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

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This document contains compromise proposals suggested by the Presidency in relation to Articles 1-62. The recitals accompanying the articles will be part of a separate document.

Suggested modifications are indicated as follows:

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

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

2016/0224 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**establishing a common procedure for international protection in the Union and repealing  
Directive 2013/32/EU<sup>1</sup>**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

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

Acting in accordance with the ordinary legislative procedure,

HAVE ADOPTED THIS REGULATION:

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

# CHAPTER I

## GENERAL PROVISIONS

### *Article 1*

#### **Subject matter<sup>2</sup>**

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

### *Article 2*

#### **Scope<sup>3</sup>**

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

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<sup>2</sup> **DE:** clarify the relationship between Dublin IV and APR (applicability of possible sanctions and legal protection, relationship between Art. 3 (3) Dublin IV and Art. 36 APR). **PRES:** the relationship between the APR and Dublin IV is explained in recital 76.

<sup>3</sup> **IT:** align text with Dublin Regulation.

*Article 3*

**Extension of the scope of application**

[...]

*Article 4*

**Definitions**

1. For the purposes of this Regulation, the following definitions [...] apply:
  - (a) [...];
  - (b) [...];
  - (c) [...];
  - (d) 'international protection' **means refugee status and subsidiary protection status as defined in points (e) and (f);**
  - (e) 'refugee status' **means the recognition by a Member State of a third-country national or a stateless person as a refugee in accordance with Regulation (EU) No XXX/XXX (Qualification Regulation);**

(f) 'subsidiary protection status' means the recognition by a Member State of a third-country national or a stateless person as a person eligible for subsidiary protection in accordance with Regulation (EU) No XXX/XXX (Qualification Regulation);

(g) [...];

(h) [...].

2. [...]⁴:

([...]i) 'application for international protection' or 'application' means a request for protection made to a Member State by a third-country national or a stateless person [...], who can be understood as seeking refugee status or subsidiary protection status⁵;

([...]j) 'applicant' means a third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been [...] taken⁶;

([...]k) 'applicant in need of special procedural guarantees' means an applicant whose ability to benefit from the rights and comply with the obligations provided for in this Regulation is limited due to individual circumstances;

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<sup>4</sup> **DE:** add a definition of the term “border” which clarifies that borders may also include internal borders within the meaning of Art. 2 (1) of Regulation (EU) 2016/399..

<sup>5</sup> **BE, DE:** scrutiny reservation. **EL, ES:** the deletion of the part existing in the current acquis (“and who does not explicitly request another kind of protection outside the scope of Directive 2011/95/EU, that can be applied for separately”) might have effects on the substance; keep the sentence, it improves clarity. **IT:** add “and/or lodged” after “made”.

<sup>6</sup> **BE, CZ:** scrutiny reservation.

- ([...]**l**) 'final decision' means a decision on whether or not a third-country national or stateless person is granted refugee status or subsidiary protection status by virtue of Regulation (EU) No XXX/XXX (Qualification Regulation), including a decision rejecting the application as inadmissible or a decision rejecting an application [...] **as implicitly withdrawn or a decision stating that an application is explicitly withdrawn [...] which has become definitive according to national law as a result of the exhaustion of appeal possibilities provided for under the national law, with the exception of extraordinary or constitutional remedies, or a decision stating that an application is explicitly withdrawn [...], irrespective of whether the applicant has the right to remain in accordance with this Regulation<sup>7</sup>;**
- (**m**) 'examination of an application for international protection' means examination of the admissibility or the merits of an application for international protection in accordance with this Regulation and Regulation (EU) No XXX/XXX (Qualification Regulation);<sup>8</sup>
- ([...]**n**) 'determining authority' means any quasi-judicial or administrative body in a Member State responsible for examining **and taking decisions on** applications for international protection [...] **at the administrative stage of the procedure;**

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<sup>7</sup> **DE, EL, SE, SK:** scrutiny reservation. **FR:** reservation on "*decision rejecting an application as implicitly withdrawn*" linked to Article 39. **CZ:** prefers reference to courts of first instance; no reference to explicit withdrawal. **EL:** too complicated; distinguish between final and definitive; the decisions on withdrawing the status are not mentioned; the reference should be to courts of first instance; proposed wording: "*Final decision means a decision that is adopted after the appeal mentioned in articles 53 et seq. or a decision that cannot be appealed pursuant to these articles because the time-limits have lapsed*". **HR:** unclear wording. **PL:** reference to courts of first instance or to the fact that it can no longer be subject to a remedy that would provide examination on merits.

<sup>8</sup> **DE, EL, SE, SK:** scrutiny reservation. **CY:** reservation.

([...]**o**) [...];

([...]**p**) 'withdrawal of international protection' means the decision by a determining authority **or a competent court or tribunal** to revoke or end, **including by refusing** [...] to renew, **the international protection in accordance with Regulation (EU) No XXX/XXX (Qualification Regulation)** [...];<sup>9</sup>

([...]**r**) [...];

([...]**s**) [...];<sup>10</sup>

([...]**t**) 'Member State responsible' means the Member State responsible for the examination of an application in accordance with **the criteria laid down in** Regulation (EU) No XXX/XXX (Dublin Regulation) [...];

(**u**) '**minor**' means a **third-country national or a stateless person below the age of 18 years**;

(**v**) '**unaccompanied minor**' means a **minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her, whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such an adult; it includes a minor who is left unaccompanied after he or she has entered the territory of Member States**;

(**w**) '**biometric data**' means **fingerprint data and facial image data in accordance with Article 3(p) of Regulation (EU) No XXX/XXX (Eurodac Regulation)**.

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<sup>9</sup> **CZ:** reservation.

<sup>10</sup> **CZ:** scrutiny reservation on deletion.

*Article 5*

[...] **Competent authorities**<sup>11</sup>

1. [...] Member States shall designate a determining authority **to carry out its tasks as provided for in this Regulation and in Regulation (EU) No XXX/XXX (Qualification Regulation), in particular [...]:**
  - (a) [...] examining applications for international protection;
  - (b) taking decisions on applications for international protection;
  - (c) taking decisions on [...] **the withdrawal of [...] international protection [...].**
2. [...]
3. [...] Member States may entrust the determining authority or other relevant national authorities such as the police, immigration authorities, border guards, authorities responsible for detention facilities or reception facilities with the task of registering applications for international protection in accordance with Article 27.<sup>12</sup>
  - (a) [...]
  - (b) [...]
  - (c) [...]
  - (d) [...]

[...]

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<sup>11</sup> **MT:** scrutiny reservation.

<sup>12</sup> **SK:** reservation. **EL, SK:** keep "*receiving*" (and reference to Article 25). **PL, BE, NL:** reintroduce a reference to "*making*" and "*lodging*" in order to cover all three steps.



**3aa. Member States may entrust at least the police, border guards and authorities responsible for detention facilities or other relevant national authorities with the task of receiving applications for international protection in accordance with Article 25.**

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

**3b. Member States may entrust other relevant authorities with the tasks under this Regulation. Those authorities shall not be entrusted with the tasks referred to in paragraph 1 and Article 12(3), with the exception of the taking of decisions on applications which are explicitly withdrawn as referred to in Article 38 or implicitly withdrawn as referred to in Article 39(1).**

**4. [...]**

**(a) [...]**

**(b) [...]**

**4a. Member States shall provide the authorities applying this Regulation with appropriate means, including necessary competent personnel, to carry out their tasks.**

**5. Member States shall ensure that the personnel of authorities applying this Regulation [...], have the appropriate knowledge and where necessary are provided with [...] training and [...] guidance to fulfil their obligations [...].**

Article 5a

Cooperation<sup>13</sup>

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

**In addition, where there is a disproportionate number of third-country nationals or stateless persons that make an application within the same period of time, making it difficult in practice for the determining authority to conduct timely personal interviews of each applicant, the determining authority of the Member State where the application is made and lodged or of the Member State responsible maybe assisted by the personnel of other authorities of that Member State.**<sup>14</sup>

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<sup>13</sup> **NL:** scrutiny reservation. **FI:** reservation.

<sup>14</sup> **DE:** scrutiny reservation on para (2).

*Article 5b [former Article 18]*

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

**Member States shall allow the United Nations High Commissioner for Refugees:**

- (a) to have access to applicants, including those in reception centres, in detention, at the border and in transit zones;**
- (b) to have access to information on individual applications for international protection, on the course of the procedure and on the decisions taken, subject to the consent of the applicant;**
- (c) to present its views, in the exercise of its supervisory responsibilities under Article 35 of the Geneva Convention, to any competent authorities regarding individual applications for international protection at any stage of the procedure.**

*Article 6*

**Confidentiality principle<sup>15</sup>**

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

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<sup>15</sup> **DE, NL:** how does this provision articulate with the Data Protection Regulation? **PRES:** the text refers to national law. MS are obliged to keep their national legislation in compliance with the GDPR.

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

**SECTION I**

**RIGHTS AND OBLIGATIONS OF APPLICANTS**

*Article 7*

**Obligations of applicants<sup>16</sup>**

1. The applicant shall make **and lodge** his or her application in the Member State [...] provided for in Article 4(1) **and (1a)** of Regulation (EU) No XXX/XXX (Dublin Regulation).<sup>17</sup>
2. The applicant shall **fully** cooperate with the [...] **competent** authorities [...] **in matters covered by this Regulation, in particular, by:**
  - (a) providing **his or her name, date of birth, sex, nationality and information about family members and other personal details relevant for the procedure for international protection [...];**
  - (aa) **where available to the applicant, providing his or her identity or travel document, and if not available, providing a reasonable explanation for not being in possession of such documents;**<sup>18</sup>

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<sup>16</sup> **DE, FI, SE:** scrutiny reservation.

<sup>17</sup> **FR:** scrutiny reservation linked with Dublin. **EL, HU, IT, SI:** reservation.

<sup>18</sup> **SI:** reservation. **EE:** add "*reasonable*", "*adequate*" or "*sufficient*" before "*explanation*". **NL:** add "*credible and excusable*" before "*explanation*".

- (ab) **providing his or her place of residence or address, and where available, a telephone number and email where he or she may be reached, including any changes thereto;**
- (b) **providing [...] biometric data as referred to in Regulation (EU) No XXX/XXX (Eurodac Regulation);<sup>19</sup>**
- (c) **lodging his or her application in accordance with Article 28 [...];**
- (d) **[...] providing as soon as possible all the elements available to him or her which substantiate the application for international protection as referred to in Article 4(2) of Regulation EU XXX/XXX (Qualification Regulation) and any other information or documents relevant [...] for the procedures in accordance with this Regulation;**
- (da) **attending the personal interview;**
- (db) **remaining on the territory of the Member State where he or she is required to be present, in accordance with Article 4(2a) of Regulation (EU) No XXX/XXX (Dublin Regulation).**

3. [...] <sup>20</sup>

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<sup>19</sup> OJ L [...], [...], p. [...].

<sup>20</sup> HU: the deletion of para (3 is not acceptable; scrutiny reservation pending discussions on Article 39

4. [...]The applicant shall accept any communication at the most recent place of residence or address [...] as indicated **by himself or herself. Member States shall establish in national law and practice the method of communication and the moment that the communication is considered as received by the applicant [...].**
5. [...] <sup>21</sup>
6. [...].
7. **Without prejudice to any search carried out for security reasons, [...]**where it is necessary for the [...] **processing** of an application, the applicant may be required by the **responsible competent** authorities to be searched or have his or her items searched **in accordance with national law. [...]** Any search of the applicant's person [...] shall be carried out by a person of the same sex with full respect for the principles of human dignity and of physical and psychological integrity. <sup>22</sup>

#### *Article 8*

#### **General guarantees for applicants** <sup>23</sup>

1. [...]
2. The determining authority **or, where applicable, other competent authorities or organisations tasked by Member States for that purpose**, shall inform **the** applicants, [...] of the following <sup>24</sup>:
  - (a) the **right** to lodge an [...] application;
  - (b) the **time-limits and stages of the procedure [...]**;

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<sup>21</sup> **PRES:** moved to para (2).

<sup>22</sup> **DE:** scrutiny reservation.

<sup>23</sup> **ES, FI, PT, SE, SI:** scrutiny reservation.

<sup>24</sup> **DE, ES, LV:** scrutiny reservation.

- (c) **his or her [...] rights and obligations during the procedure[...] and the consequences for not complying with those obligations, in particular as regards the explicit or implicit withdrawal of an application [...];<sup>25</sup>**
- (d) **[...]the procedure for submitting elements to substantiate his or her application for international protection;**
- (e) [...]
- (f) [...]
- (g) [...]
- (h) [...].

The information referred to in [...]this paragraph shall be given [...] **at the latest upon registration of the application, in a language which the applicant understands or is reasonably supposed to understand. That information shall be given by means of the leaflet referred to in paragraph 6a, or orally if the leaflet is not available in a language that the applicant understands or is reasonably supposed to understand necessary orally.**<sup>26</sup>

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

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<sup>25</sup> **DE:** scrutiny reservation; keep deleted part.

<sup>26</sup> **CZ:** scrutiny reservation; "*before lodging*" instead of "*upon registration*". **SE:** "*within a reasonable time*" instead of "*upon registration*"; align with Article 5 in RCD. **PRES:** for the sake of consistency we use the same deadline as in RCD and Dublin. **NL:** unclear how the mentioned leaflet relates to the template in Article 5 of the RCD. If the information on both the procedure and the reception conditions should be given in the same document, the Articles should be aligned.



3. [...] **During the administrative procedure**, applicants **shall be provided** with the services of an interpreter **to assist with lodging their application and for the personal interview** [...] whenever appropriate communication cannot **otherwise** be ensured [...]. Those[...] interpretation services shall be paid for from public funds.
4. The [...] **competent authorities** shall provide applicants with the opportunity to communicate with **the** United Nations High Commissioner for Refugees or with any other organisation providing legal advice or other counselling to applicants in accordance with national law.
5. **Without prejudice to Article 16(2)**, [...]the determining authority shall ensure that applicants and, where applicable, their **representatives** [...] or legal advisers or **other counsellors admitted or permitted as such under national law ("legal advisers")** [...] have access to the information referred to in Article 33(2)( [...] **b) and (ca)** required for the examination of applications and to the information provided by the experts referred to in Article 33(3), where the determining authority [...] **takes** that information into consideration for the purpose of taking a decision on their application.
6. [...]
- 6a. **The Commission shall specify, by means of implementing acts, the content of the information to be provided to applicants, drawn up in the form of a common leaflet. The common leaflet shall be established in such a manner so as to enable Member States to complete it with additional information specific to the Member State concerned. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58(2).**<sup>27</sup>

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<sup>27</sup> **EE, MT:** scrutiny reservation. **SK:** reservation. **ES:** EASO work could be used as an alternative to implementing acts.

