

POSITION (EU) No 7/2013 OF THE COUNCIL AT FIRST READING

with a view to the adoption of a Directive of the European Parliament and of the Council on common procedures for granting and withdrawing international protection (recast)

Adopted by the Council on 6 June 2013

(2013/C 179 E/02)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

affirming the principle of *non-refoulement* and ensuring that nobody is sent back to persecution.

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

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

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

(5) The first phase of a Common European Asylum System was achieved through the adoption of relevant legal instruments provided for in the Treaties, including Directive 2005/85/EC, which was a first measure on asylum procedures.

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the ordinary legislative procedure ⁽³⁾,

(6) The European Council, at its meeting of 4 November 2004, adopted The Hague Programme, which set the objectives to be implemented in the area of freedom, security and justice in the period 2005-2010. In this respect, The Hague Programme invited the European Commission to conclude the evaluation of the first-phase legal instruments and to submit the second-phase instruments and measures to the European Parliament and to the Council. In accordance with The Hague Programme, the objective to be pursued for the creation of the Common European Asylum System is the establishment of a common asylum procedure and a uniform status valid throughout the Union.

Whereas:

(1) A number of substantive changes are to be made to Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures for granting and withdrawing refugee status ⁽⁴⁾. In the interest of clarity, that Directive should be recast.

(7) In the European Pact on Immigration and Asylum, adopted on 16 October 2008, the European Council noted that considerable disparities remained between one Member State and another concerning the grant of protection and called for new initiatives, including a proposal for establishing a single asylum procedure comprising common guarantees, to complete the establishment of a Common European Asylum System, provided for in The Hague Programme.

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

(8) The European Council, at its meeting of 10-11 December 2009, adopted the Stockholm Programme which reiterated the commitment to the objective of establishing by 2012 a common area of protection and solidarity based on a common asylum procedure and a uniform status for those granted international protection based on high protection standards and fair and effective procedures. The Stockholm Programme affirmed that people in need of international protection must be ensured access to legally safe and efficient asylum

(3) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention Relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967 ('the Geneva Convention'), thus

⁽¹⁾ OJ C 24, 28.1.2012, p. 79.

⁽²⁾ OJ C ...

⁽³⁾ Position of the European Parliament of 6 April 2011 (OJ C 296 E, 2.10.2012, p. 184) and position of the Council at first reading of 6 June 2013. Position of the European Parliament of ... (not yet published in the Official Journal) and decision of the Council of ...

⁽⁴⁾ OJ L 326, 13.12.2005, p. 13.

procedures. In accordance with the Stockholm Programme, individuals should be offered the same level of treatment as regards procedural arrangements and status determination, regardless of the Member State in which their application for international protection is lodged. The objective is that similar cases should be treated alike and result in the same outcome.

- (9) The resources of the European Refugee Fund and of the European Asylum Support Office (EASO) should be mobilised to provide adequate support to Member States' efforts in implementing the standards set in the second phase of the Common European Asylum System, in particular to those Member States which are faced with specific and disproportionate pressures on their asylum systems, due in particular to their geographical or demographic situation.
- (10) When implementing this Directive, Member States should take into account relevant guidelines developed by EASO.
- (11) In order to ensure a comprehensive and efficient assessment of the international protection needs of applicants within the meaning of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted⁽¹⁾, the Union framework on procedures for granting and withdrawing international protection should be based on the concept of a single procedure.
- (12) The main objective of this Directive is to further develop the standards for procedures in Member States for granting and withdrawing international protection with a view to establishing a common asylum procedure in the Union.
- (13) The approximation of rules on the procedures for granting and withdrawing international protection should help to limit the secondary movements of applicants for international protection between Member States, where such movements would be caused by differences in legal frameworks, and to create equivalent conditions for the application of Directive 2011/95/EU in Member States.
- (14) Member States should have the power to introduce or maintain more favourable provisions for third-country nationals or stateless persons who ask for international protection from a Member State, where such a request is

understood to be on the grounds that the person concerned is in need of international protection within the meaning of Directive 2011/95/EU.

- (15) With respect to the treatment of persons falling within the scope of this Directive, Member States are bound by obligations under instruments of international law to which they are party.
- (16) It is essential that decisions on all applications for international protection be taken on the basis of the facts and, in the first instance, by authorities whose personnel has the appropriate knowledge or has received the necessary training in the field of international protection.
- (17) In order to ensure that applications for international protection are examined and decisions thereon are taken objectively and impartially, it is necessary that professionals acting in the framework of the procedures provided for in this Directive perform their activities with due respect for the applicable deontological principles.
- (18) It is in the interests of both Member States and applicants for international protection that a decision is made as soon as possible on applications for international protection, without prejudice to an adequate and complete examination being carried out.
- (19) 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.
- (20) In well-defined circumstances where an application is likely to be unfounded or where there are serious national security or public order concerns, Member States should be able to accelerate the examination procedure, in particular by introducing shorter, but reasonable, time-limits for certain procedural steps, without prejudice to an adequate and complete examination being carried out and to the applicant's effective access to basic principles and guarantees provided for in this Directive.
- (21) 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 border or accelerated procedures.

⁽¹⁾ OJ L 337, 20.12.2011, p. 9.

- (22) It is also in the interests of both Member States and applicants to ensure a correct recognition of international protection needs already at first instance. To that end, applicants should be provided at first instance, free of charge, with legal and procedural information, taking into account their particular circumstances. The provision of such information should *inter alia* enable the applicants to better understand the procedure, thus helping them to comply with the relevant obligations. It would be disproportionate to require Member States to provide such information only through the services of qualified lawyers. Member States should therefore have the possibility to use the most appropriate means to provide such information, such as through non-governmental organisations or professionals from government authorities or specialised services of the State.
- (23) In appeals procedures, subject to certain conditions, applicants should be granted free legal assistance and representation provided by persons competent to provide them under national law. Furthermore, at all stages of the procedure, applicants should have the right to consult, at their own cost, legal advisers or counsellors admitted or permitted as such under national law.
- (24) The notion of public order may *inter alia* cover a conviction for having committed a serious crime.
- (25) 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 procedures, the opportunity to cooperate and properly communicate with the competent 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. Moreover, the procedure in which an application for international protection is examined should normally provide an applicant at least with: the right to stay pending a decision by the determining authority; access to the services of an interpreter for submitting his or her case if interviewed by the authorities; the opportunity to communicate with a representative of the United Nations High Commissioner for Refugees (UNHCR) and with organisations providing advice or counselling to applicants for international protection; the right to appropriate notification of a decision and of the reasons for that decision in fact and in law; the opportunity to consult a legal adviser or other counsellor; the right to be informed of his or her legal position at decisive moments in the course of the procedure, in a language which he or she understands or is reasonably supposed to understand; and, in the case of a negative decision, the right to an effective remedy before a court or a tribunal.
- (26) With a view to ensuring effective access to the examination procedure, officials who first come into contact with persons seeking international protection, in particular officials carrying out the surveillance of land or maritime borders or conducting border checks, should receive relevant information and necessary training on how to recognise and deal with applications for international protection, *inter alia*, taking due account of relevant guidelines developed by EASO. They should be able to provide third-country nationals or stateless persons who are present in the territory, including at the border, in the territorial waters or in the transit zones of the Member States, and who make an application for international protection, with relevant information as to where and how applications for international protection may be lodged. Where those persons are present in the territorial waters of a Member State, they should be disembarked on land and have their applications examined in accordance with this Directive.
- (27) Given that third-country nationals and stateless persons who have expressed their wish to apply for international protection are applicants for international protection, they should comply with the obligations, and benefit from the rights, under this Directive and Directive .../.../EU of the European Parliament and of the Council of ... laying down standards for the reception of applicants for international protection (*) (1). To that end, Member States should register the fact that those persons are applicants for international protection as soon as possible.
- (28) In order to facilitate access to the examination 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 apply for international protection should be ensured through interpretation arrangements.
- (29) 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 or sexual violence. Member States should endeavour to identify applicants in need of special procedural guarantees before a first instance decision is taken. Those

(*) doc 14654/1/12 REV 1 [Reception Conditions Directive].

(1) OJ L ...

applicants 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.

- (30) Where adequate support cannot be provided to an applicant in need of special procedural guarantees in the framework of accelerated or border procedures, such an applicant 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.
- (31) National 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 Directive may *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).
- (32) With a view to ensuring substantive equality between female and male applicants, examination procedures should be gender-sensitive. In particular, personal interviews should be organised in a way which makes it possible for both female and male applicants to speak about their past experiences in cases involving gender-based persecution. The complexity of gender-related claims should be properly taken into account in procedures based on the concept of safe third country, the concept of safe country of origin or the notion of subsequent applications.
- (33) The best interests of the child should be a primary consideration of Member States when applying this Directive, in accordance with the Charter of Fundamental Rights of the European Union ('the Charter') and the 1989 United Nations Convention on the Rights of the Child. In assessing the best interest 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.
- (34) Procedures for examining international protection needs should be such as to enable the competent authorities to conduct a rigorous examination of applications for international protection.
- (35) 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.
- (36) Where an applicant makes a subsequent application without presenting new evidence or arguments, it would be disproportionate to oblige Member States to carry out a new full examination procedure. In those cases, Member States should be able to dismiss an application as inadmissible in accordance with the *res judicata* principle.
- (37) With respect to the involvement of the personnel of an authority other than the determining authority in conducting timely interviews on the substance of an application, the notion of 'timely' should be assessed against the time-limits provided for in Article 31.
- (38) 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 admissibility and/or substantive examination procedures which would make it possible for such applications to be decided upon at those locations in well-defined circumstances.
- (39) In determining whether a situation of uncertainty prevails in the country of origin of an applicant, Member States should ensure that they obtain precise and up-to-date information from relevant sources such as EASO, UNHCR, the Council of Europe and other relevant international organisations. Member States should ensure that any postponement of conclusion of the procedure fully complies with their obligations under Directive 2011/95/EU and Article 41 of the Charter, without prejudice to the efficiency and fairness of the procedures under this Directive.
- (40) A key consideration for the well-foundedness of an application for international protection is the safety of the applicant in his or her country of origin. Where a third country can be regarded as a safe country of origin, Member States should be able to designate it as safe and presume its safety for a particular applicant, unless he or she presents counter-indications.
- (41) Given the level of harmonisation achieved on the qualification of third-country nationals and stateless persons as beneficiaries of international protection, common criteria should be established for designating third countries as safe countries of origin.

