provided that it is satisfied that:
  - (a) life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;
  - (b) there is no risk of serious harm as defined in Regulation (EU) No XXX/XXX (Qualification Regulation);
  - (c) the principle of *non-refoulement* in accordance with the Geneva Convention is respected;
  - (d) the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law is respected;
  - (e) there is a right of legal residence;

- (f) there is appropriate access to the labour market, reception facilities, healthcare and education; and
  - (g) there is a right to family reunification in accordance with international human rights standards.
3. Before his or her application can be rejected as inadmissible pursuant to Article 36(1)(a), the applicant shall be allowed to challenge the application of the first country of asylum concept in light of his or her particular circumstances when lodging the application and during the admissibility interview.
  4. As regards unaccompanied minors, the concept of first country of asylum may only be applied where the authorities of Member States have first received from the authorities of the third country in question the assurance that the unaccompanied minor will be taken in charge by those authorities and that he or she shall immediately benefit from one of the forms of protection referred to in paragraph 1.
  5. Where an application is rejected as inadmissible in application of the concept of the first country of asylum, the determining authority shall:
    - (a) inform the applicant accordingly;
    - (b) provide him or her with a document informing the authorities of the third country, in the language of that country, that the application has not been examined in substance as a consequence of the application of the first country of asylum concept.
  6. Where the third country in question does not admit or readmit the applicant to its territory, the determining authority shall revoke the decision rejecting the application as inadmissible and shall give access to the procedure in accordance with the basic principles and guarantees provided for in Chapter II and Section I of Chapter III.
  7. Member States shall inform the Commission and the European Union Agency for Asylum every year of the countries to which the concept of the first country of asylum is applied.

#### *Article 45*

#### **The concept of safe third country**

1. A third country shall be designated as a safe third country provided that:
  - (a) life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;
  - (b) there is no risk of serious harm as defined in Regulation (EU) No XXX/XXX;
  - (c) the principle of *non-refoulement* in accordance with the Geneva Convention is respected;
  - (d) the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected;
  - (e) the possibility exists to receive protection in accordance with the substantive standards of the Geneva Convention or sufficient protection as referred to in Article 44(2), as appropriate.

The assessment of whether a third country may be designated as a safe third country in accordance with this Regulation shall be based on a range of sources of information, including in particular information from Member States, the European Union Agency for Asylum, the European External Action Service, the United Nations High Commissioner for Refugees, the Council of Europe and other relevant organisations.

2. The concept of safe third country shall be applied:
  - (a) where a third country has been designated as safe third country in accordance with Article 50;
  - (b) where a third country is designated as a safe third country at Union level; or
  - (c) in individual cases in relation to a specific applicant.
3. The determining authority shall consider a third country to be a safe third country for a particular applicant, after an individual examination of the application, only where it is satisfied of the safety of the third country for a particular applicant in accordance with the criteria established in paragraph 1 and it has established that:
  - (a) 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, including because the applicant has transited through that third country which is geographically close to the country of origin of the applicant;
  - (b) the applicant has not submitted serious grounds for considering the country not to be a safe third country in his or her particular circumstances.
4. Before his or her application can be rejected as inadmissible pursuant to Article 36(1)(b), an applicant shall be allowed to challenge the application of the concept of safe third country in light of his or her particular circumstances when lodging the application and during the admissibility interview.
5. As regards unaccompanied minors, the concept of safe third country may only be applied where the authorities of the Member States have first received from the authorities of the third country in question confirmation that the unaccompanied minor shall be taken in charge by those authorities and that he or she shall immediately have access to one of the forms of protection referred to in paragraph 1(e).
6. Where an application is rejected as inadmissible in application of the concept of the safe third country, the determining authority shall:
  - (a) inform the applicant accordingly; and
  - (b) provide him or her with a document informing the authorities of the third country, in the language of that country, that the application has not been examined in substance as a consequence of the application of the concept of the safe third country.
7. Where the third country in question does not admit or readmit the applicant to its territory, the determining authority shall revoke the decision rejecting the application as inadmissible and shall give access to the procedure in accordance with the basic principles and guarantees provided for in Chapter II and Section I of Chapter III.

## Article 46

### Designation of safe third countries at Union level

1. Third countries shall be designated as safe third countries at Union level, in accordance with the conditions laid down in Article 45(1).
2. The Commission shall regularly review the situation in third countries that are designated as safe third countries at Union level, with the assistance of the European Union Agency for Asylum and based on the other sources of information referred to in the second paragraph of Article 45(1).
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.