Article 9

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

[...] <sup>28</sup>

1. Applicants shall have the right to remain in the **territory of the Member State where he or she is required to be present in accordance with Article 4(2a) of Regulation (EU) No XXX/XXX [Dublin Regulation]** [...] until [...] a decision **on the application is taken** in [...] the administrative procedure [...]<sup>29</sup>.
2. The right to remain shall not constitute an entitlement to a residence permit [...].
3. [...] Member States may **provide in national law for an exception from [...]** the applicant's right to remain on their territory during **the** administrative procedure where<sup>30</sup>:
  - (a) [...] the conditions laid down in Article 43 **are fulfilled**;
  - (b) a person is surrendered [...] to another Member State pursuant to obligations in accordance with a European arrest warrant <sup>31</sup> [...];<sup>32</sup>

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<sup>28</sup> **BE, DE, EL, ES, IT, PT:** scrutiny reservation. **FR:** reservation.

<sup>29</sup> **FR:** scrutiny reservation. **HU:** reservation. **DE:** Paragraph 1 should not be worded only as a right applicants have, but also as an obligation, to avoid contradictions. **PRES:** the obligation is set-out in Article 7 (2)(db).

<sup>30</sup> **SE:** scrutiny reservation **IT:** should be a "*shall*" clause. **FR:** scrutiny reservation to assess if there are other cases which may justify to limit the right to remain.

<sup>31</sup> Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1).

<sup>32</sup> **DE:** reservation.

**(ba) a person is extradited, surrendered or transferred to another Member State, a third country, the international criminal court or another international court or tribunal for the purpose of, or resulting from judicial proceedings or for the execution of a sentence;**

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

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

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

## CHAPTER II

### BASIC PRINCIPLES AND GUARANTEES

#### SECTION II

##### PERSONAL INTERVIEWS

###### *Article 10*

###### **Admissibility interview<sup>33</sup>**

1. **Without prejudice to Article 42(3), b[...]**efore a decision is taken by the determining authority on the **inadmissibility** of an application [...] **in accordance with Article 36,** the applicant shall be given the opportunity of an **admissibility** interview [...]<sup>34</sup>.
2. In the admissibility interview, the applicant shall be given an opportunity to [...] **submit all elements explaining** [...] why the **inadmissibility** grounds provided for in Article 36 would not be applicable to [...] **him or her.**<sup>35</sup>
- 2a. **The admissibility interview may be conducted at the same time as the interview conducted to facilitate the determination of the Member State responsible for examining an application for international protection as referred to in Article 7 of Regulation (EU) No XXX/XXX (Dublin Regulation).**<sup>36</sup>

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<sup>33</sup> **DE, EL, ES, HR, IE, IT, SE, SI:** scrutiny reservation. **FR, IT:** reservation.

<sup>34</sup> **FR:** scrutiny reservation linked to reference to Article 36. **DE:** scrutiny reservation.

<sup>35</sup> **FR:** reservation.

<sup>36</sup> **CY, EL, HR, IT, SI:** reservation. **LV:** include a list of authorities which may conduct the interview (valid also for (2b)).

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

*Article 11*

**Substantive interview<sup>37</sup>**

1. Before a decision is taken by the determining authority on [...] **whether the applicant qualifies as a refugee or is eligible for subsidiary protection**, the applicant shall be given the opportunity of a substantive interview on his or her application<sup>38</sup>.
2. In the substantive interview, the applicant shall be given an [...] opportunity to present the elements needed to substantiate his or her application in accordance with Regulation (EU) No XXX/XXX (Qualification Regulation), and he or she shall provide [...] **the elements referred to in Article 4(2) of Regulation (EU) No XXX/XXX (Qualification Regulation)** [...] as completely as possible. The applicant shall be given the opportunity to provide an explanation regarding elements which may be missing or any inconsistencies or contradictions in [...] **his or her** statements.
3. [...]

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<sup>37</sup> **EL:** scrutiny reservation.

<sup>38</sup> **DE:** unclear if other authorities can be involved.

*Article 12*

**Requirements for personal interviews<sup>39</sup>**

1. [...] **Subject to the conditions established in this Regulation**, applicants shall be given an opportunity of a personal interview on his or her application [...].
  - 1a. **Where an application for international protection is lodged in accordance with Article 30a the applicant may be given the opportunity for a personal interview provided that paragraph (5)(b) is not applicable.**
2. [...]
3. [...] **Without prejudice to Article 5a(2)**, personal interviews shall be conducted by the personnel of the determining authority, [...].
4. Where simultaneous applications for international protection by a disproportionate number of third-country nationals or stateless persons make it difficult in practice for the determining [...]. **A person who conducts the personal interview shall not wear a military or law enforcement uniform.**
5. The [...] **admissibility interview or the substantive interview, as applicable**, may be omitted [...] <sup>40</sup> **where:**
  - (a) **the determining authority** is able to take a positive decision with regard to **the** refugee status **on the basis of the evidence available;** <sup>41</sup>
  - (aa) **the determining authority [...] considers that the application is not inadmissible on the basis of evidence available; [...]**

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<sup>39</sup> **DE, ES:** scrutiny reservation. **LV, PL:** there should be a possibility also for other national institutions, not only the determining authority, to conduct admissibility interviews.

<sup>40</sup> **NL, SI:** reservation on para (5).

<sup>41</sup> **ES, IT, NL:** add reference to subsidiary protection too.

(b) [...]the applicant is unfit, **as confirmed by medical certification provided by the applicant**, or unable to be interviewed owing to enduring circumstances beyond his or her control;

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

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

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

**5b. An applicant shall be allowed to be assisted by a legal advisor in the personal interview, including when it is held by video conference. The absence of the legal advisor shall not prevent the determining authority from conducting the interview. Where a legal advisor participates in the personal interview, he or she shall be given the opportunity to make comments and ask questions, within the framework set by the person who conducts the interview at least at the end of the personal interview.**<sup>42</sup>

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<sup>42</sup> **IT:** add "*according to a specific mandate*" at the end of the first sentence.

6. The person conducting the interview shall be competent to take account of the personal and general circumstances surrounding the application, including the applicant's cultural origin, age, **sex** [...], sexual orientation, gender identity and **special procedural needs** [...].  
Personnel interviewing applicants shall also have acquired general knowledge of [...] **factors** which could adversely affect the applicant's ability to be interviewed, such as indications that the person may have been tortured in the past.
7. The personnel interviewing applicants, including experts deployed by the European Union Agency for Asylum, shall have received [...] training in advance which shall include [...] **relevant** elements **from those** listed in Article 7(4[...]) of Regulation (EU) No XXX/XXX (EU Asylum Agency Regulation), [...].
8. [...] **Interpretation shall be provided for the personal interview where this is necessary** [...] to ensure appropriate communication between the applicant and the person conducting the interview [...]. The communication shall take place in [...] **a language which [...] the applicant** understands and in which he or she is able to communicate clearly<sup>43</sup>.
- 8a.** Where requested by the applicant **and where possible**, the determining authority shall ensure that the interviewers and interpreters are of the [...] sex **that** [...] the applicant **prefers**, [...] **unless it has reasons to [...] consider** that such a request **does** [...] not relate[...] to difficulties on the part of the applicant to present the grounds of his or her application [...].
- 8b.** **The personal interview shall be conducted under conditions which ensure appropriate privacy and confidentiality. Where the determining authority considers it necessary, it may authorise the presence of family members or other persons at the personal interview subject to the consent of the applicant.**

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<sup>43</sup> **HR:** scrutiny reservation.



9. The absence of a personal interview, **where it is omitted pursuant to paragraph 5 or where the applicant otherwise does not attend without reasonable justification**, shall not prevent the determining authority from taking a decision on [...] **the** application for international protection.

*Article 13*

**Report and recording of personal interviews<sup>44</sup>**

1. The determining authority or any other authority or experts assisting it [...] **with** conducting the personal interview shall make a thorough and factual report containing all substantive elements **of the personal interview** or a transcript **of the recording** of [...] **such an** interview.
2. The personal interview [...] **may** be recorded using audio or audio-visual means of recording. The applicant shall be informed in advance of such recording. **Where a recording is made, the determining authority shall ensure that the recording or the transcript of the recording is included in the applicant's file.**<sup>45</sup>
3. The applicant shall be given the opportunity to make comments or provide clarification orally or in writing with regard to any incorrect translations or misunderstandings appearing in the report [...], at the end of the personal interview or within a specified time limit before the determining authority takes a decision. To that end, the applicant shall be informed of the entire content of the report [...], with the assistance of an interpreter, where necessary. [...]

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<sup>44</sup> **FR:** reservation, APD wording is preferable.

<sup>45</sup> **DE:** scrutiny reservation; it should be possible to use recording for voice recognition.

4. **The applicant shall be requested to confirm that the content of the report correctly reflects the personal interview<sup>46</sup>.** Where [...] **he or she** refuses to confirm that the content of the report [...] correctly reflects the personal interview<sup>7</sup>; the reasons for his or her refusal shall be entered in [...] **his or her** file. That refusal shall not prevent the determining authority from taking a decision on the application.
- 4a. **The applicant does not have to be requested to make comments or to provide clarifications on the report, nor to confirm that the content of the report correctly reflects the interview where:**
- (a) **the personal interview is recorded and according to national law the recording may be admitted as evidence in the appeal procedure, or**
  - (b) **is it clear to the determining authority that the applicant will be granted refugee status.**
5. **Without prejudice to Article 16(1), [...]applicants or [...], where applicable,** their legal advisers [...] shall have access to the report or the transcript **of the recording [...]** or the recording before the determining authority takes a decision. **By way of exception, where there is both a recording and a transcript of the recording, access to the recording does not have to be provided in the administrative procedure. Access to the recording shall be provided in the appeal procedure.**<sup>47</sup>
6. Where the application is examined in accordance with the accelerated examination procedure, the determining authority may grant access to the report or the transcript of the recording at the same time as the decision is made.<sup>48</sup>
7. [...]

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<sup>46</sup> **SE:** scrutiny reservation. **NL:** reservation, increase of administrative burden, possibility of abuse.

<sup>47</sup> **DE, IE:** scrutiny reservation. **PL:** scrutiny reservation regarding the access before the decision is taken.

<sup>48</sup> **SE:** delete this para.

## SECTION III<sup>49</sup>

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

#### *Article 14*

#### **Right to legal assistance and representation<sup>50</sup>**

1. An [...]applicant[...] shall have the right, **at his or her own costs**, to consult, **be assisted or represented by** a legal adviser [...] on matters relating to [...] **his or her** applications [...].
2. Without prejudice to **paragraph 1** [...], an applicant may request **and is entitled to receive free information on legal and procedural aspects** [...] **in the administrative procedure and free legal assistance and representation in the appeal procedure subject to the exceptions set out in Articles 15 (3) and 15a(2), respectively** [...]<sup>51</sup>.
- 2a. **Member States may provide for free legal assistance and representation in the administrative procedure in accordance with national law.**

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<sup>49</sup> **DE, ES, IE:** scrutiny reservation. **BE:** reservation. **DE:** how do these provisions relate to Directive 2003/8/EC to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes? **PRES:** they have different scope.

<sup>50</sup> **IT:** scrutiny reservation. **SI:** reservation.

<sup>51</sup> **DE, EE, MT:** scrutiny reservation. **EL, ES, SK:** reservation.

Article 15

Free information on legal and procedural aspects [...] <sup>52</sup>

1. [...]
2. [...] **In the administrative procedure, Member States shall, upon the request of the applicant and following the lodging of the application, ensure that he or she is provided with [...] free information on legal and procedural aspects [...] in the light of the applicant's particular circumstances [...], which shall, at least, include** <sup>53</sup>:
  - (a) **explanations of the procedure that needs to be followed [...];**
  - (b) **where an application is rejected with regard to refugee status or subsidiary protection status, the reasons for such decision and information on how to challenge it, in addition to that given in accordance to Article 35 (2) and (2a). [...]**
  - (c) [...]
3. The provision of free **information on legal and procedural aspects** [...] in the administrative procedure may be excluded **by Member States** [...] <sup>54</sup>:
  - (a) [...]
  - (b) [...]
  - (c) [...];
  - (ca) **where the applicant has legal assistance and representation in accordance with Article 14 (1) or (2a), ~~or~~ the determining authority considers that the applicant will be granted refugee status or the application has no sufficient prospect of success.**

---

<sup>52</sup> **DE, EE, ES, MT, NL, SE, SK, SI:** scrutiny reservation. **BE:** reservation. **SE:** there should be more scope for exceptions from the right.

<sup>53</sup> **DE:** scrutiny reservation. **SK:** reservation. **FR, IT:** clarify in a recital that legal assistance free of charge may also be provided as part of the reception conditions.

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

Article 15a

Free legal assistance and representation in the appeal procedure<sup>55</sup>

[...]1. [...]In the appeal procedure, Member States shall, upon the request of the applicant, ensure that he or she is provided with [...] free legal assistance and representation which shall [...] include the preparation of the [...] procedural documents **required under national law**, the preparation of the appeal and, **in the event of a hearing**, participation in ~~the~~ **that** hearing before a court or tribunal [...].

[...]2. The provision of free legal assistance and representation in the appeal procedure may be excluded **by the Member States** where<sup>56</sup>:

- (a) **the applicant, who shall disclose his or her financial situation, [...] is considered to have sufficient resources to afford legal assistance and representation at his or her own costs;**
- (b) [...]it is considered as **that the appeal clearly does not have [...] any [...] sufficient prospect of success or is clearly ~~frivolous or vexatious~~ abusive;**
- (c) the appeal or review is at a second level of appeal or higher as provided for under national law, including re-hearings or reviews of appeal.

3. [...].

---

<sup>55</sup> **RO, SE:** scrutiny reservation.