- (42) The designation of a third country as a safe country of origin for the purposes of this Directive cannot establish an absolute guarantee of safety for nationals of that country. By its very nature, the assessment underlying the designation can only take into account the general civil, legal and political circumstances in that country and whether actors of persecution, torture or inhuman or degrading treatment or punishment are subject to sanction in practice when found liable in that country. For this reason, it is important that, where an applicant shows that there are valid 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.
- (43) Member States should examine all applications on the substance, i.e. assess whether the applicant in question qualifies for international protection in accordance with Directive 2011/95/EU, except where this Directive provides otherwise, in particular where it can reasonably be assumed that another country would do the examination or provide sufficient protection. In particular, Member States should not be obliged to assess the substance of an application for international protection where a first country of asylum has granted the applicant refugee status or otherwise sufficient protection and the applicant will be readmitted to that country.
- (44) Member States should not be obliged to assess the substance of an application for international protection where the applicant, due to a sufficient connection to a third country as defined by national law, can reasonably be expected to seek protection in that third country, and there are grounds for considering that the applicant will be admitted or re-admitted to that country. Member States should only proceed on that basis where that particular applicant would be safe in the third country concerned. In order to avoid secondary movements of applicants, common principles should be established for the consideration or designation by Member States of third countries as safe.
- (45) Furthermore, with respect to certain European third countries, which observe particularly high human rights and refugee protection standards, Member States should be allowed to not carry out, or not to carry out full examination of, applications for international protection regarding applicants who enter their territory from such European third countries.
- (46) Where Member States apply safe country concepts on a case-by-case basis or designate countries as safe by adopting lists to that effect, they should take into account, inter alia, the guidelines and operating manuals and the information on countries of origin and activities, including EASO Country of Origin Information report methodology, referred to in Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office⁽¹⁾, as well as relevant UNHCR guidelines.
- (47) In order to facilitate the regular exchange of information about the national application of the concepts of safe country of origin, safe third country and European safe third country as well as a regular review by the Commission of the use of those concepts by Member States, and to prepare for a potential further harmonisation in the future, Member States should notify or periodically inform the Commission about the third countries to which the concepts are applied. The Commission should regularly inform the European Parliament on the result of its reviews.
- (48) In order to ensure the correct application of the safe country concepts based on up-to-date information, Member States should conduct regular reviews of the situation in those countries based on a range of sources of information, including in particular information from other Member States, EASO, UNHCR, the Council of Europe and other relevant international organisations. When Member States become aware of a significant change in the human rights situation in a country designated by them as safe, they should ensure that a review of that situation is conducted as soon as possible and, where necessary, review the designation of that country as safe.
- (49) With respect to the withdrawal of refugee or subsidiary protection status, Member States should ensure that persons benefiting from international protection are duly informed of a possible reconsideration of their status and have the opportunity to submit their point of view before the authorities can take a reasoned decision to withdraw their status.
- (50) It reflects a basic principle of Union law that the decisions taken on an application for international protection, the decisions concerning a refusal to re-open the examination of an application after its discontinuation, and the decisions on the withdrawal of refugee or subsidiary protection status are subject to an effective remedy before a court or tribunal.

⁽¹⁾ OJ L 132, 29.5.2010, p. 11.

- (51) In accordance with Article 72 of the Treaty on the Functioning of the European Union (TFEU), this Directive does not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.
- (52) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ⁽¹⁾ governs the processing of personal data carried out in the Member States pursuant to this Directive.
- (53) This Directive does not deal with procedures between Member States governed by Regulation (EU) No .../... of the European Parliament and of the Council of ...establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person ^(*) ⁽²⁾.
- (54) This Directive should apply to applicants to whom Regulation No .../... ^(**) applies, in addition and without prejudice to the provisions of that Regulation.
- (55) The implementation of this Directive should be evaluated at regular intervals.
- (56) Since the objective of this Directive, namely to establish common procedures 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 Directive, 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 (TEU). In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (57) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011 ⁽³⁾, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (58) In accordance with Articles 1, 2 and Article 4a(1) 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 TEU and the TFEU, and without prejudice to Article 4 of that Protocol, the United Kingdom and Ireland are not taking part in the adoption of this Directive and are not bound by it or subject to its application.
- (59) 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 Directive and is not bound by it or subject to its application.
- (60) This Directive respects the fundamental rights and observes the principles recognised by the Charter. In particular, this Directive seeks to ensure full respect for human dignity and to promote the application of Articles 1, 4, 18, 19, 21, 23, 24, and 47 of the Charter and has to be implemented accordingly.
- (61) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with Directive 2005/85/EC. The obligation to transpose the provisions which are unchanged arises under that Directive.
- (62) This Directive should be without prejudice to the obligations of the Member States relating to the time-limit for transposition into national law of Directive 2005/85/EC set out in Annex II, Part B,
- HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Purpose

The purpose of this Directive is to establish common procedures for granting and withdrawing international protection pursuant to Directive 2011/95/EU.

Article 2

Definitions

For the purposes of this Directive:

- (a) 'Geneva Convention' means the Convention of 28 July 1951 Relating to the Status of Refugees, as amended by the New York Protocol of 31 January 1967;

⁽¹⁾ OJ L 281, 23.11.1995, p. 31.

^(*) doc. 15605/1/12 REV 1 [Dublin Regulation].

⁽²⁾ OJ L ...

^(**) Regulation in recital 53 [Dublin Regulation].

⁽³⁾ OJ C 369, 17.12.2011, p. 14.

- (b) 'application for international protection' or 'application' means a request made by a third-country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status, and who does not explicitly request another kind of protection outside the scope of Directive 2011/95/EU, that can be applied for separately;
- (c) 'applicant' means a third-country national or stateless person who has made an application for international protection in respect of which a final decision has not yet been taken;
- (d) '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 Directive is limited due to individual circumstances;
- (e) 'final decision' means a decision on whether the third-country national or stateless person be granted refugee or subsidiary protection status by virtue of Directive 2011/95/EU and which is no longer subject to a remedy within the framework of Chapter V of this Directive, irrespective of whether such remedy has the effect of allowing applicants to remain in the Member States concerned pending its outcome;
- (f) '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 in such cases;
- (g) 'refugee' means a third-country national or a stateless person who fulfils the requirements of Article 2(d) of Directive 2011/95/EU;
- (h) 'person eligible for subsidiary protection' means a third-country national or a stateless person who fulfils the requirements of Article 2(f) of Directive 2011/95/EU;
- (i) 'international protection' means refugee status and subsidiary protection status as defined in points (j) and (k);
- (j) 'refugee status' means the recognition by a Member State of a third-country national or a stateless person as a refugee;
- (k) 'subsidiary protection status' means the recognition by a Member State of a third-country national or a stateless person as a person eligible for subsidiary protection;
- (l) 'minor' means a third-country national or a stateless person below the age of 18 years;
- (m) 'unaccompanied minor' means an unaccompanied minor as defined in Article 2(l) of Directive 2011/95/EU;
- (n) 'representative' means a person or an organisation appointed by the competent bodies in order to assist and represent an unaccompanied minor in procedures provided for in this Directive with a view to ensuring the best interests of the child and exercising legal capacity for the minor where necessary. Where an organisation is appointed as a representative, it shall designate a person responsible for carrying out the duties of representative in respect of the unaccompanied minor, in accordance with this Directive;
- (o) 'withdrawal of international protection' means the decision by a competent authority to revoke, end or refuse to renew the refugee or subsidiary protection status of a person in accordance with Directive 2011/95/EU;
- (p) 'remain in the Member State' means to remain in the territory, including at the border or in transit zones, of the Member State in which the application for international protection has been made or is being examined;
- (q) 'subsequent application' means a further application for international protection made after a final decision has been taken on a previous application, including cases where the applicant has explicitly withdrawn his or her application and cases where the determining authority has rejected an application following its implicit withdrawal in accordance with Article 28(1).

Article 3

Scope

1. This Directive shall apply to all applications for international protection made in the territory, including at the border, in the territorial waters or in the transit zones of the Member States, and to the withdrawal of international protection.
2. This Directive shall not apply to requests for diplomatic or territorial asylum submitted to representations of Member States.
3. Member States may decide to apply this Directive in procedures for deciding on applications for any kind of protection falling outside of the scope of Directive 2011/95/EU.

*Article 4***Responsible authorities**

1. Member States shall designate for all procedures a determining authority which will be responsible for an appropriate examination of applications in accordance with this Directive. Member States shall ensure that such authority is provided with appropriate means, including sufficient competent personnel, to carry out its tasks in accordance with this Directive.

2. Member States may provide that an authority other than that referred to in paragraph 1 shall be responsible for the purposes of:

- (a) processing cases pursuant to Regulation (EU) No .../... (*), and
- (b) granting or refusing permission to enter in the framework of the procedure provided for in Article 43, subject to the conditions as set out therein and on the basis of the reasoned opinion of the determining authority.

3. Member States shall ensure that the personnel of the determining authority referred to in paragraph 1 are properly trained. To that end, Member States shall provide for relevant training which shall include the elements listed in Article 6(4)(a) to (e) of Regulation (EU) No 439/2010. Member States shall

also take into account the relevant training established and developed by the European Asylum Support Office (EASO). Persons interviewing applicants pursuant to this Directive shall also have acquired general knowledge of problems which could adversely affect the applicants' ability to be interviewed, such as indications that the applicant may have been tortured in the past.

4. Where an authority is designated in accordance with paragraph 2, Member States shall ensure that the personnel of that authority have the appropriate knowledge or receive the necessary training to fulfil their obligations when implementing this Directive.

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

*Article 5***More favourable provisions**

Member States may introduce or retain more favourable standards on procedures for granting and withdrawing international protection, insofar as those standards are compatible with this Directive.

CHAPTER II

BASIC PRINCIPLES AND GUARANTEES

*Article 6***Access to the procedure**

1. When a person makes an application for international protection to an authority competent under national law for registering such applications, the registration shall take place no later than three working days after the application is made.

If the application for international protection is made to other authorities which are likely to receive such applications, but not competent for the registration under national law, Member States shall ensure that the registration shall take place no later than six working days after the application is made.

Member States shall ensure that those other authorities which are likely to receive applications for international protection such as the police, border guards, immigration authorities and personnel of detention facilities have the relevant information and that their personnel receive the necessary level of training which is appropriate to their tasks and responsibilities and

instructions to inform applicants as to where and how applications for international protection may be lodged.

2. Member States shall ensure that a person who has made an application for international protection has an effective opportunity to lodge it as soon as possible. Where the applicant does not lodge his or her application, Member States may apply Article 28 accordingly.

3. Without prejudice to paragraph 2, Member States may require that applications for international protection be lodged in person and/or at a designated place.

4. Notwithstanding paragraph 3, an application for international protection shall be deemed to have been lodged once a form submitted by the applicant or, where provided for in national law, an official report, has reached the competent authorities of the Member State concerned.

5. Where simultaneous applications for international protection by a large number of third-country nationals or stateless persons make it very difficult in practice to respect the time-limit laid down in paragraph 1, Member States may provide for that time-limit to be extended to 10 working days.

(*) Regulation in recital 53 [Dublin Regulation].

*Article 7***Applications made on behalf of dependants or minors**

1. Member States shall ensure that each adult with legal capacity has the right to make an application for international protection on his or her own behalf.

2. Member States may provide that an application may be made by an applicant on behalf of his or her dependants. In such cases, Member States shall ensure that dependent adults consent to the lodging of the application on their behalf, failing which they shall have an opportunity to make an application on their own behalf.

Consent shall be requested at the time the application is lodged or, at the latest, when the personal interview with the dependent adult is conducted. Before consent is requested, each dependent adult shall be informed in private of the relevant procedural consequences of the lodging of the application on his or her behalf and of his or her right to make a separate application for international protection.

3. Member States shall ensure that a minor has the right to make an application for international protection either on his or her own behalf, if he or she has the legal capacity to act in procedures according to the law of the Member State concerned, or through his or her parents or other adult family members, or an adult responsible for him or her, whether by law or by the practice of the Member State concerned, or through a representative.