## Article 47

### The concept of safe country of origin

1. A third country may 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), no torture or inhuman or degrading treatment or punishment and no threat by reason of indiscriminate violence in situations of international or internal armed conflict.
2. The assessment of whether a third country may be designated as a safe country of origin in accordance with this Regulation shall be based on a range of sources of information, including in particular information from Member States, the European Union Agency for Asylum, the European External Action Service, the United Nations High Commissioner for Refugees, the Council of Europe as well as other relevant organisations, and shall take into account the common analysis of the country of origin information referred to in Article 10 of Regulation (EU) No XXX/XXX (EU Asylum Agency).
3. In making this assessment, account shall be taken, *inter alia*, of the extent to which protection is provided against persecution or mistreatment by:
  - (a) the relevant laws and regulations of the country and the manner in which they are applied;
  - (b) observance of the rights and freedoms laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms 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;
  - (c) the absence 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;

- (d) the provision for a system of effective remedies against violations of those rights and freedoms.
4. A third country designated as a safe country of origin in accordance with this Regulation may, after an individual examination of the application, be considered as a safe country of origin for a particular applicant only where:
- (a) he or she has the nationality of that country; or
  - (b) he or she is a stateless person and was formerly habitually resident in that country; and
  - (c) he or she has not submitted any serious grounds for considering the country not to be a safe country of origin in his or her particular circumstances..

#### *Article 48*

##### **Designation of safe countries of origin at Union level**

1. Third countries listed in Annex 1 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 regularly review the situation in third countries that are on the EU common list of safe countries of origin, with the assistance of the Union Agency for Asylum and based on the other sources of information referred to in Article 45(2).
3. In accordance with Article 11(2) of Regulation (EU) No XXX/XXX (EU Asylum Agency Regulation), the Commission may request the Union Agency for Asylum to provide it with information on specific third countries which could be considered for inclusion in the common EU list of safe countries of origin.
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.

#### *Article 49*

##### **Suspension and removal of the designation of a third country as a safe third country at Union level or from the EU common list of safe country of origin**

1. In case of sudden changes in the situation of a third country which is designated as a safe third country at Union level or which is on the EU common list 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 designation of a third country as a safe third country at Union level or suspending the presence of a third country from the EU common list of safe countries of origin for a period of six months.
2. The Commission shall continuously review the situation in that third country taking into account *inter alia* information provided by the Member States regarding subsequent changes in the situation of that country.
3. Where the Commission has adopted a delegated act in accordance with paragraph 1 suspending the designation of a third country as a safe third country at Union level or suspending the presence of a third country from the EU common list 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 designation of safe third countries at Union level or from the EU common list of safe countries of origin.

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 2, the delegated act suspending the third country from its designation as a safe third country at Union level or suspending the presence of the third country from the EU common list 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 substantial assessment, to extend the validity of that delegated act for a period of six months, with a possibility to renew this extension once.

#### *Article 50*

#### **Designation of third countries as safe third countries or safe country of origin at national level**

1. For a period of five years from entry into force of this Regulation, 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 designated at Union level or which are on the EU common list in Annex 1 for the purposes of examining applications for international protection.
2. Where a third country is suspended from being designated as a safe third country at Union level or the presence of a third country has been suspended from the EU common list in Annex 1 to this Regulation pursuant to Article 49(1), Member States shall not designate that country as a safe third country or a safe third country of origin at national level nor shall they apply the safe third country concept on an *ad hoc* basis in relation to a specific applicant.
3. Where a third country is no longer designated as a safe third country at Union level or a third country has been removed from the EU common list in Annex I 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.

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.

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 immediately after such designation. Member States shall inform the Commission and the Agency once a year of the other safe third countries to which the concept is applied on an *ad hoc* basis in relation to specific applicants.



## **CHAPTER IV**

### **PROCEDURES FOR THE WITHDRAWAL OF INTERNATIONAL PROTECTION**

#### *Article 51*

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

The determining authority shall start the examination to withdraw international protection from a particular person when new elements or findings arise indicating that there are reasons to reconsider the validity of his or her international protection, and in particular in those instances referred to in Articles 15 and 21 of Regulation (EU) No XXX/XXX (Qualification Regulation).

#### *Article 52*

##### **Procedural rules**

1. Where the competent authority is considering withdrawing international protection from a third-country national or stateless person, including in the context of a regular status review referred to in Articles 15 and 21 of Regulation (EU) No XXX/XXX (Qualification Regulation), the person concerned shall enjoy the following guarantees, in particular:
  - (a) he or she shall be informed in writing that the competent authority is reconsidering his or her qualification as a beneficiary of international protection and the reasons for such a reconsideration; and
  - (b) he or she shall be given the opportunity to submit, within reasonable time, by means of a written statement and in a personal interview, reasons as to why his or her international protection should not be withdrawn.
2. For the purposes of paragraph 1, Member States shall ensure that:
  - (a) the competent authority is able to obtain precise and up-to-date information from various sources, such as, where appropriate, from the European Union Agency for Asylum and the United Nations High Commissioner for Refugees, as to the general situation prevailing in the countries of origin of the persons concerned; and
  - (b) where information on an individual case is collected for the purposes of reconsidering international protection, it is not obtained 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 of the competent authority 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 8(3) and Articles 15 to 18 shall apply.

5. By way of derogation from paragraphs 1 to 4 of this Article, Member States' international protection shall lapse where the beneficiary of international protection has unequivocally renounced his or her recognition as such. International protection shall also lapse where the beneficiary of international protection has become a national of the Member State that had granted international protection.