<sup>56</sup> **DE, IT:** scrutiny reservation. **SK:** add a new point (d) drafted as follows: "*where the applicant already has legal assistance or representation.*"

Article 16

[...] **Access of the legal adviser**<sup>57</sup>

1. A legal adviser [...], who assists or represents an applicant under the terms of national law, shall be granted access to the information in the applicant's file upon the basis of which a decision is or shall be [...] **taken**<sup>58</sup>.
2. **By way of exception from paragraph 1, [...] access to the information or to the sources in the applicant's file may be denied in accordance with national law** where the disclosure of information or sources would jeopardise national security, the security of the organisations or persons providing the information or the security of the persons to whom the information relates [...]. **In such cases, access to such information or sources shall be made available to the courts or tribunals in the appeal procedure. Access to the information or to the sources in the applicants file may also be denied in accordance with the national law in ease of threat to the national security**, where the **disclosure will harm the** investigative interests relating to the examination of applications for international protection by the competent authorities of the Member States or the international relations of the Member States would be compromised **or where the information or sources are classified under national law. In such cases, access to information will be subject to the national law.** [...] <sup>59</sup>

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

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

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<sup>57</sup> **SI, SK:** scrutiny reservation.

<sup>58</sup> **SI:** if it can be an organisation, it should be specified in the text.

<sup>59</sup> **DE:** reservation on (2).

4. [...]
5. [...]
6. [...]

*Article 17*

**Conditions for [...] free information on legal and procedural aspects and free legal assistance and representation<sup>60</sup>**

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

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<sup>60</sup> **BE, ES, FR:** reservation. **EE, HR, MT, RO, SI, SK:** scrutiny reservation.

- 2a. **Member States shall lay down specific rules concerning the exclusion of the provision of free information on legal and procedural aspects and of free legal assistance and representation in accordance with Article 15(3) and Article 15a(2), respectively.**
3. Member States may also impose monetary limits or time limits on the provision of **free information on legal and procedural aspects and of free legal assistance and representation**, provided that such limits do not arbitrarily restrict access **to free information on legal and procedural aspects and** to free legal assistance and representation. As regards fees and other costs, the treatment of applicants shall not be less favourable than the treatment generally given to their nationals in matters pertaining to legal assistance<sup>61</sup>.
4. Member States may request total or partial reimbursement of any costs made if and when the applicant's financial situation considerably improves or where the decision to make such costs was taken on the basis of false information supplied by the applicant. **For that purpose, applicants shall immediately inform the competent authorities of any significant change in their financial situation.**

#### *Article 18*

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

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

---

<sup>61</sup> **DE:** in the first sentence introduce "*or make the provision of free legal assistance and representation subject to a small contribution by the applicant*" after "*provision of free legal assistance and representation*" and "*or contributions*" after "*limits*".



## CHAPTER II

### BASIC PRINCIPLES AND GUARANTEES

#### SECTION IV

##### SPECIAL GUARANTEES

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

##### **Applicants in need of special procedural guarantees<sup>62</sup>**

1. [...]
2. Where applicants have been identified as [...] **being** in need of special procedural guarantees, they shall be provided with **the necessary** [...] <sup>63</sup> support **allowing that allows** them to benefit from the rights and comply with the obligations under this Regulation [...].
3. Where **the determining authority considers that** [...] **the necessary** support cannot be provided within the framework of the accelerated examination procedure referred to in Article 40 or the border procedure referred to in Article 41 [...] the determining authority shall not apply or shall cease to apply those procedures to the applicant.<sup>64</sup>

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<sup>62</sup> **BE, IT:** scrutiny reservation.

<sup>63</sup> **DE:** not clear what the consequences are if the support is not provided. **PRES:** then the accelerated or border procedure can not be applied or ceased to be applied.

<sup>64</sup> **DE:** scrutiny reservation on para (3); it is not clear what happens to the procedures already concluded. **RO:** what happens if if such an applicant with special procedural needs falls under Art. 40 (1) (f) and the support cannot be granted in the case of an accelerated / border procedure? **PRES:** The text envisages rules only for cases where the procedure is not concluded and the necessary support cannot be provided. In this case the accelerated procedure will be transfer to normal procedure. Special procedural needs should be addressed otherwise this could affect the individual assessment of the case. The fact that there are reasonable grounds to consider the applicant as a danger to the national security or public order does not exclude the obligation to address the special procedural needs.

4. [...]

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

[...] **Assessment of special procedural needs**<sup>65</sup>

- 1. The competent authorities<sup>66</sup> shall assess whether an applicant is in need of special procedural guarantees. That assessment may be integrated into existing national procedures and need not take the form of an administrative procedure.**
- 1. The assessment referred to in paragraph -1 shall be initiated as early as possible after an application is made by [...] identifying whether an applicant presents first indications that he or she may require [...] special procedural [...] guarantees [...].<sup>67</sup> The identification shall be based on visible signs, the applicant's statements or behaviour, or any relevant documents. In the case of minors, statements of the parents, adult responsible or representative of the applicant shall also be taken into account.**

**The competent authorities shall include information on any such first indications in the applicant's file and they shall make this information available to the determining authority.<sup>68</sup>**

2. [...]

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<sup>65</sup> **CZ, SI, SK:** reservation. **DE:** scrutiny reservation.

<sup>66</sup> **SK:** scrutiny reservation on para (1). .

<sup>67</sup> **DE, SK:** scrutiny reservation. **SK:** delete "*after an application is made*".

<sup>68</sup> **DE:** scrutiny reservation.

3. [...]

The assessment referred to in paragraph -1 shall be continued by ~~the determining authority~~ after the application is lodged, including where those needs become apparent at a later stage of the procedure, taking into account any information in the applicant's file as referred to in paragraph 1. The assessment shall be reviewed in case of any relevant changes in the applicant's circumstances.<sup>69</sup>

3a. The ~~determining~~ competent authority may, ~~subject to his or her prior consent~~, refer the applicant, subject to his or her prior consent, to the appropriate medical practitioner or psychologist for psychological advice on the applicant's need for special procedural guarantees. The result may be taken into account by the determining authority when deciding on the type of special procedural guarantees which may be provided to the applicant.<sup>70</sup>

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

4. [...]

4a. The relevant personnel of the competent authorities assessing the need for special procedural guarantees shall receive appropriate training to enable them to recognise that an applicant may need special procedural guarantees and to take appropriate actions to ensure that the necessary support will be provided.<sup>71</sup>

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<sup>69</sup> **SK:** redraft as follows: “*The full assessment of whether the applicant has special reception needs shall be carried out by the determining authority (alternatively authority responsible for reception) after the application is lodged.*”

<sup>70</sup> **RO:** reservation.

<sup>71</sup> **NL:** scrutiny reservation. **SK:** reservation. **DE:** unclear what training measures are envisaged here. **PRES:** the same as in RCD. .

- 4b. **The Commission may, in accordance with Article 12 of Regulation XXX/XXX [EUAA Regulation], request the European Union Agency for Asylum to develop operational standards on measures for assessing and addressing the special procedural needs of applicants.**<sup>72</sup>

*Article 21*

**Guarantees for minors**<sup>73</sup>

1. The best interests of the child shall be a primary consideration for **the competent authorities** [...] when applying this Regulation.
2. **Where the determining authority considers it is in the best interests of the child and necessary for the examination of the application for international protection, it shall organise a personal interview for a minor taking into account in particular the age and maturity of that minor. The determining authority may also organise such an interview at the request of the minor, the adult responsible or the representative of the minor.** [...] <sup>74</sup>
- 2a. [...] **The personal interview of a minor** shall be conducted by a person who has the [...] **appropriate** knowledge of the rights and special needs of minors. [...] **It shall be conducted in a child-sensitive [...] manner that takes into consideration the age, maturity and best interests of the child.**<sup>75</sup>

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<sup>72</sup> **DE, SK:** scrutiny reservation. **BE, CY, NL, RO:** reservation. **NL:** relation with para (-1), which says that this assessment may be integrated into existing national procedures, is not clear

<sup>73</sup> **BE, CZ, ES, FR, IT:** reservation. **NL:** scrutiny reservation.

<sup>74</sup> **DE:** does this provision also apply for unaccompanied minors? **PRES:** yes. **SI:** include a specific age limit. **PRES:** this will be difficult to harmonise. MS have different national systems.

<sup>75</sup> **DE, HU, SE:** scrutiny reservation on para (2) and (2a). **FR:** reservation on para (2) and (2a).

3. The relevant personnel of the determining authority [...] shall receive appropriate training [...] on the rights and and special needs of minors.<sup>76</sup>

Article 22

Special guarantees for unaccompanied minors<sup>77</sup>

- 1. The competent authorities shall ensure that unaccompanied minors are represented and assisted in such a way so as to enable them to benefit from the rights and comply with the obligations under this Regulation, Regulation (EU) No XXXX/XXXX [Dublin Regulation] and Regulation (EU) No XXXX/XXXX [Eurodac Regulation].<sup>78</sup>
1. [...]Where an application is made by a person who claims to be a minor<sup>79</sup>, or in relation to whom there are objective grounds<sup>80</sup> to believe that he or she is a minor, the competent authorities shall [...] designate:
- (a) a person who is suitable to provisionally carry out the tasks of the representative until a representative is designated;<sup>81</sup>

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<sup>76</sup> **SK:** reservation.

<sup>77</sup> **BE, ES, LU:** reservation. **DE, FR, HR, SE:** scrutiny reservation. **SE:** less detailed provisions would be preferable.

<sup>78</sup> **NL:** scrutiny reservation on the reference to Dublin and Eurodac. **DE:** clarify if the youth welfare offices are included in the competent authorities.

<sup>79</sup> **SK:** scrutiny reservation, not acceptable for a minor to make an application on his/her own.

**FR:** add “and without prejudice to situations where the applicant is found to be a minor after the application is lodged” after “that he or she is a minor”.

<sup>80</sup> **EL:** the notion of “objective grounds” should be clarified further as it seems to indicate the is practically a certainty that someone is a minor; in Art. 24 the wording is “relevant indications”

<sup>81</sup> **NL:** scrutiny reservation. **RO:** clarify what it means.

(b) a representative as soon as possible but not later than fifteen working days from when the application is made.<sup>82</sup> This representative may be the same as that provided for in Article 23 of Directive (EU) No XXXX /XXXX [Reception Conditions Directive].

The representative and the person referred to in point (a) shall take into account the minor's own views about his or her needs.

~~In case of a disproportionate number of applications made by unaccompanied minors, or in other exceptional situations the time limit for designating a representative may be extended by ten working days.~~

This paragraph shall not apply where an application is made by a person who claims to be a minor but who is evidently<sup>83</sup> above the age of eighteen years.

The duties of the representative shall cease where the competent authorities, following the age assessment referred to in Article 24 (1), do not assume that the applicant is a minor or consider that the applicant is not a minor or where the applicant is no longer an unaccompanied minor.<sup>84</sup>

1aa. In case of a disproportionate number of applications made by unaccompanied minors or in other exceptional situations, the time limit for designating a representative may be extended by ten working days.<sup>85</sup>

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<sup>82</sup> **DE:** fifteen days is too short. **IT:** delete "fifteen working days". **SE:** no support for the idea of a dedicated person - administrative and financial burden; instead a representative should be appointed as soon as possible and until then MS should be obliged to ensure that the child has sufficient support to benefit from the rights and comply with the obligations under this regulation. **CZ:** delete the 15 days (consistency with RCD). **FR, LU:** replace this para with the following text: "*Where the age needs to be assessed in accordance with article 24, no representative shall be designated prior to the positive outcome of this assessment. The tasks of the person mentioned in point (a) and of the representative may be carried out by the same person.*"

<sup>83</sup> **FR:** replace with "clearly".

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

<sup>85</sup> (**FI:** add "*or in other exceptional situations*" after "*unaccompanied minors*".)

- 1a. Where an organisation is [...] **designated** as a representative, it shall designate a **natural** person [...] for carrying out the [...] **tasks of a representative in respect of the unaccompanied minor.**<sup>86</sup>
- ~~1b. The representative provided for in paragraph 1 of this Article may be the same as that provided for in Article 23 of Directive (EU) No XXXX /XXXX [Reception Conditions Directive].~~
- 1c. The [...] **competent** authority[...] shall **immediately**:
- (a) inform the unaccompanied minor [...], **in a child-friendly manner and in a language he or she can reasonably be expected to understand, of the designation of the person referred to in paragraph 1 (a) and of his or her representative and about how to lodge a complaint against the representative in confidence and safety.**<sup>87</sup>
  - (b) **inform the determining authority that a representative has been designated for the unaccompanied minor**<sup>88</sup>; and
  - (c) **inform the person referred to in paragraph 1 (a) and the representative of the relevant facts, procedural steps and time-limits pertaining to the application of the unaccompanied minor.**<sup>89</sup>

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<sup>86</sup> **DE:** add "*unless the representative is designated by law*".

<sup>87</sup> **IT:** difficult to understand the added value of "*and about how to lodge a complaint against any of them in confidence and safety*". **DE:** add "*or organisation*" after "*the person*" and "*unless the representative is designated by law*" in the end.

<sup>88</sup> **FR:** add "*authority in charge of registering the claim as well as the*". **DE:** add "*unless the representative is designated by law*" in the end.

<sup>89</sup> **DE:** add "*or organisation*" after "*the person*".

**1d. The person referred to in paragraph 1 (a) shall meet with the unaccompanied minor and carry out the following tasks:<sup>90</sup>**

- (a) provide him or her with relevant information in relation to the procedures provided for in this Regulation;<sup>91</sup>**
- (b) where applicable, assist him or her in relation to the age assessment procedure referred to in Article 24;<sup>92</sup>**
- (c) where applicable, provide him or her with the relevant information and assist him or her in relation to the procedures provided for in Regulation (EU) No XXXX/XXXX [Dublin Regulation] and Regulation (EU) No XXXX/XXXX [Eurodac Regulation].<sup>93</sup>**

**1da. As long as a representative has not been designated, the person referred to in paragraph 1 (a) may assist with the lodging of the application or lodge the application on behalf of the applicant in accordance with Article 32.**

**1e. The representative shall meet the unaccompanied minor and shall carry out the following tasks:<sup>94</sup>**

- (a) where applicable, provide him or her with relevant information in relation to the procedures provided for in this Regulation;**
- (b) where applicable, assist with the age assessment procedure referred to in Article 24;**

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<sup>90</sup> **SE:** delete (1d). **NL:** merge (1d) and (1e).

<sup>91</sup> **DE:** scrutiny reservation.

<sup>92</sup> **DE:** add "*and represent*" (comment also valid for point (d) and for para (1d) (a) and (d)).  
**FI:** add a new point (ba) drafted as follows: "*where applicable, assist with the lodging of the application or lodges the application on his or her behalf in accordance with Article 32*".

<sup>93</sup> **DE:** scrutiny reservation.

<sup>94</sup> **SE:** delete the first subparagraph (with points (a), (b) and (c)) of (1e). **DE:** scrutiny reservation on the changes introduced in points (a) - (d).