4. Member States shall ensure that the appropriate bodies referred to in Article 10 of 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⁽¹⁾ 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 have protection needs pursuant to Directive 2011/95/EU.

5. Member States may determine in national legislation:

- (a) the cases in which a minor can make an application on his or her own behalf;
- (b) the cases in which the application of an unaccompanied minor has to be lodged by a representative as provided for in Article 25(1)(a);

⁽¹⁾ OJ L 348, 24.12.2008, p. 98.

- (c) the cases in which the lodging of an application for international protection is deemed to constitute also the lodging of an application for international protection for any unmarried minor.

*Article 8***Information and counselling 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 wish to make an application for international protection, Member States shall provide them with information on the possibility to do so. In those detention facilities and crossing points, Member States shall make arrangements for interpretation to the extent necessary to facilitate access to the asylum procedure.

2. Member States shall ensure that organisations and persons providing advice and counselling to applicants have effective access to applicants present at border crossing points, including transit zones, at external borders. Member States may provide for rules covering the presence of such organisations and persons in those crossing points and in particular that access is subject to an agreement with the competent authorities of the Member States. Limits on such access may be imposed only where, by virtue of national law, they are objectively necessary for the security, public order or administrative management of the crossing points concerned, provided that access is not thereby severely restricted or rendered impossible.

*Article 9***Right to remain in the Member State pending the examination of the application**

1. Applicants shall be allowed to remain in the Member State, for the sole purpose of the procedure, until the determining authority has made a decision in accordance with the procedures at first instance set out in Chapter III. That right to remain shall not constitute an entitlement to a residence permit.

2. Member States may make an exception only where a person makes a subsequent application referred to in Article 41 or where they will surrender or extradite, as appropriate, a person either to another Member State pursuant to obligations in accordance with a European arrest warrant⁽²⁾ or otherwise, or to a third country or to international criminal courts or tribunals.

⁽²⁾ 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).

3. A Member State may extradite an applicant to a third country pursuant to paragraph 2 only where the competent authorities are satisfied that an extradition decision will not result in direct or indirect *refoulement* in violation of the international and Union obligations of that Member State.

Article 10

Requirements for the examination of applications

1. Member States shall ensure that applications for international protection are neither rejected nor excluded from examination on the sole ground that they have not been made as soon as possible.

2. When examining applications for international protection, the determining authority shall first determine whether the applicants qualify as refugees and, if not, determine whether the applicants are eligible for subsidiary protection.

3. Member States shall ensure that decisions by the determining authority on applications for international protection are taken after an appropriate examination. To that end, Member States shall ensure that:

- (a) applications are examined and decisions are taken individually, objectively and impartially;
- (b) precise and up-to-date information is obtained from various sources, such as EASO and UNHCR and relevant international human rights organisations, as to the general situation prevailing in the countries of origin of applicants and, where necessary, in countries through which they have transited, and that such information is made available to the personnel responsible for examining applications and taking decisions;
- (c) the personnel examining applications and taking decisions know the relevant standards applicable in the field of asylum and refugee law;
- (d) the personnel examining applications and taking decisions have the possibility to seek advice, whenever necessary, from experts on particular issues, such as medical, cultural, religious, child-related or gender issues.

4. The authorities referred to in Chapter V shall, through the determining authority or the applicant or otherwise, have access to the general information referred to in paragraph 3(b), necessary for the fulfilment of their task.

5. Member States shall provide for rules concerning the translation of documents relevant for the examination of applications.

Article 11

Requirements for a decision by the determining authority

1. Member States shall ensure that decisions on applications for international protection are given in writing.

2. Member States shall also ensure that, where an application is rejected with regard to refugee status and/or subsidiary protection status, the reasons in fact and in law are stated in the decision and information on how to challenge a negative decision is given in writing.

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

3. For the purposes of Article 7(2), and whenever the application is based on the same grounds, Member States may take a single decision, covering all dependants, 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 and/or age-based persecution. In such cases, a separate decision shall be issued to the person concerned.

Article 12

Guarantees for applicants

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

- (a) they shall be informed in a language which they understand or are reasonably supposed to understand of the procedure to be followed and of their rights and obligations during the procedure and the possible consequences of not complying with their obligations and not cooperating with the authorities. They shall be informed of the time-frame, the means at their disposal for fulfilling the obligation to submit the elements as referred to in Article 4 of Directive 2011/95/EU, as well as of the consequences of an explicit or implicit withdrawal of the application. That information shall be given in time to enable them to exercise the rights guaranteed in this Directive and to comply with the obligations described in Article 13;

- (b) they shall receive the services of an interpreter for submitting their case to the competent authorities whenever necessary. Member States shall consider it necessary to provide those services at least when the applicant is to be interviewed as referred to in Articles 14, 15, 16, 17 and 34 and appropriate communication cannot be ensured without such services. In that case and in other cases where the competent authorities call upon the applicant, those services shall be paid for out of public funds;
- (c) they shall not be denied the opportunity to communicate with UNHCR or with any other organisation providing legal advice or other counselling to applicants in accordance with the law of the Member State concerned;
- (d) they and, if applicable, their legal advisers or other counsellors in accordance with Article 23(1), shall have access to the information referred to in Article 10(3)(b) and to the information provided by the experts referred to in Article 10(3)(d), where the determining authority has taken that information into consideration for the purpose of taking a decision on their application;
- (e) they shall be given notice in reasonable time of the decision by the determining authority on their application. If a legal adviser or other counsellor is legally representing the applicant, Member States may choose to give notice of the decision to him or her instead of to the applicant;
- (f) they shall be informed of the result of the decision by the determining authority in a language that they understand or are reasonably supposed to understand when they are not assisted or represented by a legal adviser or other counsellor. The information provided shall include information on how to challenge a negative decision in accordance with the provisions of Article 11(2).

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

Article 13

Obligations of the applicants

1. Member States shall impose upon applicants the obligation to cooperate with the competent authorities with a view to establishing their identity and other elements referred to

in Article 4(2) of Directive 2011/95/EU. Member States may impose upon applicants other obligations to cooperate with the competent authorities insofar as such obligations are necessary for the processing of the application.

2. In particular, Member States may provide that:

- (a) applicants are required to report to the competent authorities or to appear before them in person, either without delay or at a specified time;
- (b) applicants have to hand over documents in their possession relevant to the examination of the application, such as their passports;
- (c) applicants are required to inform the competent authorities of their current place of residence or address and of any changes thereof as soon as possible. Member States may provide that the applicant shall have to accept any communication at the most recent place of residence or address which he or she indicated accordingly;
- (d) the competent authorities may search the applicant and the items which he or she is carrying. Without prejudice to any search carried out for security reasons, a search of the applicant's person under this Directive 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;
- (e) the competent authorities may take a photograph of the applicant; and
- (f) the competent authorities may record the applicant's oral statements, provided he or she has previously been informed thereof.

Article 14

Personal interview

1. Before a decision is taken by the determining authority, the applicant shall be given the opportunity of a personal interview on his or her application for international protection with a person competent under national law to conduct such an interview. Personal interviews on the substance of the application for international protection shall be conducted by the personnel of the determining authority. This subparagraph shall be without prejudice to Article 42(2)(b).

Where simultaneous applications for international protection by a large number of third-country nationals or stateless persons make it impossible in practice for the determining authority to conduct timely interviews on the substance of each application, Member States may provide that the personnel of another authority be temporarily involved in conducting such interviews. In such cases, the personnel of that other authority shall receive in advance the relevant training which shall include the elements listed in Article 6(4)(a) to (e) of Regulation (EU) No 439/2010. Persons conducting personal interviews of applicants pursuant to this Directive shall also have acquired general knowledge of problems which could adversely affect an applicant's ability to be interviewed, such as indications that the applicant may have been tortured in the past.

Where a person has lodged an application for international protection on behalf of his or her dependants, each dependent adult shall be given the opportunity of a personal interview.

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

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

- (a) the determining authority is able to take a positive decision with regard to refugee status on the basis of evidence available; or
- (b) the determining authority is of the opinion that the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond his or her control. When in doubt, 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.

Where a personal interview is not conducted pursuant to point (b) or, where applicable, with the dependant, reasonable efforts shall be made to allow the applicant or the dependant to submit further information.

3. The absence of a personal interview in accordance with this Article shall not prevent the determining authority from taking a decision on an application for international protection.

4. The absence of a personal interview pursuant to paragraph 2(b) shall not adversely affect the decision of the determining authority.

5. Irrespective of Article 28(1), Member States, when deciding on an application for international protection, may take into account the fact that the applicant failed to appear for the personal interview, unless he or she had good reasons for the failure to appear.

Article 15

Requirements for a personal interview

1. A personal interview shall normally take place without the presence of family members unless the determining authority considers it necessary for an appropriate examination to have other family members present.

2. A personal interview shall take place under conditions which ensure appropriate confidentiality.

3. Member States shall take appropriate steps to ensure that personal interviews are conducted under conditions which allow applicants to present the grounds for their applications in a comprehensive manner. To that end, Member States shall:

- (a) ensure that the person who conducts the interview is competent to take account of the personal and general circumstances surrounding the application, including the applicant's cultural origin, gender, sexual orientation, gender identity or vulnerability;
- (b) wherever possible, provide for the interview with the applicant to be conducted by a person of the same sex if the applicant so requests, unless the determining authority has reason 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;
- (c) select an interpreter who is able to ensure appropriate communication between the applicant and the person who conducts the 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. Wherever possible, Member States shall provide an interpreter of the same sex if the applicant so requests, unless the determining authority has 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;
- (d) ensure that the person who conducts the interview on the substance of an application for international protection does not wear a military or law enforcement uniform;

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

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

Article 16

Content of a personal interview

When conducting a personal interview on the substance of an application for international protection, the determining authority shall ensure that the applicant is given an adequate opportunity to present elements needed to substantiate the application in accordance with Article 4 of Directive 2011/95/EU as completely as possible. This shall include the opportunity to give an explanation regarding elements which may be missing and/or any inconsistencies or contradictions in the applicant's statements.

Article 17

Report and recording of personal interviews

1. Member States shall ensure that either a thorough and factual report containing all substantive elements or a transcript is made of every personal interview.

2. Member States may provide for audio or audio-visual recording of the personal interview. Where such a recording is made, Member States shall ensure that the recording or a transcript thereof is available in connection with the applicant's file.

3. Member States shall ensure that the applicant has the opportunity to make comments and/or provide clarification orally and/or in writing with regard to any mistranslations or misconceptions 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, Member States shall ensure that the applicant is fully informed of the content of the report or of the substantive elements of the transcript, with the assistance of an interpreter if necessary. Member States shall then request the applicant to confirm that the content of the report or the transcript correctly reflects the interview.

When the personal interview is recorded in accordance with paragraph 2 and the recording is admissible as evidence in the appeals procedures referred to in Chapter V, Member States need not request the applicant to confirm that the content of the report or the transcript correctly reflects the interview. Without prejudice to Article 16, where Member States provide for both a transcript and a recording of the personal interview, Member States need not allow the applicant to make comments on and/or provide clarification of the transcript.

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.

Such refusal shall not prevent the determining authority from taking a decision on the application.

5. Applicants and their legal advisers or other counsellors, as defined in Article 23, shall have access to the report or the transcript and, where applicable, the recording, before the determining authority takes a decision.