## **CHAPTER V**

### **APPEAL PROCEDURE**

#### *Article 53*

#### **The right to an effective remedy**

1. Applicants have the right to an effective remedy before a court or tribunal in accordance with the basic principles and guarantees provided for in Chapter II, against the following:
  - (a) a decision taken on their application for international protection, including a decision:
    - (i) rejecting an application as inadmissible referred to in Article 36(1);
    - (ii) rejecting an application as unfounded or manifestly unfounded in relation to refugee status or subsidiary protection status referred to in Article 37(2) and (3) or Article 42(4);
    - (iii) rejecting an application as explicitly withdrawn or as abandoned referred to in Articles 38 and 39;
    - (iv) taken following a border procedure as referred to in Article 41.
  - (b) a decision to withdraw international protection pursuant to Article 52.
2. Persons recognised as eligible for subsidiary protection have the right to an effective remedy against a decision considering an application unfounded in relation to refugee status.
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, including, where applicable, an examination of the international protection needs pursuant to Regulation (EU) No XXX/XXX (Qualification Regulation).

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.
4. The courts or tribunals shall, through the determining authority, the applicant or otherwise, have access to the general information referred to in Article 33(2)(b) and (c).
5. Documents relevant for the examination of applications by courts or tribunals in the appeal procedure shall be translated, where necessary, if they were not already translated in accordance with Article 33(4).

6. Applicants shall lodge appeals against any decision referred to in paragraph 1:
- (a) within one week in the case of a decision rejecting a subsequent application as inadmissible or manifestly unfounded;
  - (b) within two weeks in the case of a decision rejecting an application as inadmissible or in the case of a decision rejecting an application as explicitly withdrawn or as abandoned, or in the case of a decision rejecting an application as unfounded or manifestly unfounded in relation to refugee or subsidiary protection status following an accelerated examination procedure or border procedure or while the applicant is held in detention;
  - (c) within one month in the case of a decision rejecting an application as unfounded in relation to the refugee or subsidiary protection status if the examination is not accelerated or in the case of a decision withdrawing international protection.

For the purposes of point (b), Member States may provide for an *ex officio* review of decisions taken pursuant to a border procedure.

The time-limits provided for in this paragraph shall start to run from the date when the decision of the determining authority is notified to the applicant or from the moment the legal adviser or counsellor is appointed if the applicant has introduced a request for free legal assistance and representation.

#### *Article 54*

#### **Suspensive effect of appeal**

1. The Member State responsible shall allow applicants to remain on its territory until the time limit within which to exercise their right to an effective remedy has expired and, when such a right has been exercised within the time limit, pending the outcome of the remedy.
2. 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*, where the applicant's right to remain in the Member State is terminated as a consequence of any of the following categories of decisions:
  - (a) a decision which considers an application to be manifestly unfounded or rejects the application as unfounded in relation to refugee or subsidiary protection status in the cases subject to an accelerated examination procedure or border procedure;
  - (b) a decision which rejects an application as inadmissible pursuant to Article 36(1)(a) and (c);
  - (c) a decision which rejects an application as explicitly withdrawn or abandoned in accordance with Article 38 or Article 39, respectively.
3. 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 provided that:
  - (a) the applicant has the necessary interpretation, legal assistance and sufficient time to prepare the request and submit to the court or tribunal the arguments in favour of granting him or her the right to remain on the territory pending the outcome of the remedy; and

- (b) in the framework of the examination of a request to remain on the territory of the Member State responsible, the court or tribunal examines the decision refusing to grant international protection in terms of fact and law.
4. Member States shall allow the applicant to remain on their territory pending the outcome of the procedure to rule on whether or not the applicant may remain on the territory. That decision shall be taken within one month from the lodging of the appeal.
5. An applicant who lodges a further appeal against a first or subsequent appeal decision shall not have a right to remain on the territory of the Member State unless a court or tribunal decides otherwise upon the applicant's request or acting *ex officio*. That decision shall be taken within one month from the lodging of that further appeal.

#### *Article 55*

#### **Duration of the first level of appeal**

1. Without prejudice to an adequate and complete examination of an appeal, the courts or tribunals shall decide on the first level of appeal within the following time-limits from when the appeal is lodged:
- (a) within six months in the case of a decision rejecting the application as unfounded in relation to refugee or subsidiary protection status if the examination is not accelerated or in the case of a decision withdrawing international protection;
- (b) within two months in the case of a decision rejecting an application as inadmissible or in the case of a decision rejecting an application as explicitly withdrawn or as abandoned or as unfounded or manifestly unfounded in relation to refugee or subsidiary protection status following an accelerated examination procedure or a border procedure or while the applicant is held in detention;
- (c) within one month in the case of a decision rejecting a subsequent application as inadmissible or manifestly unfounded.
2. In cases involving complex issues of fact or law, the time-limits set out in paragraph 1 may be prolonged by an additional three month-period.

### **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**

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(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.

#### *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>37</sup>
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
3. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.

#### *Article 59*

#### **Delegated acts**

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.
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.

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<sup>37</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).

*Article 60*

**Monitoring and evaluation**

By [two years from entry into force 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.

*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 [six months from its entry into force].

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*  
*The President*

*For the Council*  
*The President*