- (c) assist with the lodging of the application or lodge the application on his or her behalf in accordance with Article 32;<sup>95</sup>
- (d) where applicable, assist with and be present for the personal interview and inform about possible consequences of the personal interview and about how to prepare for that interview;<sup>96</sup>
- (e) where applicable, provide him or her with the relevant information and assist him or her in relation to the procedures provided for in Regulation (EU) No XXXX/XXXX [Dublin Regulation] and Regulation (EU) No XXXX/XXXX [Eurodac Regulation].

In the personal interview, the representative shall have an opportunity to ask questions or make comments within the framework set by the person conducting the interview.<sup>97</sup>

2. [...]

3. [...]<sup>98</sup>

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<sup>95</sup> **SK:** scrutiny reservation. **EL:** the national legislation requires the minor to be present at the moment of lodging; exceptions could be applied only in cases of *force majeure*. **FI:** add "*where applicable*"; clarify that if the registering and the lodging take place at the same time and a representative is not appointed yet, the person designated in the Eurodac Regulation (Article 2a) should assist with the lodging.

<sup>96</sup> **FR:** scrutiny reservation on "*and be present*"; if the representative is not present, it shouldn't prevent the determining authority to perform the interview with the minor, since such interviews require specific arrangements (specialised case worker, duly trained interpreter).

<sup>97</sup> **NL,** supported by **FR, PL:** reservation; this paragraph leaves no room for the determining authority to continue the procedure if the guardian fails to be present at the interview. **CY:** scrutiny reservation.

<sup>98</sup> **SE:** this is preferable to the list of tasks currently in Art. 22 (1e).

4. The [...] **representative** shall perform his or her [...] **tasks** in accordance with the principle of the best interests of the child. **A representative shall have the necessary [...] knowledge of the rights and special needs of minors**, and shall not have a verified record of child-related crimes [...] **and offences, or crimes and offences that lead to serious doubts about their ability to assume a role of responsibility with regard to minors**<sup>99</sup>.
- 4a. The [...] **representative** shall be changed **where necessary, in particular** [...] when the [...] **competent** authorities consider that he or she has not adequately performed his or her tasks [...]. Organisations or [...] **natural persons** whose interests conflict [...] with those of the unaccompanied minor shall not be [...] **designated** as [...] **representative**.
5. The [...] **competent** authorities shall [...] place a [...] **representative** in charge of a [...] **proportionate and limited** number of unaccompanied minors at the same time [...] **to ensure that he or she is able** to perform his or her tasks effectively.<sup>100</sup>
- 5a. Member States shall appoint **administrative or judicial authorities or other** entities [...] responsible [...] **to** supervise [...] that [...] **the representative properly** performs [...] **his or her** tasks [...]. Those **administrative or judicial authorities or other** entities [...] shall review complaints lodged by unaccompanied minors against [...] **his or her representative**.<sup>101</sup>
6. [...]

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<sup>99</sup> **PL:** add "*or pose a threat to the national security*"; current drafting is too strict, it should refer only to intentional crimes. **EL:** the representative should not have a criminal record at all. **DE:** add "*unless the representative is designated by law*" (also valid for paras (4a) and (5)).

<sup>100</sup> **HU:** scrutiny reservation. **SK:** this should be regulated at national level, delete it. **NL:** scrutiny reservation on para (5). **IE:** replace "*and*" with "*or*"; preferable to delete this para as it refers more to operational matters which are outside the scope of APR.

<sup>101</sup> **IT, SI:** reservation. **DE, FR:** scrutiny reservation. **MT:** reference to UAM should be in the singular.

## SECTION V

### **MEDICAL EXAMINATIONS AND AGE ASSESSMENT**

#### *Article 23*

#### **Medical examination<sup>102</sup>**

1. Where the determining authority deems it relevant for the [...] **examination** of an application for international protection in accordance with Regulation (EU) No XXX/XXX (Qualification Regulation), [...] **it may**, subject to the applicant's consent, [...] **request** a medical examination of the applicant concerning signs and symptoms that might indicate past persecution or serious harm.<sup>103</sup>

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

3. When no medical examination is carried out in accordance with paragraph 1, the determining authority shall inform applicants that they may, on their own initiative and at their own cost, arrange for a medical examination concerning signs and symptoms that might indicate past persecution or serious harm.
4. The results of the medical examination **referred in paragraph 1** shall be submitted to the determining authority as soon as possible and shall be assessed by the determining authority along with the other elements of the application.
- 4a. **The medical examination referred to in paragraph 1 shall be causing no physical harm ~~the least invasive possible~~ and be performed only by medical professionals, and in a way that respects the individual's dignity.**<sup>104</sup>

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<sup>102</sup> **DE, SE, SK:** scrutiny reservation. **FR:** reservation linked to reservation on Art 20.

<sup>103</sup> **SE:** scrutiny reservation.

<sup>104</sup> **CZ:** reservation.

5. An applicant's refusal to undergo a medical examination **or his or her decision to undergo a medical examination on his or her own initiative, when such an examination does not take place within a suitable time-frame**, shall not prevent the determining authority from taking a decision on the application for international protection.<sup>105</sup>

Article 24

[...] **Age assessment of unaccompanied minors**<sup>106</sup>

1. **In case of doubt concerning the applicant's age, the competent authorities shall assess whether the applicant is a minor, including on the basis of statements by the applicant or other relevant indications.**<sup>107</sup>

**Where, following statements by the applicant, the parents, adult responsible or representative or other relevant indications, there are still doubts as to whether or not the applicant is a minor, [...] medical examinations [...] shall be used as a measure of last resort to [...] assess the age of [...] an applicant**<sup>108</sup> [...].

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

2. [...]

---

<sup>105</sup> **SE:** delete “*or his or her decision to undergo a medical examination on his or her own initiative*”. If the applicant, in accordance with article 23(3), has been given the opportunity to at their own cost arrange for a medical examination he or she must be given a reasonable time within which to hand in a medical report. Otherwise the provision in 23(3) would not have any meaning.

<sup>106</sup> **DE, SE, SK:** scrutiny reservation. **BE:** reservation.

<sup>107</sup> **FR:** add “*and to determine whether the applicant is in need of a representative*” after “*doubts*”.

<sup>108</sup> **SK:** previous text is preferable instead of “*measure of last resort*”. **SE:** add “*only*” before “*be used*”.

3. [...] **The medical examination shall be causing no physical harm ~~the least invasive possible~~ and be performed [...] in a way that respects [...] the individual's dignity[...]. That examination shall be carried out by [...] medical professionals allowing for the most reliable result possible.**<sup>109</sup>
4. Where medical examinations are used to [...], **assess the age of an applicant**, the [...] **competent** authority shall ensure that [...] **applicants, and their parents, adult responsible or their representatives**, are informed, prior to the examination of their application for international protection, and in a language that they understand or are reasonably [...] **supposed** to understand, of the possibility that their age be [...] assessed by medical examination. This shall include information on the method of examination and possible consequences which the result of the medical examination may have for the examination of the application, as well as on the possibility and consequences of a refusal on **their** part [...] to undergo the medical examination.<sup>110</sup>
- 4a. A medical examination to assess the age of an applicant shall only be carried out where the applicant and the parents, the adult responsible or representative consent after having received the information provided for in paragraph 4**<sup>111</sup>.

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<sup>109</sup> **SK:** replace "*shall be the least invasive examination*" with "*causing no physical harm*"; „*least invasive*“ should be determined either in the operative part of the proposal or in a recital. **DE:** clarify at least in a recital that genital examination is excluded.

<sup>110</sup> **FR:** add "*or of the person mentioned in point (a) of paragraph 1 of Article 22 or his or her representative*" after "*their part*".

<sup>111</sup> **DE:** scrutiny reservation. **PT:** reservation. **FR:** add "*or, when national law so provides, the person mentioned in point (a) of paragraph 1 of Article 22 or*" after "*applicant*".

**LU:** opposes the need for the consent of the representative

5. The refusal by [...] **the applicant, the parents, the adult responsible or representative** [...] a medical examination **to be carried out for the assessment of the applicant's age** [...] shall not prevent the determining authority from taking a decision on the application for international protection. **Such refusal may only be considered as a rebuttable presumption that the applicant is not a minor.**<sup>112</sup>
6. [...] **The competent authorities may** [...] take into account [...] age assessments [...] made by **competent authorities in** other Member States on the basis of a medical examination carried out in accordance with this Article and based on methods which are recognised under its national law.<sup>113</sup> **The competent authorities may also take into account the fact that an applicant has previously declared to be an adult in another Member State and has accordingly been registered as such in that Member State.**

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<sup>112</sup> **BE:** scrutiny reservation, link with Dublin not clear. **SE:** the applicant needs to consent for a physical examination to be conducted. To link a lack of consent to a presumption against the applicant's claimed age may put into question the possibility to refuse to consent. The burden of proof to demonstrate an age lies on the applicant. A medical examination may only be initiated when the applicant has not fulfilled this burden in other ways. As such, the lack of a medical examination will never be the sole reason behind a decision to reject an applicant's claimed age. Hence, replace the last sentence with the following text: "*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.*"

<sup>113</sup> **BE, DE, FR, SK:** scrutiny reservation.

## CHAPTER III

### ADMINISTRATIVE PROCEDURE

#### SECTION I

##### ACCESS TO THE PROCEDURE

###### *Article 25*

###### **Making an application for international protection<sup>114</sup>**

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

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<sup>114</sup> **CY, DE:** scrutiny reservation. **HU:** reservation because of link to Dublin.

## Article 26

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

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

## Article 27

### Registering applications for international protection<sup>115</sup>

1. The authorities [...] **responsible for registering applications or experts assisting them with that task** shall register an application promptly, and not later than [...] **seven** days from when it is made. [...] **For that purpose they shall register, at least**, the following information:<sup>116</sup>

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<sup>115</sup> **CY, CZ, DE, HU, SE, SK:** scrutiny reservation. **SI:** reservation. **DE, NL:** what is the relation with Eurodac Regulation, what are the legal consequences if an application is made but is not formally lodged later? Is it up to MS to specify the files they wish to store this information in? **PRES:** the proposal is linked to the amendments of Article 10(1) of the Eurodac Regulation. The consequences of not lodging an application are envisaged in Art. 39 – implicitly withdrawn.

<sup>116</sup> **DE:** scrutiny reservation. Would this Article allow the authorities, when registering a request pursuant to Article 26 (1), to collect data for other purposes at the same time, for instance for our Central Register of Foreigners? **PRES:** Biometrics are personal data. Being personal data the rules for purpose limitation applies. **EL,** supported by **ES:** deadline too short.



- (a) the name, date and place of birth, [...] sex, nationality or statelessness, family members as defined in Article 2(g) of Regulation No (EU) XXX/XXX (Dublin Regulation), and in the case of minors, siblings or relatives as defined in Article 2(h) of Regulation No (EU) XXX/XXX (Dublin Regulation) present in a Member State, where applicable and as well as other personal details of the applicant relevant for the procedure for international protection and for the determination of the Member State responsible;<sup>117</sup>
  - (b) where available to the applicant, the type and number of any identity or travel document of the applicant and the country that issued that document, as well as other documents of the applicant relevant for his or her identification and for the procedure for international protection and for the determination of the Member State responsible;
  - (ba) the date of the application, place where the application was made and the authority to which the application was made;
  - (bb) the applicant's location or the applicant's place of residence or address and where available a telephone number and an e-mail address where he or she may be reached.
- 1a. The competent authorities shall take biometric data referred to in Regulation (EU) No XXX/XXX (Eurodac Regulation) at the latest upon the registration of an application for international protection and transmit those data in accordance with that Regulation.<sup>118</sup>

[...]

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<sup>117</sup> **SI:** reservation on "*other personal details*".

<sup>118</sup> **IT, PL:** scrutiny reservation.

- 1b. Where an application is made to an authority which is not responsible for registering applications, that authority shall promptly and at the latest within two days inform the authority responsible for registering applications, and the application shall be registered by the responsible authority at the latest within ten days from when the information is received by the authority responsible for registering applications.<sup>119</sup>
2. [...]
3. Where [...] there is a disproportionate number of third-country nationals or stateless persons that make an application within the same period of time, making it difficult in practice to register applications within the deadlines provided for in paragraphs 1 and 1b, [...] the application shall be registered at the latest within [...] twenty-one days.<sup>120</sup>
4. [...]

#### *Article 28*

#### **Lodging of an application for international protection<sup>121</sup>**

1. The applicant shall lodge the application with the competent authority of the Member State where the application is made as soon as possible and no later than twenty-one [...] days from [...] when the application is registered, provided that he or she is given an effective opportunity to do so [...] in accordance with this Article.<sup>122</sup> Where the application is not lodged with the determining authority, the competent authority shall promptly inform the determining authority that an application has been lodged.

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<sup>119</sup> **SK:** scrutiny reservation.

<sup>120</sup> **EL, ES, IT:** deadline too short. **EL, ES:** the deadline should be adapted when it is not possible to keep it. **IT:** "*disproportionate number*" is not determined.

<sup>121</sup> **ES, FI, HU, SE, SK:** scrutiny reservation. **RO:** reservation. **BE:** reservation. **DE, RO:** what are the consequences if the deadlines are not met? **IT:** deadlines too short.

<sup>122</sup> **EL:** reservation, deadline too short. **IT:** delete this para. Alternatively, add a reference to 20 days for challenging circumstances. **ES:** deadline too short. **BE:** no deadline, "*as soon as possible*" instead (comment also valid for para (3)).

- 1a. Following a transfer in accordance with Article 20(1)(a) of Dublin Regulation, the applicant shall lodge the application with the competent authorities of the Member State responsible as soon as possible and no later than twenty-one days from when the applicant identifies himself or herself to the competent authorities of the Member State responsible, ~~at the place and time indicated to him or her when being notified with the transfer decision.~~
- 1b. The application shall be lodged in person at a designated time and place which shall be communicated to the applicant by the competent authorities.