Where Member States provide for both a transcript and a recording of the personal interview, Member States need not provide access to the recording in the procedures at first instance referred to in Chapter III. In such cases, they shall nevertheless provide access to the recording in the appeals procedures referred to in Chapter V.

Without prejudice to paragraph 3 of this Article, where the application is examined in accordance with Article 31(8), Member States may provide that access to the report or the transcript, and where applicable, the recording, is granted at the same time as the decision is made.

Article 18

Medical examination

1. Where the determining authority deems it relevant for the assessment of an application for international protection in accordance with Article 4 of Directive 2011/95/EU, Member States shall, subject to the applicant's consent, arrange for a medical examination of the applicant concerning signs that might indicate past persecution or serious harm. Alternatively, Member States may provide that the applicant arranges for such a medical examination.

The medical examinations referred to in the first subparagraph shall be carried out by qualified medical professionals and the result thereof shall be submitted to the determining authority as soon as possible. Member States may designate the medical professionals who may carry out such medical examinations. An applicant's refusal to undergo such a medical examination shall not prevent the determining authority from taking a decision on the application for international protection.

Medical examinations carried out in accordance with this paragraph shall be paid for out of public funds.

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

3. The results of the medical examinations referred to in paragraphs 1 and 2 shall be assessed by the determining authority along with the other elements of the application.

Article 19

Provision of legal and procedural information free of charge in procedures at first instance

1. In the procedures at first instance provided for in Chapter III, Member States shall ensure that, on request, applicants are provided with legal and procedural information free of charge, including, at least, information on the procedure in the light of the applicant's particular circumstances. In the event of a negative decision on an application at first instance, Member States shall also, on request, provide applicants with information - in addition to that given in accordance with Articles 11(2) and 12(1)(f) - in order to clarify the reasons for such decision and explain how it can be challenged.

2. The provision of legal and procedural information free of charge shall be subject to the conditions laid down in Article 21.

Article 20

Free legal assistance and representation in appeals procedures

1. Member States shall ensure that free legal assistance and representation is granted on request in the appeals procedures provided for in Chapter V. It shall include, at least, the preparation of the required procedural documents and participation in the hearing before a court or tribunal of first instance on behalf of the applicant.

2. Member States may also provide free legal assistance and/or representation in the procedures at first instance provided for in Chapter III. In such cases, Article 19 shall not apply.

3. Member States may provide that free legal assistance and representation not be granted where the applicant's appeal is considered by a court or tribunal or other competent authority to have no tangible prospect of success.

Where a decision not to grant free legal assistance and representation pursuant to this paragraph is taken by an authority

which is not a court or tribunal, Member States shall ensure that the applicant has the right to an effective remedy before a court or tribunal against that decision.

In the application of this paragraph, Member States shall ensure that legal assistance and representation is not arbitrarily restricted and that the applicant's effective access to justice is not hindered.

4. Free legal assistance and representation shall be subject to the conditions laid down in Article 21.

Article 21

Conditions for the provision of legal and procedural information free of charge and free legal assistance and representation

1. Member States may provide that the legal and procedural information free of charge referred to in Article 19 is provided by non-governmental organisations, or by professionals from government authorities or from specialised services of the State.

The free legal assistance and representation referred to in Article 20 shall be provided by such persons as admitted or permitted under national law.

2. Member States may provide that legal and procedural information free of charge referred to in Article 19 and free legal assistance and representation referred to in Article 20 are granted:

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

(b) only through the services provided by legal advisers or other counsellors specifically designated by national law to assist and represent applicants.

Member States may provide that the free legal assistance and representation referred to in Article 20 is granted only for appeals procedures in accordance with Chapter V before a court or tribunal of first instance and not for any further appeals or reviews provided for under national law, including rehearings or reviews of appeals.

Member States may also provide that the free legal assistance and representation referred to in Article 20 is not granted to applicants who are no longer present on their territory in application of Article 41(2)(c).

3. Member States may lay down rules concerning the modalities for filing and processing requests for legal and procedural information free of charge under Article 19 and for free legal assistance and representation under Article 20.

4. Member States may also:

(a) impose monetary and/or time-limits on the provision of legal and procedural information free of charge referred to in Article 19 and on the provision of free legal assistance and representation referred to in Article 20, provided that such limits do not arbitrarily restrict access to the provision of legal and procedural information and legal assistance and representation;

(b) provide that, as regards fees and other costs, the treatment of applicants shall not be more favourable than the treatment generally accorded to their nationals in matters pertaining to legal assistance.

5. Member States may demand to be reimbursed wholly or partially for any costs granted if and when the applicant's financial situation has improved considerably or if the decision to grant such costs was taken on the basis of false information supplied by the applicant.

Article 22

Right to legal assistance and representation at all stages of the procedure

1. Applicants shall be given the opportunity to consult, at their own cost, in an effective manner a legal adviser or other counsellor, admitted or permitted as such under national law, on matters relating to their applications for international protection, at all stages of the procedure, including following a negative decision.

2. Member States may allow non-governmental organisations to provide legal assistance and/or representation to applicants in the procedures provided for in Chapter III and Chapter V in accordance with national law.

Article 23

Scope of legal assistance and representation

1. Member States shall ensure that 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 enjoy access to the information in the applicant's file upon the basis of which a decision is or will be made.

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

(a) make access to such information or sources available to the authorities referred to in Chapter V; and

(b) establish in national law procedures guaranteeing that the applicant's rights of defence are respected.

In respect of point (b), Member States may, in particular, grant access to such 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.

2. Member States shall ensure that the legal adviser or other counsellor who assists or represents an applicant has access to closed areas, such as detention facilities and transit zones, for the purpose of consulting that applicant, in accordance with Article 10(4) and Article 18(2)(b) and (c) of Directive .../.../EU (*).

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

Member States may stipulate that the legal adviser or other counsellor may only intervene at the end of the personal interview.

4. Without prejudice to this Article or to Article 25(1)(b), Member States may provide rules covering the presence of legal advisers or other counsellors at all interviews in the procedure.

Member States 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.

(*) Directive in recital 27 [Reception Conditions Directive].

Without prejudice to Article 25(1)(b), the absence of a legal adviser or other counsellor shall not prevent the competent authority from conducting a personal interview with the applicant.

Article 24

Applicants in need of special procedural guarantees

1. Member States shall assess within a reasonable period of time after an application for international protection is made whether the applicant is an applicant in need of special procedural guarantees.

2. The assessment referred to in paragraph 1 may be integrated into existing national procedures and/or into the assessment referred to in Article 22 of Directive .../.../EU (*) and need not take the form of an administrative procedure.

3. Member States shall ensure that where applicants have been identified as applicants in need of special procedural guarantees, they are provided with adequate support in order to allow them to benefit from the rights and comply with the obligations of this Directive throughout the duration of the asylum procedure.

Where such adequate support cannot be provided within the framework of the procedures referred to in Article 31(8) and Article 43, in particular where Member States consider that the applicant is in need of special procedural guarantees as a result of torture, rape or other serious forms of psychological, physical or sexual violence, Member States shall not apply, or shall cease to apply, Article 31(8) and Article 43. Where Member States apply Article 46(6) to applicants to whom Article 31(8) and Article 43 cannot be applied pursuant to this subparagraph, Member States shall provide at least the guarantees provided for in Article 46(7).

4. Member States shall ensure that the need for special procedural guarantees is also addressed, in accordance with this Directive, where such a need becomes apparent at a later stage of the procedure, without necessarily restarting the procedure.

Article 25

Guarantees for unaccompanied minors

1. With respect to all procedures provided for in this Directive and without prejudice to the provisions of Articles 14, 15, 16, and 17, Member States shall:

(a) take measures as soon as possible to ensure that a representative represents and assists the unaccompanied minor to enable him or her to benefit from the rights and comply with the obligations provided for in this Directive. The unaccompanied minor shall be informed immediately of the appointment of a representative. The representative shall perform his or her duties in accordance with the principle of the best interests of the child and shall have the necessary expertise to that end. The person acting as representative shall be changed only when necessary. Organisations or individuals whose interests conflict or could potentially conflict with those of the unaccompanied minor shall not be eligible to become representatives. The representative may also be the representative referred to in Directive .../.../EU (*);

(b) ensure that the representative is given the opportunity to inform the unaccompanied minor about the meaning and possible consequences of the personal interview and, where appropriate, how to prepare himself or herself for the personal interview. Member States shall ensure that a representative and/or a legal adviser or other counsellor admitted or permitted as such under national law are present at that interview and have an opportunity to ask questions or make comments, within the framework set by the person who conducts the interview.

Member States may require the presence of the unaccompanied minor at the personal interview, even if the representative is present.

2. Member States may refrain from appointing a representative where the unaccompanied minor will in all likelihood reach the age of 18 before a decision at first instance is taken.

3. Member States shall ensure that:

(a) if an unaccompanied minor has a personal interview on his or her application for international protection as referred to in Articles 14, 15, 16, 17, and 34, that interview is conducted by a person who has the necessary knowledge of the special needs of minors;

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

4. Unaccompanied minors and their representatives shall be provided, free of charge, with legal and procedural information as referred to in Article 19 also in the procedures for the withdrawal of international protection provided for in Chapter IV.

(*) Directive in recital 27 [Reception Conditions Directive].

5. Member States may use medical examinations to determine the age of unaccompanied minors within the framework of the examination of an application for international protection where, following general statements or other relevant indications, Member States have doubts concerning the applicant's age. If, thereafter, Member States are still in doubt concerning the applicant's age, they shall assume that the applicant is a minor.

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, to the extent possible, for a reliable result.

Where medical examinations are used, Member States shall ensure that:

- (a) unaccompanied minors are informed prior to the examination of their application for international protection, and in a language that they understand or are reasonably supposed to understand, of the possibility that their age may be determined by medical examination. This shall include information on the method of examination and the possible consequences of the result of the medical examination for the examination of the application for international protection, as well as the consequences of refusal on the part of the unaccompanied minor to undergo the medical examination;
- (b) unaccompanied minors and/or their representatives consent to a medical examination being carried out to determine the age of the minors concerned; and
- (c) the decision to reject an application for international protection by an unaccompanied minor who refused to undergo a medical examination shall not be based solely on that refusal.

The fact that an unaccompanied minor has refused to undergo a medical examination shall not prevent the determining authority from taking a decision on the application for international protection.

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

Where Member States, in the course of the asylum procedure, identify a person as an unaccompanied minor, they may:

- (a) apply or continue to apply Article 31(8) only if:

- (i) the applicant comes from a country which satisfies the criteria to be considered a safe country of origin within the meaning of this Directive; or
- (ii) the applicant has introduced a subsequent application for international protection that is not inadmissible in accordance with Article 40(5); or
- (iii) the applicant may for serious reasons be considered 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;

- (b) apply or continue to apply Article 43, in accordance with Articles 8 to 11 of Directive .../2013/EU (*), only if:

- (i) the applicant comes from a country which satisfies the criteria to be considered a safe country of origin within the meaning of this Directive; or
- (ii) the applicant has introduced a subsequent application; or
- (iii) the applicant may for serious reasons be considered 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; or
- (iv) there are reasonable grounds to consider that a country which is not a Member State is a safe third country for the applicant, pursuant to Article 38; or
- (v) the applicant has misled the authorities by presenting false documents; or
- (vi) in bad faith, the applicant has destroyed or disposed of an identity or travel document that would have helped establish his or her identity or nationality.