Alternatively, Member States may provide in national law for the possibility for the applicant to lodge an application by means of a form, including where he or she is unable to appear in person owing to enduring circumstances beyond his or her control, such as imprisonment or hospitalisation. The application shall be considered to have been lodged provided that the applicant submits the form within the time-limit set out in paragraph 1. In such cases, the time-limit for the examination of the application shall start to run from the date on which the competent authority receives the form.<sup>123</sup>

2. [...]
3. For the purposes of the first paragraph of paragraph 1b, [...] where there is a disproportionate number of third-country nationals or stateless persons that [...] **make an application** for international protection **within the same period of time**, making it difficult in practice to [...] **give the applicant an appointment** within [...] **that** time-limit [...] the applicant [...] **shall be given an appointment** to lodge his or her application **at a date** not later than ~~one~~ **two** months from [...] when the application is registered.<sup>124</sup>

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<sup>123</sup> **SI:** reservation, second sub-para is not necessary. **MT:** scrutiny reservation; the form should be submitted in person. **PRES:** to require the applicant to submit the form in person would defeat the purpose of having this possibility; this is an option for MS and it exists only if it is provided for in national law **EE, :** cannot support lodging by form. **IT:** in the second sub-para, delete the last sentence and replace "*within the time limit set out in para 1*" with "*as soon as possible and no later than fifteen working days from when the application is lodged by means of a form.*"; the form should be submitted in person.

<sup>124</sup> **EL:** reservation, deadline too short, use the following wording instead: "*whenever this is possible and under priority*". **ES, IT:** no deadline, "*as soon as possible*" instead.

4. When lodging an application, applicants are required to submit **as soon as possible** all the elements **and documents at their disposal** referred to in Article 4(2[...]) of Regulation (EU) No XXX/XXX (Qualification Regulation) needed for substantiating their application. [...] **After** the lodging of their application, **including at their personal interview**, applicants shall be [...] **allowed** to submit any additional elements relevant for its examination until a decision under the administrative procedure is taken [...].<sup>125</sup>

[...] <sup>126</sup>

5. [...]

6. [...]

6aa. **An applicant shall not be allowed to lodge an application, where he or she refuses to comply with the obligation to provide biometric data in accordance with Regulation (EU) No XXX/XXX (Eurodac Regulation), provided that the administrative measures set out in Article 2(3) of Regulation (EU) No XXX/XXX (Eurodac Regulation) have been exhausted.**

6a. **Member States may organise the access to the procedure in such a way that making, registering or lodging take place at the same time. In such cases the deadlines provided for in paragraphs 1 and 3 of this Article and Article 27 shall not apply.**<sup>127</sup>

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<sup>125</sup> **FI:** add "*or at the latest in the personal interview in accordance with Article 10 or 11*" after "*When lodging an application*". Include second sentence in Article 7 (d). **RO:** against the possibility for the applicant to submit evidence after the lodging. **PRES:** to ensure an adequate assessment of protection needs, it is necessary to allow the applicant to bring forward elements even after the lodging of the application; in this respect, the personal interview is a significant moment where applicants often provide the elements to substantiate their claim for international protection.

<sup>126</sup> **DE, SE:** keep deleted para.

<sup>127</sup> **EE:** delete last sentence

Article 29

**Documents for the applicant<sup>128</sup>**

1. The **competent** authorities of the Member State where an application for international protection is made shall, upon registration, provide the applicant with a document [...] **indicating** that an application has been made **and registered which shall be valid until the document referred to in paragraph 2 is issued [...]**.
- 1a. **The document referred to in paragraph 1 does not have to be provided if it is already possible to issue the document referred to in paragraph 2.**
- 1b. **The document referred to in paragraph 1 shall be withdrawn when the document referred to in paragraph 2 is issued.**
2. The **competent** authorities of the Member State where the application is lodged **in accordance with Article 28 (1) and (1a)** shall, [...] **as soon as possible after** the lodging of the application, [...] **issue a document which shall include<sup>129</sup> at least the following details, to be updated as necessary [...]**:
  - (a) **the name, date and place of birth, sex, nationality, [...]** facial image of the applicant[...] **and signature [...]**;
  - (b) [...] the issuing authority, date and place of issue and period of validity of the document;

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<sup>128</sup> **DE, ES, IT, SE, SK:** scrutiny reservation. **SI:** reservation. **NL:** it should be explicitly stated that this is necessary only when the three phases do not coincide or when the applicant remains within the reach of the competent authorities.

<sup>129</sup> **IT:** add the following: "*That document shall contain security features necessary to prevent its falsification.*"

- (c) [...] the status of the individual as an applicant;
- (d) stating that the applicant has the right to remain on the territory of that Member State and indicating whether the applicant is free to move within all or part of the territory of that Member State;
- (e) stating that the document is not a [...] travel document [...].<sup>130</sup>
- (f) [...]

**2a. It shall not be necessary to issue the documents referred to in this Article when and for as long as the applicant is in detention, imprisonment or kept at the border in accordance with Article 41.<sup>131</sup>**

**2b. In the case of accompanied minors, the documents referred to in this Article issued to one of the parents or adult responsible may also cover the minor, if appropriate.**

**2c. The documents referred to in this Article shall be considered as being sufficient means for applicants to identify themselves in relation to national authorities for the duration of the procedure for international protection.<sup>132</sup>**

3. [...]

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<sup>130</sup> **IT:** reservation on the deletion.

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

<sup>132</sup> **IE:** scrutiny reservation

4. The document referred to in paragraph 2 shall be valid for [...] **up to [...] twelve months or until the applicant is transferred to another Member State in accordance with Regulation (EU) XXX/XXX [Dublin Regulation]. Where the document is issued by the Member State responsible the validity [...]** shall be renewed [...] **so as to cover [...]** the period during which the applicant has a right to remain on [...] **its territory [...]**.<sup>133</sup>

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

5. [...]

### Article 30

#### Access to the procedure in detention facilities and at border crossing points<sup>134</sup>

1. [...]
- (a) [...]
- (b) [...]
- (c) [...]<sup>135</sup>

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<sup>133</sup> **BE, SI:** redraft as follows: "*The document referred to in paragraph 2 shall be valid for a period of six months which shall be renewed accordingly to ensure that the validity of that document covers the period during which as long as the applicant has a right to remain on the territory of the Member State responsible*". - this duration coincides with the duration of procedures until applicant obtains a legal status to stay or has to leave. Delete "*indicated on the document*" in the second sub-para. **DE:** scrutiny reservation on the validity; the text could be amended as follows: "*... for a period not exceeding six months or, in the case of a transfer in accordance with the Dublin Regulation, only until the applicant is transferred to the responsible Member State.*"

<sup>134</sup> **SI:** reservation.

<sup>135</sup> **EL:** keep deleted para.

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

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

#### *Article 30a*

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

1. **In the case of an adult requiring assistance to exercise legal capacity in accordance with national law ('dependent adult'), an adult responsible for him or her whether by law or by practice of the Member State concerned ('adult responsible') may make and lodge an application on the behalf of the dependent adult.**
2. **The dependent adult shall be present for the lodging of the application, unless except where there are justified reasons for which he or she cannot be present or, where such possibility is provided for in national law, the application is lodged by means of a form.**
3. **Without prejudice to this Article, Article 28 shall apply.**



Article 31

**Applications on behalf of an an [...] accompanied minor  
[...]<sup>136</sup>**

- 1 (new).** An accompanied minor shall have the right to lodge an application in his or her own name if he or she has the legal capacity according to the national law of the Member State concerned. Where the accompanied minor does not have the legal capacity according to the national law of the Member State concerned, the parents, a parent or another adult responsible for the minor, whether by law or by practice of the Member State concerned, shall lodge the application on his or her behalf.
- 2 (new).** In the case of an accompanied minor, who does not have legal capacity according to the national law of the Member State concerned, the making and lodging of an application by a parent or another adult responsible for him or her shall be considered to be the making and lodging of an application for international protection on behalf of the minor.<sup>137</sup>
- 3 (new).** Where the parent or adult responsible for the accompanied minor lodges the application on behalf of the minor, the minor shall be present for the lodging of the application, except where there are justified reasons for which the minor cannot be present or, where such possibility is provided for in national law, the application is lodged by means of a form.
- 4 (new).** Without prejudice to this Article, Article 28 shall apply.

1. [...]
2. [...]

---

<sup>136</sup> **IT, SK:** reservation. **DE:** clarify if an application be lodged only for persons who have (also) requested protection and have been registered.

<sup>137</sup> **DE, IE:** scrutiny reservation.

3. [...]
4. [...]
5. [...]
6. [...]
7. [...]
8. [...]
9. [...]
10. [...]

*Article 32*

**Applications of unaccompanied minors<sup>138</sup>**

1. An unaccompanied minor shall **have the right to lodge<sup>139</sup>** an application in his or her own name if he or she has the legal capacity [...] according to the national law of the Member State concerned[...]. **Where the unaccompanied minor does not have the legal capacity according to the national law of the Member State concerned [...] a [...] representative or a suitable person as referred to in Article 22 shall lodge [...] the application** on his or her behalf.

[...]

2. In the case of an unaccompanied minor, **who does not have legal capacity according to the national law of the Member State concerned the application shall be lodged without delay taking into account the best interests of the child [...]<sup>140</sup>.**

[...]

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<sup>138</sup> **DE, FR, IE, PT, SE, SI, SK:** scrutiny reservation.

<sup>139</sup> **SK,** supported by **CZ:** add "*make and*" before "*lodge*".

<sup>140</sup> **LU, SK:** scrutiny reservation.

- 2a. Where the representative of an unaccompanied minor lodges the application on behalf of the minor, the minor shall be present for the lodging of the application, except where there are justified reasons for which the minor cannot be present or, where such possibility is provided for in national law, the application is lodged by means of a form.
3. [...] Without prejudice to this Article, Article 28 shall apply.

## SECTION II

### EXAMINATION PROCEDURE

#### *Article 33*

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

1. [...] **The determining authority** shall examine **and take decisions on** applications for international protection in accordance with the basic principles and guarantees set out in Chapter II.
2. [...] <sup>141</sup> The determining authority shall examine applications objectively, impartially and on an individual basis. For the purpose of examining [...] **an** application, [...] **the determining authority** shall take the following into account:
  - (a) the relevant statements and documentation presented by the applicant [...] **in accordance with Article 4(1) and (2) of Regulation No. XXX/XXX [Qualification Regulation];**

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<sup>141</sup> **FR:** scrutiny reservation.

- (b) [...] relevant, [...] **precise** and up-to-date information relating to the situation prevailing in the country of origin of the applicant at the time of taking a decision on the application, including laws and regulations of the country of origin and the manner in which they are applied, [...], obtained from relevant **and available national, Union and international sources, and where available [...]** the common analysis **on the situation in specific [...]** countries[...] of origin [...] **and the guidance notes** referred to in Article 10 of Regulation (EU) No XXX/XXX [...] [EU Asylum Agency Regulation][...];
- (ca) **when applying the concepts of first country of asylum or safe third country, relevant, precise and up-to-date information relating to the situation prevailing in the third country being considered as a first country of asylum or a safe third country at the time of taking a decision on the application;**<sup>142</sup>
- (d) the individual position and personal circumstances of the applicant, ~~including factors~~ such as background, **sex [...]**, age, sexual orientation and gender identity so as to assess whether, on the basis of the applicant's personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious harm;
- (e) whether the activities that the applicant was engaged in since leaving the country of origin were carried out by the applicant for the sole or main purpose of creating the necessary conditions for applying for international protection, so as to assess whether those activities would expose the applicant to persecution or serious harm if returned to that country **as referred to in Article 5 of Regulation No XXX/XXX [Qualification Regulation];**
- (f) whether the applicant could reasonably be expected to avail himself or herself of the protection of another country where he or she could assert citizenship;<sup>143</sup>
- (fa) **whether the internal protection alternative as referred to in Article 8 of Regulation No XXX/XXX [Qualification Regulation] applies.**

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<sup>142</sup> **IT:** delete this point.

<sup>143</sup> **DE:** scrutiny reservation; according to which provision is this aspect significant for decisions?

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

**The applicant may, at his or her own cost, ensure the translation of documents which are not identified by the determining authority as being relevant. In case of subsequent applications, the applicant shall be responsible for the translation of documents.**<sup>144</sup>

5. [...] **The determining authority may prioritise the** examination of an application for international protection [...] in particular, where:<sup>145</sup>
- (a) the application is likely to be well-founded;
  - (b) the applicant has special reception needs within the meaning of Article 20 of Directive XXX/XXX/EU (Reception Conditions Directive), or is in need of special procedural guarantees, in particular where he or she is an unaccompanied minor:

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<sup>144</sup> **FR:** reservation. **CZ:** scrutiny reservation. **IT:** the first sentence should be a "*may*" clause; delete the third sentence.

<sup>145</sup> **PL:** delete para (5).

- (c) **there are reasonable grounds to consider the applicant as a danger to the national security or public order of the Member State;**
- (d) **the application is a subsequent application.**

*Article 34*

**Duration of the examination procedure<sup>146</sup>**

1. The examination to determine **whether an application is inadmissible** [...] in accordance with Article 36([...] **1a) and (1aa)(a) and (c)** shall **be concluded as soon as possible and not later than** [...] **two** months from the lodging of an application.<sup>147</sup>

**In the case referred to in Article 36(1aa)(b), the determining authority shall conclude the examination within eight working days.**

[...] <sup>148</sup>

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

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<sup>146</sup> **SE:** scrutiny reservation. **DE:** scrutiny reservation on the extensions of the deadlines. **DE,** supported by **BE, NL:** what are the legal consequences of failing to comply with the deadline? **EL:** reservation. **MT:** the proposed time-limits are a cause for concern as these will place an administrative burden. **NL:** short and concrete deadlines are necessary, in order for the applicant to have a quick answer to his application, reduce reception costs and prevent misuse. However, these deadlines should not be fixed, or there should be a possibility to extend them. **SE,** supported by **IT:** no support for many and varying time limits. Time limits may create administrative burdens.

<sup>147</sup> **EL:** reservation regarding the link with Dublin.

<sup>148</sup> **CZ:** scrutiny reservation on the deletion. **FR:** keep deleted sentence and add the following one: "*By way of exception, in the case referred to in Article 36(1aa), the determining authority shall conclude the preliminary examination referred to in Article 42(2) within fifteen working days.*" **DE:** against deleting the 10-day time limit.

- 1a. The determining authority shall conclude the accelerated examination procedure as soon as possible and not later than three months from the lodging of the application.
- 1b. The determining authority may extend the time-limits provided for in the first paragraph of paragraph 1 and in paragraph 1a by not more than ~~one~~ two months where:
- (a) a disproportionate number of third-country nationals or stateless persons make an application for international protection within the same period of time, making it difficult in practice to conclude the admissibility procedure or the accelerated examination procedure within the set time-limits;<sup>149</sup>
- (b) complex issues of fact or law are involved.
2. The determining authority shall ensure that an examination [...] on the merits, **which is not subject to an accelerated examination procedure**, is concluded as soon as possible and not later than six months from the lodging of the application[...].<sup>150</sup>
- ~~3.~~ The determining authority may extend that time-limit [...] not more than [...] ~~six~~ nine months<sup>151</sup>, where:
- (a) a disproportionate number of third-country nationals or stateless persons **make an application** [...] for international protection **within the same period of time**, making it difficult in practice to conclude the procedure within the six-month time limit;
- (b) complex issues of fact or law are involved;
- (c) **the delay can be attributed to the applicant for reasons beyond his or her control.**

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<sup>149</sup> **DE, FR:** two months instead. **MT:** replace "*may extend that period by not more than one month*" with "*decide to conclude the examination procedure within the time limits set out in Article 34(2)*".

<sup>150</sup> **DE:** does "*concluded*" mean the notification of the decision to the applicant pursuant to Art. 35 (1) of the Asylum Procedures Regulation? **EL:** reservation; extend the deadline if the examination on the merits has been preceded by an admissibility check; keep deleted text.

<sup>151</sup> **SK:** what will happen in situations, where the time limit for an examination procedure are not be met by determining authority due to the reasons on the applicant's side?

4. Where an application is subject to the procedure laid down in Regulation (EU) No XXX/XXX (Dublin Regulation), **and the applicant is already in the Member State responsible in accordance with Regulation (EU) No XXX/XXX (Dublin Regulation)**, the time-limits referred to in paragraphs 1a and 2, **and where applicable in paragraph 1**, shall start to run from the moment **the Member State responsible is determined. If the applicant is not in the Member State responsible, the time limit shall start to run from when the application is lodged in accordance with 28(1a). [...]**<sup>152</sup>

~~4a. Where the number of third-country nationals or stateless persons making applications for international protection remains disproportionate over a long period of time making it difficult in practice to conclude the procedure within the extended time-limits referred to in paragraphs 1b or 2, respectively, the time-limits may be extended by up to six months. For that purpose, the Member State concerned shall notify the Commission informing it of the need for an extended time-limit and the reasons for such an extension.~~

5. The determining authority may postpone concluding the examination procedure where it cannot reasonably be expected to decide within the time-limits laid down in paragraphs 1a and 2 [...] due to an uncertain situation in the country of origin which is expected to be temporary. In such cases, the determining authority shall:

(a) conduct reviews of the situation in that country of origin at least every [...] six months,<sup>153</sup>

(aa) **where available, take into account reviews of the situation in that country of origin carried out by the European Union Agency for Asylum;**

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<sup>152</sup> **DE:** scrutiny reservation; add "*Article 3(3)(a) and Article 3(3a) remain unaffected*" after "*the MS responsible is determined*".

<sup>153</sup> **EL:** redraft as follows: "*(a) take into consideration ~~conduct~~ reviews of the situation in that country of origin at least every two months; these reviews will be undertaken by competent bodies at EU level.*"



- (b) inform the applicants concerned within a reasonable time of the reasons for the postponement.<sup>154</sup>

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

- 5a. [...] ~~Without prejudice to paragraph 4a~~ The determining authority shall conclude the examination procedure within ~~18~~ 21 [...] months from the lodging of an application.

**6. Member States may lay down in national law rules on the consequences where the determining authority exceeds the time limits set out in this Article.**

### SECTION III

## DECISIONS ON APPLICATIONS

### *Article 35*

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

1. A decision on an application for international protection shall be given in writing and it shall be notified to the applicant **in accordance with national law** without undue delay [...].  
**Member States may provide that where a representative or legal adviser is representing the applicant, the determining authority shall notify the decision to the representative or legal adviser instead of the applicant.**<sup>155</sup>
2. Where an application is rejected as inadmissible, as unfounded with regard to refugee status or subsidiary protection status, as explicitly withdrawn or as [...] **implicitly withdrawn**, the reasons in fact and in law shall be stated in the decision.<sup>156</sup>

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<sup>154</sup> **BE:** can the information be provided collectively to applicants in a similar situation?

<sup>155</sup> **CY:** reservation.

<sup>156</sup> **CY:** reservation. **SK:** scrutiny reservation.

- 2a. **The applicant shall be informed of the result of the decision and [...] of how to challenge a decision [...] rejecting an application as inadmissible, as unfounded with regard to refugee status or subsidiary protection status, or as implicitly withdrawn. [...] That information shall be provided in a language that he or she understands or is reasonably supposed to understand when he or she is not assisted by a legal adviser[...]. Where the applicant is assisted by a legal adviser the information could be provided to that legal adviser without being translated in a language which he or she understands or is reasonably supposed to understand.**<sup>157</sup>
3. **Where applicants belong to the same family, including [...] accompanied minors or dependent adults [...] and whenever the application is based on the same grounds, the determining authority may, following an individual assessment for each applicant, take a single decision, covering all applicants, unless to do so would lead to the disclosure of particular circumstances of an applicant which could jeopardise his or her interests, in particular in cases involving gender, sexual orientation, gender identity or age-based persecution. In such cases, a separate decision shall be issued and notified in accordance with paragraph 1 [...].**

*Article 36*

**Decision on the inadmissibility of the application**<sup>158</sup>

1. [...]
- 1a. **The determining authority may reject [...] the application as inadmissible where any of the following grounds applies:**<sup>159</sup>

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<sup>157</sup> **CY, SK:** reservation.

<sup>158</sup> **SE:** scrutiny reservation. **CY, EL:** reservation.

<sup>159</sup> **DE:** reservation on the deletion and on the "may" clause (prefer a "shall" clause). **CZ, HU:** reservation, "shall" clause is preferable. **SI:** reservation.

- (a) a country which is not a Member State is considered to be a first country of asylum for the applicant pursuant to Article 44, unless it is clear **beforehand** that the applicant will not be admitted or readmitted to that country;
- (b) a country which is not a Member State is considered to be a safe third country for the applicant pursuant to Article 45, unless it is clear **beforehand** that the applicant will not be admitted or readmitted to that country;
- (c) [...]
- (d) [...]
- (f) **an international criminal court or tribunal has provided safe relocation for the applicant to a Member State or third country, or is unequivocally undertaking actions to that extent, unless new relevant circumstances have arisen which have not been taken into account by the court or tribunal or where there was no legal possibility to raise circumstances relevant to internationally recognized human rights standards before that international criminal court or tribunal.**

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

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

- (b) the applicant, who is issued with a return decision in accordance with Article 6 of Directive 2008/115/EC, makes an application only after seven ~~working~~ days from the date on which the applicant receives the return decision and provided that he or she had been informed of the consequences of not making an application within that time-limit and that no new relevant elements have arisen since the end of that period;<sup>160</sup>
- [(c) a Member State other than the Member State examining the application has granted the applicant international protection.]

2. [...]

3. [...]<sup>161 162</sup>

4. [...]

5. [...]

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<sup>160</sup> **HU:** seven days too long. **IT, RO:** delete "*he or she had been informed of the consequences of not making an application within that time-limit*".

<sup>161</sup> OJ L [...], [...], p. [...].

<sup>162</sup> **DE:** scrutiny reservation; clarify the reasons for the deletion.

**Decision on the merits of an application**

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

- (a) another Member State is responsible in accordance with Regulation (EU) No XXX/XXX (Dublin Regulation);<sup>163</sup> or**
- (b) an application is rejected as inadmissible in accordance with Article 36(1a) and (1aa).<sup>164</sup>**

1. When examining an application on the merits, the determining authority shall **determine** [...] whether the applicant qualifies as a refugee and, if not, it shall determine whether the applicant is eligible for subsidiary protection in accordance with Regulation (EU) No XXX/XXX (Qualification Regulation).
2. The determining authority shall reject an application as unfounded where it has established that the applicant does not qualify for international protection pursuant to Regulation (EU) No XXX/XXX (Qualification Regulation).
3. The determining authority shall **may** declare an unfounded application to be manifestly unfounded, **if at the time of the decision, any of the circumstances** [...] referred to in Article 40(1)[...], as well as in Article 40 (5) (a), (b) and (ba) applies,<sup>165</sup> **including where a decision is not taken within the time-limits referred to in Article 34 (1a) and (1b) or in the case referred in Article 40(4).**

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<sup>163</sup> **CZ:** scrutiny reservation.

<sup>164</sup> **SK:** reservation on para (-1). **CZ:** add a new point (c) drafted as follows: "(c) an application is explicitly or implicitly withdrawn". **SE:** delete para (-1).

<sup>165</sup> **BE, DE, FR, SE, SI:** scrutiny reservation on para (3).

**Explicit withdrawal of applications**

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

**Implicit withdrawal of applications<sup>166</sup>**

1. The [...] **competent** authority shall reject an application as [...] **implicitly withdrawn** where:<sup>167</sup>

(a) [...];

(b) [...];

(c) [...] **the application is not lodged in accordance with Articles 28 and or 30a to 32**;<sup>168</sup>

**(ca) the applicant refuses to cooperate by not complying with any of the obligations set out in Article 7 (2) (a) or (aa);**

**(cb) the applicant refuses to provide his or her address unless housing is provided by competent authorities;**

~~1aa. The determining authority shall reject an application as implicitly withdrawn where the examination of the application had already been discontinued once pursuant to paragraph 1a.~~

~~1a. The determining authority shall discontinue the examination of the application where:~~

(d) the applicant has, **without due cause**, not [...] **attended** a personal interview although he **or she** was required to do so pursuant to Article[...] 12;<sup>169</sup>

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<sup>166</sup> **DE, IT, PT, SE:** scrutiny reservation. **BE, RO, SI:** reservation.

<sup>167</sup> **ES, FR:** reservation on para (1).

<sup>168</sup> **DE, EL:** scrutiny reservation. **FR:** reservation.

<sup>169</sup> **DE:** scrutiny reservation on the deletion.

- (e) the applicant has **left the specific [...] place of residence designated in accordance with Article 7(1) of Regulation (EU) ) XXX/XXX (Reception Conditions Directive) [...] without authorisation as provided for in Article 7(34) of that Directive;**<sup>170</sup>
- (f) the applicant has [...] not complied **more than once** with reporting duties imposed on him or her in accordance with Article 7(2[...]) of Regulation (EU) ) XXX/XXX (Reception Conditions Directive);<sup>171</sup>
- (h) **the applicant does not remain available to the competent administrative or judicial authorities, such as by leaving the territory of the Member State without authorisation from the competent authorities for reasons which are not beyond the applicant's control, including by not remaining present in the Member State responsible or in the Member State of allocation pursuant to a transfer as provided for in Article 4(2a) of Regulation (EU) No XXX/XXX (Dublin Regulation);**
- (i) **the applicant has lodged the application in a Member State other than provided in article 4(1) and 4(1a) of the Dublin regulation and does not remain present in that State pending the determination of the Member State responsible or the implementation of the transfer procedure, if applicable.**

2. [...]

3. [...]

4. [...]

5. [...]

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<sup>170</sup> **DE, SK:** scrutiny reservation linked to RCD. **NL:** reservation. **SE:** replace with the following: "*the applicant has abandoned his or her application*".

<sup>171</sup> **SE:** delete point (f). **DE:** scrutiny reservation linked to RCD.



- 5a. ~~Where the determining authority discontinues the examination of the application, the time-limits referred to in Articles 34 and 41(2) shall be suspended and shall start to run from the moment that the applicant reports back to the determining authority.~~
- 5b. ~~In the cases referred to in paragraphs 1 and 1a, a~~An application may be rejected as unfounded where the determining authority has, at the stage that the application is implicitly withdrawn, already found that the applicant does not qualify for international protection pursuant to Regulation (EU) No XXX/XXX (Qualification Regulation).

## SECTION IV

### SPECIAL PROCEDURES

#### *Article 40*

#### **Accelerated examination procedure**<sup>172</sup>

1. **Without prejudice to Article 20(3)**, [...]the determining authority shall, in accordance with the basic principles and guarantees provided for in Chapter II, accelerate the examination on the merits of an application for international protection, in the cases where:<sup>173</sup>
  - (a) the applicant, in [...] **lodging** his or her application and presenting the facts, has only raised issues that are not relevant to the examination of whether he or she qualifies as a beneficiary of international protection in accordance with Regulation (EU) No XXX/XXX (Qualification Regulation);<sup>174</sup>

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<sup>172</sup> **HU:** substantive reservation (link with Dublin). **PRES:** there is no more link with Dublin. **BE, DE, FI, IE, IT, SE:** scrutiny reservation. **EL, SI:** reservation. **EL, ES, IE, IT, MT, SE:** "may" provision is preferable.

<sup>173</sup> **EL:** the determining authority should have the possibility to decide whether an accelerated procedure should be applied, based on the merits of the individual case. Either it should not be obligatory to apply the accelerated procedure, or the applicable (short) time limits should be extendable. Flexibility is needed to be able to cope with a high influx of manifestly unfounded cases.

<sup>174</sup> **DE:** insert "*clearly*" before "*not relevant*".

- (b) the applicant has made clearly **insufficient**, inconsistent [...] **or** contradictory, clearly false or obviously improbable representations which contradict [...] **relevant and available** country of origin information, thus making his or her claim clearly unconvincing [...] **as** to whether he or she qualifies as a beneficiary of international protection by virtue of Regulation (EU) No XXX/XXX (Qualification Regulation);
- (c) the applicant has misled the authorities by presenting false information or documents or by withholding relevant information [...];<sup>175</sup>
- (ca) **the applicant withheld documents relevant with respect to his or her identity or nationality or he or she has destroyed or disposed of an identity or travel document in order to prevent the establishment of his or her identity or nationality or if the circumstances clearly give reason to believe that this is the case;**
- (d) the applicant [...] **makes** an application merely to delay or frustrate the enforcement of [...] decision [...] **for** his or her removal from the territory of a Member State;
- (e) a third country may be considered as a safe country of origin for the applicant within the meaning of this Regulation;
- (f) [...] **there are reasonable grounds to consider the applicant as a danger to the national security or public order of the Member States, or the applicant had been forcibly expelled for serious reasons of national security or public order under national law;**<sup>176</sup>
- (g) [...]

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<sup>175</sup> **DE, CZ:** delete "*that could have had a negative impact on the decision*". **DE:** insert "*clearly*" before "*misled*".

<sup>176</sup> **DE:** keep previous drafting in the first sentence, namely "*the applicant may, for serious reasons be considered...*".

- (h) the application is a subsequent application **which is not inadmissible [...]**;<sup>177</sup>
- (i) **the applicant entered the territory of Member States unlawfully or prolonged his or her stay unlawfully and, without good reason, has either not presented himself or herself to the competent authorities or not made an application for international protection as soon as possible, given the circumstances of his or her entry.**

2. [...]