Member States may apply points (v) and (vi) only in individual cases where there are serious grounds for considering that the applicant is attempting to conceal relevant elements which would likely lead to a negative decision and provided that the applicant has been given full opportunity, taking into account the special procedural needs of unaccompanied minors, to show good cause for the actions referred to in points (v) and (vi), including by consulting with his or her representative;

(*) Directive in recital 27 [Reception Conditions Directive].

- (c) consider the application to be inadmissible in accordance with Article 33(2)(c) if a country which is not a Member State is considered as a safe third country for the applicant pursuant to Article 38, provided that to do so is in the minor's best interests;
- (d) apply the procedure referred to in Article 20(3) where the minor's representative has legal qualifications in accordance with national law.

Without prejudice to Article 41, in applying Article 46(6) to unaccompanied minors, Member States shall provide at least the guarantees provided for in Article 46(7) in all cases.

Article 26

Detention

1. Member States shall not hold a person in detention for the sole reason that he or she is an applicant. The grounds for and conditions of detention and the guarantees available to detained applicants shall be in accordance with Directive .../.../EU (*).
2. Where an applicant is held in detention, Member States shall ensure that there is a possibility of speedy judicial review in accordance with Directive .../.../EU (*).

Article 27

Procedure in the event of withdrawal of the application

1. Insofar as Member States provide for the possibility of explicit withdrawal of the application under national law, when an applicant explicitly withdraws his or her application for international protection, Member States shall ensure that the determining authority takes a decision either to discontinue the examination or to reject the application.
2. Member States may also decide that the determining authority may decide to discontinue the examination without taking a decision. In that case, Member States shall ensure that the determining authority enters a notice in the applicant's file.

Article 28

Procedure in the event of implicit withdrawal or abandonment of the application

1. When there is reasonable cause to consider that an applicant has implicitly withdrawn or abandoned his or her application, Member States shall ensure that the determining authority takes a decision either to discontinue the examination or, provided that the determining authority considers the

application to be unfounded on the basis of an adequate examination of its substance in line with Article 4 of Directive 2011/95/EU, to reject the application.

Member States may assume that the applicant has implicitly withdrawn or abandoned his or her application for international protection in particular when it is ascertained that:

- (a) he or she has failed to respond to requests to provide information essential to his or her application in terms of Article 4 of Directive 2011/95/EU or has not appeared for a personal interview as provided for in Articles 14, 15, 16 and 17 of this Directive, unless the applicant demonstrates within a reasonable time that his or her failure was due to circumstances beyond his or her control;
- (b) he or she has absconded or left without authorisation the place where he or she lived or was held, without contacting the competent authority within a reasonable time, or he or she has not within a reasonable time complied with reporting duties or other obligations to communicate, unless the applicant demonstrates that this was due to circumstances beyond his or her control.

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

2. Member States shall ensure that an applicant who reports again to the competent authority after a decision to discontinue as referred to in paragraph 1 of this Article is taken, is entitled to request that his or her case be reopened or to make a new application which shall not be subject to the procedure referred to in Articles 40 and 41.

Member States may provide for a time-limit of at least nine months after which the applicant's case can no longer be reopened or the new application may be treated as a subsequent application and subject to the procedure referred to in Articles 40 and 41. Member States may provide that the applicant's case may be reopened only once.

Member States shall ensure that such a person is not removed contrary to the principle of *non-refoulement*.

Member States may allow the determining authority to resume the examination at the stage where it was discontinued.

3. This Article shall be without prejudice to Regulation (EU) No .../... (**).

(*) Directive in recital 27 [Reception Conditions Directive].

(**) Regulation in recital 53 [Dublin Regulation].

*Article 29***The role of UNHCR**

1. Member States shall allow UNHCR:
 - (a) to have access to applicants, including those in detention, at the border and in the 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, provided that the applicant agrees thereto;
 - (c) to present its views, in the exercise of its supervisory responsibilities under Article 35 of the Geneva Convention, to any competent authorities regarding individual applications for 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 UNHCR pursuant to an agreement with that Member State.

*Article 30***Collection of information on individual cases**

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

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

CHAPTER III

PROCEDURES AT FIRST INSTANCE

*SECTION I**Article 31***Examination procedure**

1. Member States shall process applications for international protection in an examination procedure in accordance with the basic principles and guarantees of Chapter II.
2. Member States shall ensure that the examination procedure is concluded as soon as possible, without prejudice to an adequate and complete examination.
3. Member States shall ensure that the examination procedure is concluded within six months of the lodging of the application.

Where an application is subject to the procedure laid down in Regulation (EU) No .../... (*), the time-limit of six months shall start to run from the moment the Member State responsible for its examination is determined in accordance with that Regulation, the applicant is on the territory of that Member State and has been taken in charge by the competent authority.

Member States may extend the time-limit of six months set out in this paragraph for a period not exceeding a further nine months, where:

- (a) complex issues of fact and/or law are involved;
- (b) a large number of third-country nationals or stateless persons simultaneously apply for international protection, making it very difficult in practice to conclude the procedure within the six-month time-limit;
- (c) where the delay can clearly be attributed to the failure of the applicant to comply with his or her obligations under Article 13.

By way of exception, Member States may, in duly justified circumstances, exceed the time-limits laid down in this paragraph by a maximum of three months where necessary in order to ensure an adequate and complete examination of the application for international protection.

4. Without prejudice to Articles 13 and 18 of Directive 2011/95/EU, Member States may postpone concluding the examination procedure where the determining authority cannot reasonably be expected to decide within the time-limits laid down in paragraph 3 due to an uncertain situation in the country of origin which is expected to be temporary. In such a case, Member States shall:

- (a) conduct reviews of the situation in that country of origin at least every six months;
- (b) inform the applicants concerned within a reasonable time of the reasons for the postponement;

(*) Regulation in recital 53 [Dublin Regulation].

(c) inform the Commission within a reasonable time of the postponement of procedures for that country of origin.

5. In any event, Member States shall conclude the examination procedure within a maximum time-limit of 21 months from the lodging of the application.

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

(a) be informed of the delay; and

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

7. Member States may prioritise an examination of an application for international protection in accordance with the basic principles and guarantees of Chapter II in particular:

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

(b) where the applicant is vulnerable, within the meaning of Article 22 of Directive .../.../EU (*), or is in need of special procedural guarantees, in particular unaccompanied minors.

8. Member States may provide that an examination procedure in accordance with the basic principles and guarantees of Chapter II be accelerated and/or conducted at the border or in transit zones in accordance with Article 43 if:

(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 by virtue of Directive 2011/95/EU; or

(b) the applicant is from a safe country of origin within the meaning of this Directive; or

(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 and/or nationality that could have had a negative impact on the decision; or

(d) it is likely that, in bad faith, the applicant has destroyed or disposed of an identity or travel document that would have helped establish his or her identity or nationality; or

(e) 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 Directive 2011/95/EU; or

(f) the applicant has introduced a subsequent application for international protection that is not inadmissible in accordance with Article 40(5); or

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

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

(i) the applicant refuses to comply with an obligation to have his or her fingerprints taken in accordance with Regulation (EU) No .../... of the European Parliament and of the Council of ... on the establishment of Eurodac for the comparison of fingerprints for the effective application of Regulation (EU) No .../... establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes (**) ⁽¹⁾; or

(j) the applicant may, for serious reasons, be considered 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.

9. Member States shall lay down time-limits for the adoption of a decision in the procedure at first instance pursuant to paragraph 8. Those time-limits shall be reasonable.

Without prejudice to paragraphs 3, 4 and 5, Member States may exceed those time-limits where necessary in order to ensure an adequate and complete examination of the application for international protection.

(*) Directive in recital 27 [Reception Conditions Directive].

(**) doc. PE-CONS 17/13 [Eurodac Regulation].

⁽¹⁾ OJ L ...

Article 32

Unfounded applications

1. Without prejudice to Article 27, Member States may only consider an application to be unfounded if the determining authority has established that the applicant does not qualify for international protection pursuant to Directive 2011/95/EU.

2. In cases of unfounded applications in which any of the circumstances listed in Article 31(8) apply, Member States may also consider an application to be manifestly unfounded, where it is defined as such in the national legislation.

SECTION II

Article 33

Inadmissible applications

1. In addition to cases in which an application is not examined in accordance with Regulation (EU) No .../... (*), Member States are not required to examine whether the applicant qualifies for international protection in accordance with Directive 2011/95/EU where an application is considered inadmissible pursuant to this Article.

2. Member States may consider an application for international protection as inadmissible only if:

- (a) another Member State has granted international protection;
- (b) a country which is not a Member State is considered as a first country of asylum for the applicant, pursuant to Article 35;
- (c) a country which is not a Member State is considered as a safe third country for the applicant, pursuant to Article 38;
- (d) the application is a subsequent application, where no new elements or findings relating to the examination of whether the applicant qualifies as a beneficiary of international protection by virtue of Directive 2011/95/EU have arisen or have been presented by the applicant; or
- (e) a dependant of the applicant lodges an application, after he or she has in accordance with Article 7(2) consented to have his or her case be part of an application lodged on his or her behalf, and there are no facts relating to the dependant's situation which justify a separate application.

Article 34

Special rules on an admissibility interview

1. Member States shall allow applicants to present their views with regard to the application of the grounds referred to in Article 33 in their particular circumstances before the determining authority decides on the admissibility of an application for international protection. To that end, Member States shall conduct a personal interview on the admissibility of the application. Member States may make an exception only in accordance with Article 42 in the case of a subsequent application.

This paragraph shall be without prejudice to Article 4(2)(a) of this Directive and to Article 5 of Regulation (EU) No .../... (*).

2. Member States may provide that the personnel of authorities other than the determining authority conduct the personal interview on the admissibility of the application for international protection. In such cases, Member States shall ensure that such personnel receive in advance the necessary basic training, in particular with respect to international human rights law, the Union asylum *acquis* and interview techniques.

SECTION III

Article 35

The concept of first country of asylum

A country can be considered to be a first country of asylum for a particular applicant if:

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

provided that he or she will be re-admitted to that country.

In applying the concept of first country of asylum to the particular circumstances of an applicant, Member States may take into account Article 38(1). The applicant shall be allowed to challenge the application of the first country of asylum concept to his or her particular circumstances.

Article 36

The concept of safe country of origin

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

- (a) he or she has the nationality of that country; or

(*) Regulation in recital 53 [Dublin Regulation].

(b) he or she is a stateless person and was formerly habitually resident in that country;

and 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 and in terms of his or her qualification as a beneficiary of international protection in accordance with Directive 2011/95/EU.

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

Article 37

National designation of third countries as safe countries of origin

1. Member States may retain or introduce legislation that allows, in accordance with Annex I, for the national designation of safe countries of origin for the purposes of examining applications for international protection.

2. Member States shall regularly review the situation in third countries designated as safe countries of origin in accordance with this Article.