3. [...]

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

5. The accelerated examination procedure may be applied to unaccompanied minors only where:<sup>178</sup>

- (a) the applicant comes from a third country **that may be** considered to be a safe country of origin in accordance [...] **within the meaning of this Regulation;**
- (b) **there are reasonable grounds to consider** the applicant [...] **as a danger to the national security or public order of the Member State, or the applicant has been forcibly expelled for serious reasons of [...] national security or public order under national law;**
- (ba) **the application is a subsequent application which is not inadmissible;**<sup>179</sup>

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<sup>177</sup> **DE:** reservation on the deletion. **RO:** reservation.

<sup>178</sup> **DE:** scrutiny reservation; redraft para (5) as follows: “*The accelerated examination procedure shall not be applied to unaccompanied minors.*”

<sup>179</sup> **RO:** reservation.

- (c) the applicant withheld documents relevant with respect to his or her identity or nationality or he or she has destroyed or disposed of an identity or travel document ~~the applicant withheld documents relevant with respect to his or her identity or nationality or it is likely that he or she has destroyed or disposed of an identity or travel document that would have helped to establish his or her identity or nationality or if the circumstances clearly give reason to believe that this is the case;~~<sup>180</sup>
- (d) the applicant has misled the authorities by presenting false information or documents or by withholding relevant information or documents ~~that could have had a negative impact on the decision.~~

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

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<sup>180</sup> EL: reservation on "*it is likely that...*".

Article 41

**Border procedure**<sup>181</sup>

1. **Without prejudice to Article 20(3), Member States [...] shall**, in accordance with [...] **national law, provide for a border procedure whereby the determining authority may examine [...] applications at the external border or in the transit zones of the Member State and take decisions on:**<sup>182</sup>
  - (a) the **inadmissibility** of an application made at such locations pursuant to Article 36[...]<sup>183</sup>; or
  - (b) the merits of an application **made at such locations** in the cases subject to the accelerated examination procedure referred to in Article 40.
2. A decision referred to in paragraph 1 shall be taken **following an adequate and complete examination of the application** as soon as possible [...], and no [...] **later** than [...] **eight** weeks from when the application is lodged.<sup>184</sup>

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<sup>181</sup> **CZ, DE, EL, HU:** scrutiny reservation.

<sup>182</sup> **RO:** reservation. **NL:** A rejection of an asylum application in a border procedure has to be followed by a refusal to enter the country. A rejected asylum application is not such a refusal in itself, which is not efficient. Therefore redraft as follows: add "or (2)" in point (a) and add a second sub-para along the following lines: "*Such a decision shall, pursuant to article 8, paragraph 3, under d, of [the Reception Conditions Directive] be considered as a refusal to enter the territory.*".

<sup>183</sup> **CZ:** the reference should be "36 (2)" to reflect current renumbering; is it possible to issue a decision on withdrawal in the framework of a border procedure?

<sup>184</sup> **NL,** supported by **PL:** sometimes the responsibility for not concluding the procedure within 4 weeks belongs to the applicant (e.g. in cases of ID fraud, new document submitted very late etc); in such cases it should be possible to extend the period by another four weeks.

- 2a. **The competent authorities may carry out the procedure for determining the Member State responsible for examining the application as laid down in Regulation (EU) No XXX/XXX (Dublin Regulation) at the external border or in the transit zone of the Member State.**
3. Where a final decision **on the application** is not taken within [...] ~~eight~~ **twelve** weeks [...], the applicant shall no longer be kept at the border or **in the** transit zones and shall be granted entry to the territory of the Member State for his or her application to be processed in accordance with the other provisions of this Regulation.
4. In the event of arrivals involving a disproportionate number of third-country nationals or stateless persons **making** [...] applications for international protection at the **external** border or in **a the** transit zone, making it difficult in practice to apply the provisions of paragraph 1 at such locations, the border procedure may also be applied at locations in proximity to the **external** border or transit zone.<sup>185</sup>
5. The border procedure may be applied to unaccompanied minors, in accordance with Articles 8 to 11 of Directive (EU) No XXX/XXX (Reception Conditions Directive) **only in the cases referred to in Article 36(1a)(a) and (b) as well as in Article 40(5).** [...] <sup>186</sup>
- (a) [...]
- (b) [...]
- (c) [...]
- (d) [...]
- [...]

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<sup>185</sup> **NL:** add "*closed*" before "*locations*".

<sup>186</sup> **DE:** scrutiny reservation. **EL:** reservation on para (5), prioritising the examination of application from UAM is a good approach but it is doubtful that their best interest can be safeguarded in the accelerated or border procedure; clarify that in such cases it should be applied only if it is in the best interest of the child. **HR:** unclear wording.

**Subsequent applications<sup>187</sup>**

- 1. **An application made where a final decision on a previous application by the same applicant has not yet been taken shall be considered as a further representation and not as a new application.<sup>188</sup>**

**That further representation shall be examined in the Member State responsible in the framework of the ongoing examination in the administrative procedure or in the framework of any ongoing appeal procedure in so far as the competent court or tribunal may take into account the elements underlying the further representation.<sup>189</sup>**

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<sup>187</sup> **BE, CY, CZ, DE, IE, NL, PT, SE, SI:** scrutiny reservation. **EL:** reservation on the definition of subsequent application; streamline with the the cessation of responsibility clause in Dublin. **NL:** the system has become too complicated, as there are now three possible grounds to reject a subsequent applications with different procedural rules and consequences.

<sup>188</sup> **ES:** redraft as follows: "*applicant in the MS responsible*" and "*taken by that MS*" (also valid for para (1)). **MT:** "*Any further application made by the same applicant in a the Member State responsible after a final decision has been taken on a previous application by the same applicant shall be considered as a subsequent application.*"

<sup>189</sup> **IT:** it should be clarified how information on subsequent applications are supposed to be shared among Member States, and so how the responsible Member State could have access to a subsequent application in order to take it into account during the administrative or judicial procedure.

1. [...]Any further application made **by the same applicant** in a[...] Member State **after a final decision has been taken on a previous application by the same applicant** shall be considered to be a subsequent application **and shall be examined** by the Member State responsible.<sup>190</sup>
2. A subsequent application shall be subject to a preliminary examination in which the determining authority shall establish whether [...] new elements [...] have arisen or have been presented by the applicant **and** which:
  - (a) significantly increase the likelihood of the applicant **to** qualify[...] as a beneficiary of international protection by virtue of Regulation (EU) No XXX/XXX (Qualification Regulation); or
  - (b) [...] relate to **an inadmissibility ground previously applied, where [...]** the previous application was rejected as inadmissible.<sup>191</sup>

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<sup>190</sup> **EL, NL:** reservation. **EL:** the definition is too broad; between two applications the situation in the country of origin may have deteriorated significantly, especially when the time lapse between the two is long enough. The current understanding of subsequent applications is that they are abusive and are lodged only to delay an eventual return or to prolong the stay in the MS responsible. However, if the applicant is returned/readmitted and becomes again an asylum-seeker, several years later, due to an overall change of circumstances in his/her country of origin/country of readmission, then his/her second application cannot be examined as a subsequent application, i.e as an abusive one. A more appropriate definition is needed that will not risk restricting the rights of persons in real need; replace "*any MS*" by "*the MS responsible*". **MT:** delete para (-1) and redraft para (1) as follows: "*After a previous application has been rejected by means of a final decision, any further application made by the same applicant in the MS responsible shall be considered as a subsequent application.*"

<sup>191</sup> **BE:** clarify this point and para (3a).



3. The preliminary examination shall be carried out on the basis of written submissions [...] or a personal interview in accordance with the basic principles and guarantees provided for in Chapter II. **In particular, [...]**the personal interview may be dispensed with in those instances where, from the written submissions, it is clear that the application does not give rise to ~~relevant~~ new elements **as referred to in paragraph 2 [...]**.<sup>192</sup>
- 3a. **The elements presented by the applicant shall be considered as being new only where the applicant was unable, through no fault on his or her own part, to present those elements in the context of the earlier application.**<sup>193</sup> Any elements which could have been presented earlier by the applicant shall not be taken into account unless the previous application was rejected as implicitly withdrawn in accordance with Article 39 without an examination on the merits.
4. [...]Where  
 [...] new elements **as referred to in paragraph 2 [...]** have been presented by the applicant **or have arisen, the application shall be further examined on its merits, unless the application may be considered as inadmissible on the basis of another ground provided for in Article 36(1a).**
- (b) [...]
5. Where **no new elements as referred to in paragraph 2 have been presented by the applicant or have arisen, the application shall be rejected**<sup>194</sup> as inadmissible pursuant to Article 36 (1aa)(a) [...].

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<sup>192</sup> **RO:** the interview should be an exception; clarify who determines which alternative is sufficient / relevant.

<sup>193</sup> **IT:** reservation.

<sup>194</sup> **IT:** scrutiny reservation on para (5).

Article 43

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

Without prejudice to the principle of *non-refoulement*,<sup>195</sup> Member States may provide an exception from the right to remain on their territory and derogate from Article 54[...] (3)(ba), [...] **as from when:**

- (-a) **a first subsequent application has been lodged and is not further examined pursuant to Article 42(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;**
- (a) **a first subsequent application [...] is rejected by the determining authority as inadmissible, unfounded or manifestly unfounded;**<sup>196</sup>
- (b) a second or further subsequent application is made in any Member State following a final decision rejecting a previous subsequent application as inadmissible **or** unfounded or manifestly unfounded.<sup>197</sup>

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<sup>195</sup> **EL:** unclear how this principle will be respected while at the same time, denying the right to an effective remedy to all rejected subsequent applications.

<sup>196</sup> **EL:** reservation; according to this provision, there is no suspensive effect of the appeal in cases of subsequent applications that are rejected as inadmissible. This is problematic because it denies the right to an effective remedy. When the appeal will be examined by the court or tribunal and if the inadmissible decision is overturned, the applicant will no longer be in the MS in order to benefit from it.

<sup>197</sup> **EL, ES:** reservation regarding the reference to "*any MS*" (supported by **IT**) and "*final decision*". **ES, MT:** replace "*any MS*" with "*the MS responsible*". **RO:** delete "*unfounded or manifestly unfounded*".

## SECTION V

### SAFE COUNTRY CONCEPTS<sup>198</sup>

#### Article 43a

#### The notion of effective protection<sup>199</sup>

1. A third country that has ratified and respects the Geneva Convention within the limits of the derogations or limitations made by that third country, as permitted under the Convention, shall be considered as ensuring effective protection. In case of geographical limitations made by the third country, the existence of protection for persons who fall outside of the scope of the Convention shall be assessed in accordance with the criteria set out in paragraph 2.
2. In cases other than that referred to in paragraph 1, that third country shall be considered as ensuring effective protection where the following criteria are met as a minimum:<sup>200</sup>
  - (a) being allowed to remain on the territory of the third country;
  - (b) access to means of subsistence sufficient to maintain an adequate standard of living;<sup>201</sup>

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<sup>198</sup> **DE, SI, SK:** scrutiny reservation. **HU:** reservation.

<sup>199</sup> **SE:** scrutiny reservation. **NL:** suggestion for recital to Art 43a: "In addition to the requirement of sufficient protection and with a view to effective return and sustainable reception, where the European Union and a third country jointly come to a statement, arrangement or agreement to protect migrants in the third country, the objective should be to offer a higher level of protection in accordance with relevant substantive standards of the Geneva Convention."

<sup>200</sup> **SK:** scrutiny reservation.

<sup>201</sup> **HU:** scrutiny reservation; this points generates, together with the recitals, a complex set of conditions which makes it difficult to any third country to meet these conditions. **HR,** **NL:** needs to fit it with the EU TK statement.

- (c) access to emergency healthcare and essential treatment of illnesses; and
- (d) access to elementary education.

*Article 44*

**The concept of first country of asylum<sup>202</sup>**

1. A third country ~~may only~~ shall be considered to be a first country of asylum for an [...] applicant **where in that country [...]**:
  - (a) [...] **the applicant's life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;**
  - (b) [...] **the applicant faces no real risk of serious harm as defined in Article 16 of Regulation (EU) No XXX/XXX (Qualification Regulation);**
  - (ba) **the applicant is protected against refoulement and against removal, in violation of the right to protection from torture and cruel, inhuman or degrading treatment or punishment as laid down in international law;**
  - (bb) **the applicant enjoyed effective protection as defined in Article 43a before travelling to the Union and he or she can still avail himself or herself of that protection.**
2. [...]
  - (a) [...]
  - (b) [...]
  - (c) [...]
  - (d) [...]

---

<sup>202</sup> **BE, DE, SE, NL:** scrutiny reservation. **IT, EL:** reservation linked to Dublin.

(e) [...]

(f) [...]

(g) [...]

2a. ~~The concept of first country of asylum may be applied only following a~~An individual assessment of the particular circumstances of the applicant shall be carried out taking into account elements submitted by the applicant explaining why the concept of first country of asylum would not be applicable to him or her.

3. [...]

4. [...]

5. [...]

(a) [...]

(b) [...]

6. Where the third country in question does not [...] readmit the applicant to its territory **or does not reply within a time limit set by the competent authority**, the applicant shall [...] have access to the procedure in accordance with the basic principles and guarantees provided for in Chapter II and Section I of Chapter III.<sup>203</sup>

7. [...]

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<sup>203</sup> **DE, SK, HR:** scrutiny reservation. **FR, HU:** reservation; in case of non-admission, the file should be managed as a subsequent application. **SK:** the determining authority should either continue the examination of the application, or new application should be made.

**The concept of safe third country<sup>204</sup>**

1. A third country ~~may only~~ shall be designated as a safe third country [...] **where in that country.**<sup>205</sup>
  - (a) **non-nationals'** life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;
  - (b) **non-nationals face** [...] no **real** risk of serious harm as defined in **Article 16 of Regulation (EU) No XXX/XXX (Qualification Regulation)**;
  - (c) **non-nationals are protected against** [...] refoulement [...] **and against** [...] removal, in violation of the right to **protection** [...] from torture and cruel, inhuman or degrading treatment **or punishment** as laid down in international law [...];<sup>206</sup>
  - (e) the possibility exists **to request and, if conditions are fulfilled, receive effective protection as defined in Article 43a** [...].
- 1a. **The designation of a third country as a safe third country may be made with exceptions for specific parts of its territory or clearly identifiable categories of persons.**<sup>207</sup>
- 1b. [...] **When assessing** whether a third country [...] **shall** be designated as a safe third country in accordance with this Regulation **account shall be taken of** [...] a range of **relevant and available** sources of information, including [...] from Member States, the European Union Agency for Asylum, the European External Action Service, the United Nations High Commissioner for Refugees [...] and other relevant **intergovernmental or international** organisations.<sup>208</sup>

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<sup>204</sup> **DE, FR, IT, SE, LU:** scrutiny reservation. **CY:** reservation.