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

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

Article 38

The concept of safe third country

1. Member States may apply the safe third country concept only where the competent authorities are satisfied that a person seeking international protection will be treated in accordance with the following principles in the third country concerned:

(a) life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;

(b) there is no risk of serious harm as defined in Directive 2011/95/EU;

(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; and

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

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

(a) rules requiring a connection between the applicant and the third country concerned on the basis of which it would be reasonable for that person to go to that country;

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

(c) rules in accordance with international law, allowing an individual examination of whether the third country concerned is safe for a particular applicant which, as a minimum, shall permit the applicant to challenge the application of the safe third country concept on the grounds that the third country is not safe in his or her particular circumstances. The applicant shall also be allowed to challenge the existence of a connection between him or her and the third country in accordance with point (a).

3. When implementing a decision solely based on this Article, Member States shall:

(a) inform the applicant accordingly; and

(b) provide him 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.

4. Where the third country does not permit the applicant to enter its territory, Member States shall ensure that access to a procedure is given in accordance with the basic principles and guarantees described in Chapter II.

5. Member States shall inform the Commission periodically of the countries to which this concept is applied in accordance with the provisions of this Article.

Article 39

The concept of European safe third country

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

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

- (a) it has ratified and observes the provisions of the Geneva Convention without any geographical limitations;
- (b) it has in place an asylum procedure prescribed by law; and
- (c) it has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms and observes its provisions, including the standards relating to effective remedies.

3. The applicant shall be allowed to challenge the application of the concept of European safe third country on the grounds that the third country concerned is not safe in his or her particular circumstances.

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

5. When implementing a decision solely based on this Article, the Member States concerned 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.

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

7. Member States shall inform the Commission periodically of the countries to which this concept is applied in accordance with this Article.

SECTION IV

Article 40

Subsequent application

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

2. For the purpose of taking a decision on the admissibility of an application for international protection pursuant to Article 33(2)(d), a subsequent application for international protection shall be subject first to a preliminary examination as to whether new elements or findings have arisen or have been presented by the applicant which relate to the examination of whether the applicant qualifies as a beneficiary of international protection by virtue of Directive 2011/95/EU.

3. If the preliminary examination referred to in paragraph 2 concludes that new elements or findings have arisen or been presented by the applicant which significantly add to the likelihood of the applicant qualifying as a beneficiary of international protection by virtue of Directive 2011/95/EU, the application shall be further examined in conformity with Chapter II. Member States may also provide for other reasons for a subsequent application to be further examined.

4. Member States may provide that the application will only be further examined if the applicant concerned was, through no fault of his or her own, incapable of asserting the situations set forth in paragraphs 2 and 3 of this Article in the previous procedure, in particular by exercising his or her right to an effective remedy pursuant to Article 46.

5. When a subsequent application is not further examined pursuant to this Article, it shall be considered inadmissible, in accordance with Article 33(2)(d).

6. The procedure referred to in this Article may also be applicable in the case of:

- (a) a dependant who lodges an application after he or she has, in accordance with Article 7(2), consented to have his or her case be part of an application lodged on his or her behalf, and/or

- (b) an unmarried minor who lodges an application after an application has been lodged on his or her behalf pursuant to Article 7(5)(c).

In those cases, the preliminary examination referred to in paragraph 2 will consist of examining whether there are facts relating to the dependant's or the unmarried minor's situation which justify a separate application.

7. Where a person with regard to whom a transfer decision has to be enforced pursuant to Regulation (EU) No .../... (*) makes further representations or a subsequent application in the transferring Member State, those representations or subsequent applications shall be examined by the responsible Member State, as defined in that Regulation, in accordance with this Directive.

Article 41

Exceptions from the right to remain in case of subsequent applications

1. Member States may make an exception from the right to remain in the territory where a person:

- (a) has lodged a first subsequent application, which is not further examined pursuant to Article 40(5), merely in order to delay or frustrate the enforcement of a decision which would result in his or her imminent removal from that Member State, or
- (b) makes another subsequent application in the same Member State, following a final decision considering a first subsequent application inadmissible pursuant to Article 40(5) or after a final decision to reject that application as unfounded.

Member States may make such an exception only where the determining authority considers that a return decision will not lead to direct or indirect *refoulement* in violation of that Member State's international and Union obligations.

2. In cases referred to in paragraph 1, Member States may also:

- (a) derogate from the time-limits normally applicable in accelerated procedures, in accordance with national law, when the examination procedure is accelerated in accordance with Article 31(8)(g);
- (b) derogate from the time-limits normally applicable to admissibility procedures provided for in Articles 33 and 34, in accordance with national law; and/or;
- (c) derogate from Article 46(8).

(*) Regulation in recital 53 [Dublin Regulation].

Article 42

Procedural rules

1. Member States shall ensure that applicants whose application is subject to a preliminary examination pursuant to Article 40 enjoy the guarantees provided for in Article 12(1).

2. Member States may lay down in national law rules on the preliminary examination pursuant to Article 40. Those rules may, *inter alia*:

- (a) oblige the applicant concerned to indicate facts and substantiate evidence which justify a new procedure;
- (b) permit the preliminary examination to be conducted on the sole basis of written submissions without a personal interview, with the exception of the cases referred to in Article 40(6).

Those rules shall not render impossible the access of applicants to a new procedure or result in the effective annulment or severe curtailment of such access.

3. Member States shall ensure that the applicant is informed in an appropriate manner of the outcome of the preliminary examination and, if the application is not to be further examined, of the reasons why and the possibilities for seeking an appeal or review of the decision.

SECTION V

Article 43

Border procedures

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

- (a) the admissibility of an application, pursuant to Article 33, made at such locations; and/or
- (b) the substance of an application in a procedure pursuant to Article 31(8).

2. Member States shall ensure that a decision in the framework of the procedures provided for in paragraph 1 is taken within a reasonable time. When a decision has not been taken within four weeks, the applicant shall be granted entry to the territory of the Member State in order for his or her application to be processed in accordance with the other provisions of this Directive.

3. In the event of arrivals involving a large number of third-country nationals or stateless persons lodging applications for international protection at the border or in a transit zone, which makes it impossible in practice to apply there the

provisions of paragraph 1, those procedures may also be applied where and for as long as these third-country nationals or stateless persons are accommodated normally at locations in proximity to the border or transit zone.

CHAPTER IV

PROCEDURES FOR THE WITHDRAWAL OF INTERNATIONAL PROTECTION

Article 44

Withdrawal of international protection

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

Article 45

Procedural rules

1. Member States shall ensure that, where the competent authority is considering withdrawing international protection from a third-country national or stateless person in accordance with Articles 14 or 19 of Directive 2011/95/EU, the person concerned enjoys the following guarantees:

- (a) to 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) to be given the opportunity to submit, in a personal interview in accordance with Article 12(1)(b) and Articles 14, 15, 16 and 17 or in a written statement, reasons as to why his or her international protection should not be withdrawn.

2. In addition, Member States shall ensure that within the framework of the procedure set out in paragraph 1:

- (a) the competent authority is able to obtain precise and up-to-date information from various sources, such as, where appropriate, from EASO and UNHCR, as to the general

situation prevailing in the countries of origin of the persons concerned; and

- (b) where information on an individual case is collected for the purposes of reconsidering international protection, it is not obtained from the actor(s) of persecution or serious harm in a manner that would result in such actor(s) being directly informed of the fact that the person concerned is a 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. Member States shall ensure that the decision of the competent authority to withdraw international protection is given in writing. The reasons in fact and in law shall be stated in the decision and information on how to challenge the decision shall be given in writing.

4. Once the competent authority has taken the decision to withdraw international protection, Article 20, Article 22, Article 23(1) and Article 29 are equally applicable.

5. By way of derogation from paragraphs 1, 2 and 3 and 4 of this Article, Member States may decide that international protection shall lapse by law where the beneficiary of international protection has unequivocally renounced his or her recognition as such. A Member State may also provide that international protection shall lapse by law where the beneficiary of international protection has become a national of that Member State.

CHAPTER V

APPEALS PROCEDURES

Article 46

The right to an effective remedy

1. Member States shall ensure that applicants have the right to an effective remedy before a court or tribunal, against the following:

- (a) a decision taken on their application for international protection, including a decision:

- (i) considering an application to be unfounded in relation to refugee status and/or subsidiary protection status;

- (ii) considering an application to be inadmissible pursuant to Article 33(2);

- (iii) taken at the border or in the transit zones of a Member State as described in Article 43(1);

(iv) not to conduct an examination pursuant to Article 39.

(b) a refusal to re-open the examination of an application after its discontinuation pursuant to Articles 27 and 28;

(c) a decision to withdraw international protection pursuant to Article 45.

2. Member States shall ensure that persons recognised by the determining authority as eligible for subsidiary protection have the right to an effective remedy pursuant to paragraph 1 against a decision considering an application unfounded in relation to refugee status.

Without prejudice to paragraph 1(c), where the subsidiary protection status granted by a Member State offers the same rights and benefits as those offered by the refugee status under Union and national law, that Member State may consider an appeal against a decision considering an application unfounded in relation to refugee status inadmissible on the grounds of insufficient interest on the part of the applicant in maintaining the proceedings.

3. In order to comply with paragraph 1, Member States shall ensure that an effective remedy provides 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 Directive 2011/95/EU, at least in appeals procedures before a court or tribunal of first instance.

4. Member States shall provide for reasonable time-limits and other necessary rules for the applicant to exercise his or her right to an effective remedy pursuant to paragraph 1. The time-limits shall not render such exercise impossible or excessively difficult.

Member States may also provide for an *ex officio* review of decisions taken pursuant to Article 43.

5. Without prejudice to paragraph 6, Member States shall allow applicants to remain in the 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.

6. In the case of a decision:

(a) considering an application to be manifestly unfounded in accordance with Article 32(2) or unfounded after examination in accordance with Article 31(8), except for cases where these decisions are based on the circumstances referred to in Article 31(8)(h);

(b) considering an application to be inadmissible pursuant to Article 33(2)(a) (b) or (d);

(c) rejecting the reopening of the applicant's case after it has been discontinued according to Article 28; or

(d) not to examine or not to examine fully the application pursuant to Article 39,

a court or tribunal shall have the power to rule whether or not the applicant may remain on the territory of the Member State, either upon the applicant's request or acting *ex officio*, if such a decision results in ending the applicant's right to remain in the Member State and where in such cases the right to remain in the Member State pending the outcome of the remedy is not provided for in national law.

7. Paragraph 6 shall only apply to procedures referred to in Article 43 provided that:

(a) the applicant has the necessary interpretation, legal assistance and at least one week 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 the request referred to in paragraph 6, the court or tribunal examines the negative decision of the determining authority in terms of fact and law.

If the conditions referred to in points (a) and (b) are not met, paragraph 5 shall apply.

8. Member States shall allow the applicant to remain in the territory pending the outcome of the procedure to rule whether or not the applicant may remain on the territory, laid down in paragraphs 6 and 7.

9. Paragraphs 5, 6 and 7 shall be without prejudice to Article 26 of Regulation (EU) No .../... (*).

10. Member States may lay down time-limits for the court or tribunal pursuant to paragraph 1 to examine the decision of the determining authority.

11. Member States may also lay down in national legislation the conditions under which it can be assumed that an applicant has implicitly withdrawn or abandoned his or her remedy pursuant to paragraph 1, together with the rules on the procedure to be followed.

(*) Regulation in recital 53 [Dublin Regulation].

CHAPTER VI

GENERAL AND FINAL PROVISIONS

Article 47

Challenge by public authorities

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

Article 48

Confidentiality

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

Article 49

Cooperation

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

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

When resorting to the measures referred to in Article 6(5), the second subparagraph of Article 14(1) and Article 31(3)(b), Member States shall inform the Commission 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 50

Report

No later than... (*), the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose any amendments that are necessary. Member States shall send to the Commission all the information that is appropriate for drawing up its report. After presenting the report, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States at least every five years.

As part of the first report, the Commission shall also report, in particular, on the application of Article 17 and the various tools used in relation to the reporting of the personal interview.

Article 51

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 1 to 30, Article 31(1), (2), (6), (7), (8) and (9), Articles 32 to 46, Articles 49 and 50 and Annex I by ... (**) at the latest. They shall forthwith communicate the text of those provisions to the Commission.

2. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 31(3), (4) and (5) by ... (***) . They shall forthwith communicate the text of those provisions to the Commission.

3. When Member States adopt the provisions referred to in paragraphs 1 and 2, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the directive repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

4. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 52

Transitional provisions

Member States shall apply the laws, regulations and administrative provisions referred to in Article 51(1) to applications for international protection lodged and to procedures for the withdrawal of international protection started after ... (**) or an earlier date. Applications lodged before ... (**) and procedures for the withdrawal of refugee status started before that date shall be governed by the laws, regulations and administrative provisions adopted pursuant to Directive 2005/85/EC.

Member States shall apply the laws, regulations and administrative provisions referred to in Article 51(2) to applications for international protection lodged after ... (***) or an earlier date. Applications lodged before that date shall be governed by the laws, regulations and administrative provisions in accordance with Directive 2005/85/EC.

(*) Four years from the date of entry into force of this Directive.

(**) Two years from the date of entry into force of this Directive.

(***) Five years from the date of entry into force of this Directive

*Article 53***Repeal**

Directive 2005/85/EC is repealed for the Member States bound by this Directive with effect from ... (*), without prejudice to the obligations of the Member States relating to the time-limit for transposition into national law of the Directive set out in Annex II, Part B.

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

*Article 54***Entry into force and application**

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

Articles 47 and 48 shall apply from ... (*)

*Article 55***Addressees**

This Directive is addressed to the Member States in accordance with the Treaties.

Done at ...

For the European Parliament

The President

...

For the Council

The President

...

(*) Day after two years from the date of entry into force of this Directive.

ANNEX I

Designation of safe countries of origin for the purposes of Article 37(1)

A country is considered as a safe country of origin where, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is generally and consistently no persecution as defined in Article 9 of Directive 2011/95/EU, no torture or inhuman or degrading treatment or punishment and no threat by reason of indiscriminate violence in situations of international or internal armed conflict.

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

- (a) the relevant laws and regulations of the country and the manner in which they are applied;
 - (b) observance of the rights and freedoms laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms and/or the International Covenant for Civil and Political Rights and/or the 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) respect for the *non-refoulement* principle in accordance with the Geneva Convention;
 - (d) provision for a system of effective remedies against violations of those rights and freedoms.
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ANNEX II

Part A

Repealed Directive

(referred to in Article 53)

Council Directive 2005/85/EC

(O) L 326, 13.12.2005, p. 13)

Part B

Time-limit for transposition into national law

(referred to in Article 51)

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

ANNEX III

Correlation Table

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STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

The recast of the Asylum Procedures Directive is part of a series of legislative proposals in the field of asylum to establish the second phase of the Common European Asylum System.

On 7 June 2011, the Council received from the Commission an amended proposal for a Directive of the European Parliament and of the Council on common procedures for granting and withdrawing international protection status (Recast) (11207/11). The Commission had amended its initial proposal of 23 October 2009 (12959/09) taking into account the European Parliament's first-reading position voted on 6 April 2011 (8526/11) and the views expressed in Council.

With a view to avoiding delays, the European Parliament established its negotiating position by considering the amended proposal in light of its position at first reading on the initial proposal.

At its plenary session on 26 and 27 October 2011, the European Economic and Social Committee, under reference to its opinion of 28 April 2010 ⁽¹⁾, decided not to draw up a new opinion on the amended proposal, but to refer to the position it had taken on the initial proposal. On 16 November 2011, the Committee of the Regions announced in a letter not to issue an opinion on the amended proposal (18836/11).

At its meeting on 13/14 May 2013, the Council confirmed a Political agreement on the amended proposal (7695/13 + COR 1).

In accordance with 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 and Ireland are not taking part in the adoption of the recast of the Asylum Procedures Directive. Denmark is not taking part in its adoption and is not bound by it or subject to its application in accordance with the Protocol on the position of Denmark.

II. OBJECTIVES OF THE PROPOSAL

Directive 2005/85 provides for minimum standards on procedures that Member States apply for granting and withdrawing international protection with the aim of ensuring that applications are treated alike, irrespective in which Member State they are processed.

The objective of the recast of the Asylum Procedures Directive is setting common standards for national asylum systems at the level of the European Union. These standards must provide applicants for international protection with a high level of safeguards. They must also better enable Member States to operate asylum procedures that are cost-effective and capable of tackling potential abusive claims while taking into account the differences amongst national legal systems. Particular attention is given to more 'frontloading' of services, advice and expertise with a view to achieving an efficient and high-quality examination process that results in robust first instance decisions. Finally, the recast fully respects fundamental rights having regard to developing case law of the Court of Justice of the European Union and the European Court of Human Rights and ensures consistency with the other legislative instruments in the field of asylum.

III. ANALYSIS OF THE COUNCIL'S POSITION AT FIRST READING

A. *General observations*

On the basis of the amended proposal of the Commission, the European Parliament and the Council have conducted negotiations with the aim to conclude an agreement at the stage of the Council's position at first reading. The text of the Council position fully reflects the compromise reached between the two co-legislators.

⁽¹⁾ EESC opinion 'Minimum standards on procedures in Member States for granting and withdrawing international protection (recast)', OJ C 18 of 19.1.2011, p. 85.

B. Key issues

The compromise reflected in the Council position at first reading adapts Directive 2005/85/EC ⁽¹⁾ as to the following key issues:

Training

With a view to improving the quality of the asylum procedure, the Council position establishes training requirements for personnel of the determining authorities responsible in the Member States for an appropriate examination of applications for international protection as well as for personnel of other competent authorities that may come into contact with applicants for international protection.

The personnel of the determining authority need to be properly trained. To that end, Member States must provide for training that includes the same elements as those listed in the Regulation establishing the European Asylum Support Office, except those relating to reception conditions. Moreover, persons interviewing applicants must have acquired general knowledge of problems which could adversely affect the applicants' ability to be interviewed, such as indications of possible past torture.

The same training requirements apply to personnel working for another authority that is assigned to conduct interviews where a large number of third country nationals or stateless persons simultaneously request international protection as the requirements for personnel of the determining authority.

In case the personnel of authorities other than the determining authority conduct admissibility interviews, Member States must ensure these personnel receive, in advance, the necessary basic training, in particular with regard to international human rights law, asylum *acquis* and interview techniques.

Finally, also personnel of authorities likely to receive requests for international protection, such as border guards and personnel of immigration authorities or detention facilities, must receive the necessary level of training as appropriate to their tasks and responsibilities.

Access to the procedure

The Council position sets standards aimed at ensuring easy and timely access to the asylum procedure while taking into account the specificities of national systems. It fully clarifies that a person who has expressed the wish to apply for international protection is an applicant within the meaning of the Directive. In order to ensure that they effectively comply with their obligations and benefit from the relevant rights, their applications should be registered as soon as possible and within specific time limits: in case the application is made with the determining authority the time limit is 3 working days after the application is made; in case of other competent authorities, such as border guards, the time limit is 6 working days. A longer time limit of 10 working days is allowed in a situation of a large and simultaneous influx of applicants.

Also important for effective access to the procedure is the obligation for Member States to provide third-country nationals or stateless persons detained in detention facilities or present at border crossings with information on the possibility to make a request for international protection where there are indications these persons may wish to do so. Moreover, Member States shall provide interpretation arrangements in detention facilities and border areas to the extent necessary to facilitate access to the procedure concerning international protection.

Examination procedure

The Council position provides that a procedure for examining an application for international protection needs to be concluded within 6 months after the application was lodged. In case of complex issues, a large number of applicants or a delay due to the lack of cooperation of the applicant, Member States may extend this time limit by a period not exceeding a further 9 months. Finally, an additional extension of maximum 3 months is allowed exceptionally, in duly justified cases, where it is necessary to ensure an adequate and complete examination.

⁽¹⁾ Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ L 326, 1.12.2005, p. 13).

When a determining authority cannot reasonably be expected to decide within these time limits due to an uncertain situation in the country of origin which is expected to be temporary, Member States may postpone concluding the procedure. In such a case, the Member States must conduct every 6 months a review of the situation in that country and inform within a reasonable time the applicants concerned about the reasons of the postponement and the Commission about the postponement of procedures for that country. In any case, Member States are required to conclude the procedure within a maximum time limit of 21 months from the lodging of the application.

The Council position also introduces a distinction between prioritized and accelerated procedures. The latter imply shorter procedural time limits compared to those in a regular procedure, while prioritised procedures merely mean that the application is examined before other applications. Member States must lay down reasonable time limits for accelerated procedures while being allowed to exceed them in order to ensure an adequate and complete examination.

In line with the aim to establish more harmonised asylum procedures, accelerated examination procedures and border procedures can be conducted only under specific grounds, which aim to include in those procedures only applications that are likely to be unfounded, or that raise serious national security or public order concerns.

Information in case of derogations

In case a Member State, as a consequence of a large number of persons applying simultaneously, derogates from the time limits for registration of the application and for conclusion of the examination of the application, or allows other authorities than the determining authority to conduct asylum interviews, it must inform the Commission. This information must be provided as soon as the reasons for applying these exceptional measures have ceased to exist and at least on an annual basis.

Report and recording of interview

The Council position provides for an extensive set of rules concerning the reporting on and recording of asylum interviews. As part of its report on the application of the recast of the Directive in the Member States, the Commission will report in particular on the application of these rules and the various tools used in relation to the reporting of the personal interview.

The Council position provides that Member States are required to prepare a thorough and factual report containing all substantial elements or a transcript. In addition, they may provide for an audio or audio visual recording. Member States must also ensure that the applicant is fully informed of the content of the report or of the substantial elements of the transcript.

Furthermore, the Council position specifies the conditions for the applicant to make comments and/or provide clarifications on the report or the transcript and to give his confirmation that the content of the report or the transcript correctly reflects the interview.

Finally, the Council position lays down the rules for access by the applicant and his legal advisor or counsellor to the report, the transcript or the recording.

Legal information and legal assistance and representation

The Council position provides that Member States must ensure that applicants, on request and under certain conditions, are provided with legal and procedural information free of charge in procedures at first instance. This shall include, at least, the provision of information on the procedure in the light of the applicant's particular circumstances. Furthermore, in the event of a negative decision in first instance, Member States must, on request, provide applicants with information in order to clarify the reasons of such decision and explain how it can be challenged. Furthermore, Member States may provide that this legal and procedural information is provided by non-governmental organisations, or professionals from government authorities or specialised services of the State.

In addition, Member States must ensure that, under certain conditions and in full consistency with the other asylum instruments, free legal assistance and representation is granted on request in appeals procedures. This must include, at least, the preparation of the required procedural documents and participation in the hearing before the court or tribunal of first instance on behalf of the applicant. Notwithstanding these mandatory rules for appeals procedures, Member States may decide to provide free legal assistance and/or representation in procedures at first instance.

Applicants in need of special procedural guarantees

The Council position aims at allowing applicants in need of special procedural guarantees to benefit from the rights and comply with the obligations of this Directive throughout the duration of the asylum procedure. To that end, Member States must assess, within a reasonable period of time after the application, whether the applicant is in need of special procedural guarantees. With a view to avoiding unnecessary administrative burden, it is specified that such assessment may be integrated into existing national procedures and/or into the assessment for special reception needs and that it needs not take the form of an administrative procedure.

Where applicants have been identified to be in need of special procedural guarantees, they must be provided with adequate support. Moreover, where such adequate support cannot be provided within the framework of accelerated or border procedures, in particular where Member States consider that the applicant is in need of special procedural guarantees as a result of torture, rape or other serious forms of psychological, physical or sexual violence, Member States are not allowed to apply such procedures, or must cease to apply them.

Where Member States identify special procedural needs of a nature that could prevent the application of accelerated and border procedures, this implies that the applicant must also be provided with additional guarantees in cases where his appeal is not automatically suspensive. These guarantees are the same as those for persons subject to border procedures.

Minors

The Council position provides specific guarantees to minors and unaccompanied minors while avoiding potential misuse. It clarifies the conditions that apply to minors who wish to make an application on their own behalf. Furthermore, it specifies that interviews with minors must be conducted in a child appropriate manner.

As regards unaccompanied minors, the Council position establishes a set of guarantees in relation to the representative. Member States are also required to provide unaccompanied minors, free of charge, with legal and procedural information for procedures for the withdrawal of international protection. That way, unaccompanied minors and their representative receive a form of legal support in all procedures of the Directive (first instance, appeal and withdrawal).

Where Member States, in the course of the asylum procedure, identify a person as an unaccompanied minor, Member States may use certain procedures for processing the application for international protection only under specific circumstances:

- Member States may apply, or continue to apply, accelerated procedures only if the applicant comes from a safe country of origin, he has made a subsequent application that is not inadmissible or for reasons of national security or public order.
- Member States may apply or continue to apply border procedures under the same three circumstances that allow the use of accelerated procedures. Furthermore, they can apply border procedures under three additional circumstances:
 - where there are reasonable grounds to consider that the unaccompanied minor applicant comes from a safe third country;
 - if the unaccompanied minor applicant has misled the authorities by presenting false documents;
 - if the unaccompanied minor applicant, in bad faith, has destroyed or disposed of an identity or travel document that would have helped establish his identity or nationality.

Member States may invoke the latter two circumstances only in specific cases where there are serious grounds to consider that the applicant is attempting to conceal relevant elements which would likely lead to a negative decision and provided that the applicant has been given full opportunity, taking into account the special procedural needs of unaccompanied minors, to show good cause for his actions, including by consulting with his representative.

Because border procedures always involve some form of detention, they cannot be used systematically in any of the six circumstances. In order to comply with the Reception Conditions Directive, unaccompanied minors may be detained only in exceptional circumstances, which must be appreciated with due regard to the best interest of the child.

- Member States may declare the application of an unaccompanied minor inadmissible in case the unaccompanied minor comes from a safe third country, which is not a Member State, only provided this is in the minor's best interest. Member States may declare the application of an unaccompanied minor inadmissible on the other applicable grounds under the normal rules.
- Member States may decide not to provide free legal assistance and representation to an unaccompanied minor applicant if the appeal is considered by a court or tribunal or other competent authority to have no tangible prospect of success, but only if the minor's representative has legal qualifications.

Finally, Member States must grant to unaccompanied minors at least the same additional guarantees as those for persons subject to border procedures in cases where their appeal against a negative decision is not automatically suspensive.

Gender sensitive asylum procedures

The Council position takes into account that asylum procedures must be gender sensitive. In that light, Member States must, wherever possible, ensure that the interviewer and the interpreter are of the same sex as the applicant, if the applicant concerned so requests. Member States need not however provide a same sex interviewer or interpreter in case the determining authority has reasons to believe that the 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.

Moreover, without prejudice to any search carried out for security reasons, a search of the applicant's person in the application of this directive must be carried out by a person of the same sex in full respect of the principles of human dignity and of physical and mental integrity.

Subsequent applications

The Council position clarifies the procedural rules regarding subsequent applications. Contrary to a variety of procedural arrangements for those applications possible under Directive 2005/85/EC, the Council position provides that a subsequent application is considered inadmissible when in a preliminary examination no new elements or findings arise or are presented by the applicant which significantly add to the likelihood of him being in need of international protection.

Applicants that make subsequent applications with the sole intention to delay removal from the territory of the Member State put an undue strain on national asylum systems. Therefore, effective rules on subsequent applications are needed. These rules must enable Member States to distinguish between, on the one hand, persons who make a subsequent application because protection needs have arisen *sur place* after their previous application or for other legitimate reasons and, on the other hand, persons who make a subsequent application only to delay removal from the territory. In this context it is noted that Member States remain at all times bound by the principle of *non refoulement* which means that a person must not be send back to a country where he could be at risk.

Against this background, in two cases Member States are allowed to make an exception from the normally applicable right to remain in the territory. First, where a person has made a first subsequent application, which is considered inadmissible, merely in order to delay or frustrate the enforcement of a decision which would result in his imminent removal from that Member State. And second, where the person makes another request for international protection in the same Member State, following a final decision to consider a first subsequent application inadmissible or after a final decision to reject that application as unfounded.

Implicit withdrawal/abandonment of an application

The Council position lays down that, under certain conditions, Member States may assume that an applicant has implicitly withdrawn or abandoned his application for international protection. Member States may make such an assumption in two cases in particular. Firstly, when it is ascertained that the applicant has failed to respond to requests to provide information essential to his application or has not appeared for a personal interview, unless the applicant demonstrates within a reasonable time that his failure was due to circumstances beyond his control. And secondly, when the applicant has absconded or left without authorisation the place where he lived or was held, without contacting the competent authority within a reasonable time, or when the applicant has not within a reasonable time complied with reporting duties or other obligations to communicate, unless he demonstrates that this was due to circumstances beyond his control.

Against that background, the Council position provides for a set of rules with regard to the re-opening of an implicitly withdrawn or abandoned application. In case the person reports again to the authorities within a period of at least 9 months, Member States are not allowed to treat the re-opened application or the new application as a subsequent application. However, in case the person reports again after 9 months, the Member State are allowed to apply the regime of subsequent applications. This means that the application could be considered inadmissible if no relevant new elements have arisen or been presented since the discontinuation decision. Furthermore, Member States may provide that an application that has been discontinued can be re-opened only once.

Effective remedy

The Council position establishes a set of rules on the right to remain on the territory pending an appeal which aims to fully guarantee the right to an effective remedy while acknowledging the need for effective and efficient asylum systems capable of preventing misuse. Against that background, as a rule, Member States must allow applicants to remain in the territory until the time limit within which to exercise their right to an effective remedy has expired or, when this right has been exercised within the time limit, pending the outcome of the remedy.

However, in a limited number of cases, a Member State may foresee that such automatic suspensive effect does not apply. In such cases, Member States must provide that a court or tribunal has the power to rule whether or not the applicant may remain on the territory, either upon request of the applicant or acting on its own motion. These cases cover decisions:

- to consider an application manifestly unfounded or unfounded after examination in accelerated procedure, except where these decisions are based on the fact that the applicant entered the territory of the Member State unlawfully or prolonged his stay unlawfully and, without good reason, has not presented himself to the authorities and/or filed an application for asylum as soon as possible, given the circumstances of his entry;
- to consider an application inadmissible because another Member State has granted international protection, a country which is not a Member State is considered as a first country of asylum for the applicant or the application is a subsequent application, where no new elements or findings relating to the examination of whether the applicant is in need of international protection have arisen or have been presented by the applicant;
- to reject reopening of the applicant's case that has been discontinued;
- not to examine or not to examine fully the application because the European safe third country concept applies.

In border procedures, non-automatic suspensive effect can be applied only provided that, firstly, the applicant has the necessary interpretation, legal assistance and at least one week to prepare the request and submit to the court or tribunal the arguments in favour of granting him/her the right to remain on the territory pending the outcome of the remedy and, secondly, that in the framework of the examination of the request to remain in the territory, the court or tribunal examines the negative decision of the determining authority in terms of fact and law.

When non-automatic suspensive effect is applied, the applicant is allowed to remain on the territory pending the outcome of the procedure to rule whether or not the applicant may remain on the territory. Furthermore, in all cases, the principle of *non refoulement* applies.

Safe third countries

The Council position allows Member States to apply the safe country of origin, safe third country and European safe third country concepts, while recognising the need for possible further harmonisation in the future. To that end, Member States should take into account, *inter alia* the guidelines and the operating manuals developed by the European Asylum Support Office and the United Nations High Commissioner for Refugees and conduct regular reviews of the situation in those third countries. Furthermore, the importance is underlined of exchanging information from relevant sources and having regular reviews on the application by Member States of the safe third country concepts with the Member States and with the involvement of the Parliament.

The Council position clarifies the conditions for the application of those concepts as it provides that Member States must allow applicants to challenge the application of the European safe third country concept on the grounds that the country is not safe in their particular circumstances.

Other important issues

Other important issues in the Council position at first reading on which the Council and the European Parliament reached a compromise concern:

Extradition

A Member State may make an exception to the right of an applicant for international protection to remain on the territory until a first instance decision on his application is made, where the Member State will surrender or extradite, as appropriate, a person either to another Member State pursuant to obligations in accordance with a European arrest warrant or otherwise, or to a third country or to international criminal courts or tribunals. A Member State may extradite an applicant to a third country only where the competent authorities are satisfied that an extradition decision will not result in direct or indirect *refoulement* in violation of international obligations of the Member State.

Determining authority and other competent authorities

Member States may provide that an authority other than the determining authority is responsible for the purposes of processing cases pursuant to the Dublin Regulation or of granting or refusing permission to enter in the framework of a border procedure, subject to the conditions set out in that framework and on the basis of the reasoned opinion of the determining authority.

Medical examination

The Council position includes rules concerning medical examinations so as to ensure that signs that might result from past persecution or serious harm are included in the assessment of the request for international protection. These rules include *inter alia* provisions indicating the conditions when the medical examination is to be paid out of public funds or when they are at the cost of the applicant.

National security considerations

In appeals, in case of national security considerations and with a view to ensuring equality of arms, Member States must provide access to information or sources whose confidentiality is required for national security reasons available to the courts and tribunals in appeal and establish in national law procedures guaranteeing respect of the applicant's rights of defence.

IV. CONCLUSION

The Council's position at first reading fully reflects the compromise reached in the negotiations between the Council and the European Parliament, facilitated by the Commission. This compromise is confirmed by the letter of the Chair of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) to the Chairman of the Permanent Representatives Committee (8223/13). In this letter, the LIBE Chair indicates that he will recommend to the members of the LIBE Committee, and subsequently to the plenary, that they accept the Council's position at first reading without amendments at Parliament's second reading, subject to verification by the lawyer-linguists of both institutions. By amending the Asylum Procedures Directive, the European Union provides an essential building block for establishing the Common European Asylum System.