<sup>205</sup> **EE:** prefers "*shall*". **HU:** reservation, "*shall*" instead of "*may*" (red line).

<sup>206</sup> **DE, ES:** add "*and*" at the end of this point. **PRES:** the conditions in para (1) are cumulative.

<sup>207</sup> **FR:** reservation. **ES, FR, IT:** delete this para. **PRES:** the reference to part of the territory has been deleted.

<sup>208</sup> **HU:** "*may*" instead of "*account shall be taken of*".

2. The concept of safe third country ~~may~~ shall be applied;<sup>209</sup>

[...] where a third country has been designated as safe third country **at Union or national level** in accordance with Articles **46 or 50**.<sup>210</sup>

2a. **The concept of safe third country may be applied**

(b) [...]

[...] in relation to a specific applicant **where the country has not been designated as safe third country at Union or national level, provided that the conditions set out in paragraph 1 are met with regard to that applicant**.<sup>211</sup>

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

~~(a) an An individual assessment of the particular circumstances of the applicant has shall been carried out taking into account elements submitted by the applicant explaining why the concept of safe third country would not be applicable to him or her.~~<sup>212</sup>

~~(b) there is a connection between the applicant and the third country in question on the basis of which it would be reasonable for that person to go to that country.~~

3. [...]

(a) [...]

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<sup>209</sup> **FR, RO, SE:** "may" instead of "shall".

<sup>210</sup> **ES, IT, LU:** designation should only be at Union level. **EL:** reservation. Mandatory only upon designation at Union level. **FR:** reservation.

<sup>211</sup> **SI:** delete the para, no added value. **HU:** reservation, "shall" instead of "may" (red line).

<sup>212</sup> **NL:** add a new point: "*Where the EU and a third country jointly have come to a statement, arrangement or agreement that migrants admitted under this statement, arrangement or agreement will be protected in accordance with the relevant international standards and in respect of the principle of non-refoulement, the conditions of paragraph 2 may be considered fulfilled.*".

(b) [...]

4. [...]

5. [...]

6. [...]

(a) [...]

(b) [...]

7. Where the third country in question does not admit or readmit the applicant to its territory **or does not reply within a time limit set by the competent authority**, the applicant [...] shall **have [...]** access to the procedure in accordance with the basic principles and guarantees provided for in Chapter II and Section I of Chapter III.<sup>213</sup>

#### Article 46

#### Designation of safe third countries at Union level<sup>214</sup>

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

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<sup>213</sup> **HU, IT, PL, SI:** reservation linked to the Dublin Regulation. **DE:** scrutiny reservation. **BE, HU:** reservation, in case of non-admission, the file should be managed as a subsequent application. **NL:** Add a new para 45(8): "*Where a situation of severe crisis as mentioned in Article 34m of [the Dublin Regulation] occurs, paragraphs 1(e) and 2b(b) do not apply, provided that :*

(a) *the applicant will be admitted to the territory of the third country;*

(ii) *he or she has access to reception conditions or means of subsistence sufficient to maintain at least a basic standard of living;*

(iii) *access to emergency healthcare and essential treatment of illnesses; and*

(iv) *access to elementary education under the same conditions as for the nationals of the third country."*

<sup>214</sup> **SK:** scrutiny reservation.



2. The Commission shall [...] review the situation in third countries that are **on the EU common list of [...]** safe third countries [...] with the assistance of the European Union Agency for Asylum and based on the other sources of information referred to in [...] Article 45(1b).
- 2a. **The European Union Agency for Asylum shall, at the request of the Commission, provide it with information on specific third countries which could be considered for inclusion in the EU common list of safe third countries. The Commission may take into account a request from a Member States to assess whether a third country could be designated as a safe third country at Union level.**<sup>215</sup>
3. The Commission shall be empowered to adopt delegated acts to suspend the designation of a third country as a safe third country at Union level subject to the conditions as set out in Article 49.<sup>216</sup>

*Article 47*

**The concept of safe country of origin**<sup>217</sup>

1. A third country [...] **shall** be designated as a safe country of origin in accordance with this Regulation where, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is generally no persecution as defined in Article 9 of Regulation (EU) No XXX/XXX (Qualification Regulation) [...] **and no real risk of serious harm as defined in Article 16 of Regulation (EU) No XXX/XXX (Qualification Regulation).**<sup>218</sup>

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<sup>215</sup> **NL:** drafting proposal: "*Member States may invite the Commission to assess whether a third country can be designated as a safe country of origin. The Commission shall take the invitation into consideration in deciding whether Annex 1 should be amended. The Commission shall inform the Member States within six months about its decision*". **BE, EE, NL:** "shall" not "may". **PRES:** such a change would interfere with COM right of initiative.

<sup>216</sup> **CY:** scrutiny reservation. **HU:** delete this para.

<sup>217</sup> **BE:** scrutiny reservation. **CY:** reservation.

<sup>218</sup> **DE:** scrutiny reservation on "*that there is generally no persecution*".

- 1a. The designation of a third country as a safe country of origin may be made with exceptions for specific parts of its territory or clearly identifiable categories of persons.<sup>219</sup>
2. [...] **When assessing** whether a third country [...] **shall** be designated as a safe country of origin in accordance with this Regulation **account shall be taken of** [...] a range of **relevant and available** sources of information, including [...] information from Member States, the European Union Agency for Asylum, the European External Action Service, the United Nations High Commissioner for Refugees, [...] **and** other relevant **intergovernmental or international** organisations, and shall take into account **where available** the common analysis of the country of origin information referred to in Article 10 of Regulation (EU) No XXX/XXX (EU Asylum Agency).<sup>220</sup>
3. In making this assessment, account shall be taken, *inter alia*, of the extent to which protection is provided against persecution or [...] **serious harm** by:<sup>221</sup>
- (a) the relevant laws and regulations of the country and the manner in which they are applied;
  - (b) observance of the rights and freedoms laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms or the International Covenant for Civil and Political Rights or the United Nations Convention against Torture, in particular the rights from which derogation cannot be made under Article 15(2) of the said European Convention;

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<sup>219</sup> **FR:** reservation. **IT:** at the end add "*or particular social group*" to align the text to both Geneva Convention and Art. 44(1)(a).

<sup>220</sup> **FR:** prefers "*shall be based on*". **HU:** "*may*" instead of "*account shall be taken of*".

<sup>221</sup> **SI:** scrutiny reservation on para (3).

(c) [...]

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

4. **The concept of [...] a safe country of origin [...] may [...] only be applied provided that [...]:**<sup>222</sup>

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

[...]

**(aa) the applicant does not belong to a category of persons for which an exception was made when designating the third country as a safe country of origin;**<sup>223</sup>

(b) **an individual assessment of the particular circumstances of the applicant has been carried out taking into account elements submitted by the applicant explaining why the concept of safe country of origin would not be applicable to him or her** [...]<sup>224</sup>

~~(ba) the applicant does not belong to a category of persons for which an exception was made when designating the third country as a safe country of origin.~~

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<sup>222</sup> **SI:** scrutiny reservation on para (4). **HU:** reservation, "*shall*" instead of "*may*" (red line).

<sup>223</sup> **EL, FR, IT, NL:** reservation.

<sup>224</sup> **CZ:** scrutiny reservation. **SE:** delete point (b); serious ground is too high of a requirement in the field of evidence. **IT:** replace "*serious*" with "*substantive*".

**Designation of safe countries of origin at Union level<sup>225</sup>**

1. Third countries listed in Annex 1<sup>226</sup> to this Regulation are designated as safe countries of origin at Union level, in accordance with the conditions laid down in Article 47.
2. The Commission shall [...] review the situation in third countries that are on the EU common list of safe countries of origin, with the assistance of the **European Union Agency for Asylum** and based on the other sources of information referred to in Article 47[...] (2).
3. [...] **The European Union Agency for Asylum shall, at the request of the Commission, provide it with information on specific third countries which could be considered for inclusion in the common EU list of safe countries of origin.<sup>227</sup> The Commission may take into account a request from a Member States to assess whether a third country could be included in the common EU list of safe countries of origin.<sup>228</sup>**
4. The Commission shall be empowered to adopt delegated acts to suspend the presence of a third country from the EU common list of safe countries of origin subject to the conditions as set out in Article 49.<sup>229</sup>

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<sup>225</sup> **SK:** scrutiny reservation.

<sup>226</sup> **BE, DE, EE, ES, FR, IE, MT, SE, SK:** scrutiny reservation on Annex I. **CY:** reservation on Annex I. **CY, DE:** deciding whether to include Turkey in the list depends on further developments there and it should be done in close consultation with the European partners and EU institutions. **IT:** the list in Annex I should include all TC relevant for MS.

<sup>227</sup> **NL:** reservation.

<sup>228</sup> **BE, NL:** "shall" instead of "may". **NL:** drafting proposal: "*Member States may invite the Commission to assess whether a third country can be designated as a safe country of origin. The Commission shall take the invitation into consideration in deciding whether Annex I should be amended. The Commission shall inform the Member States within six months about its decision.*"

<sup>229</sup> **CY:** scrutiny reservation. **HU:** delete this para.

Article 49

**Suspension and removal [...] of a third country [...] from the EU common lists of safe third country or of safe country of origin<sup>230</sup>**

1. In case of [...] **significant** changes in the situation of a third country [...] which is on the EU common lists **of safe third country or** of safe countries of origin, the Commission shall conduct a substantiated assessment of the fulfilment by that country of the conditions set in Article 45 or Article 47 and, if the Commission considers that those conditions are no longer met, it shall adopt a delegated act suspending [...] the presence of a third country from the EU common lists **of safe third countries or** of safe countries of origin for a period of six months.<sup>231</sup>
2. The Commission shall continuously review the situation in that third country taking into account *inter alia* information provided by the Member States **and the European Agency for Asylum** regarding subsequent changes in the situation of that country.<sup>232</sup>
3. Where the Commission has adopted a delegated act in accordance with paragraph 1 [...] suspending the presence of a third country from the EU common lists **of safe third countries or** of safe countries of origin, it shall within three months after the date of adoption of that delegated act submit a proposal, in accordance with the ordinary legislative procedure, for amending this Regulation to remove that third country [...] from the EU common lists **of safe third countries or** of safe countries of origin.<sup>233</sup>

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<sup>230</sup> **SE:** scrutiny reservation. **HU:** reservation.

<sup>231</sup> **HU:** delete from "*the Commission shall...*"

<sup>232</sup> **IT:** delete para (2) as it is redundant.

<sup>233</sup> **IT:** one month instead of three months. **HU:** delete this para.

4. Where such a proposal is not submitted by the Commission within three months from the adoption of the delegated act as referred to in paragraph 1[...], the delegated act [...] suspending the presence of the third country from the EU common lists of **safe third countries or** of safe countries of origin shall cease to have effect. Where such a proposal is submitted by the Commission within three months, the Commission shall be empowered, on the basis of a substantiated[...] assessment, to extend the validity of that delegated act for a period of six months, with a possibility to renew this extension once.<sup>234</sup>
- 4a. **Without prejudice to paragraph 4, where the proposal submitted by the Commission to amend this Regulation to remove the third country from the EU common lists of safe third countries or of safe countries of origin is not adopted within eighteen months from when the proposal was submitted by the Commission, the suspension of the presence of a third country from the EU common lists of safe third countries or of safe countries of origin shall cease to have effect.**<sup>235</sup>

#### Article 50

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

1. [...] Member States may retain or introduce legislation that allows for the national designation of safe third countries or safe countries of origin other than those [...] which are on the EU common lists in Annex 1 **and 1a** for the purposes of examining applications for international protection.<sup>236</sup>
2. Where [...] the presence of a third country has been suspended from the EU common lists in Annex 1 **or 1a** to this Regulation pursuant to Article 49(1), Member States shall not designate that country as a safe third country or a safe [...] country of origin at national level [...].<sup>237</sup>

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<sup>234</sup> **IT:** one month instead of three months. **HU:** delete this para.

<sup>235</sup> **EL:** scrutiny reservation. **CZ, SK:** 12 months instead of 18. **HU:** delete this para.

<sup>236</sup> **NL:** reservation.

<sup>237</sup> **NL:** in this case, it should still be possible to apply the concept of safe third countries on basis of Article 45(2)(c); therefore delete "nor shall they apply the safe third country concept on an ad hoc basis in relation to a specific applicant." **HU:** delete this para.

3. Where a third country [...] has been removed from the EU common lists in Annexe I or Ia to the Regulation in accordance with the ordinary legislative procedure, a Member State may notify the Commission that it considers that, following changes in the situation of that country, it again fulfils the conditions set out in Article 45(1) and Article 47.

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

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

The notifying Member State may only designate that third country as a safe third country or as a safe country of origin at national level provided that the Commission does not object to that designation.<sup>238</sup>

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

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<sup>238</sup> **DE:** unclear how suspending/removing a country from the common EU list will affect an existing designation at national level. Art. 50(2) and (3) only refer to the subsequent national designation. **PRES:** where a third country is on the EU common list it must be removed from a national list. **IE:** scrutiny reservation on this subpara.

Where it considers that those conditions are fulfilled, the Commission may propose an amendment to this Regulation in order to add that third country to the EU common lists of safe countries of origin or of safe third countries.<sup>239</sup>

4. Member States shall notify the Commission and the European Union Agency for Asylum of the third countries that are designated as safe third countries or safe countries of origin at national level **upon the date of application of this Regulation and** immediately after ~~such~~ **each designation or changes to the designations**. Member States shall inform the Commission and the Agency once a year of the other safe third countries to which the concept is applied [...] in relation to specific applicants **as referred to in Article 45(2a)**.<sup>240</sup>

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<sup>239</sup> **HU:** delete the last two paras.

<sup>240</sup> **SK:** scrutiny reservation. **ES:** in the light of para (1), both newly designated countries and the third countries already designated at national level should be notified on the date of entry into force of this Regulation; it would also be useful to mention a deadline by which Member States should inform the Commission and the European Union Agency for Asylum in relation to the countries to which they apply "ad hoc" (see also the comment under para (2) ) the concepts in question (given that this would allow an EU-wide analysis to be carried out in the year in which the information is communicated in this case, and on the basis of this analysis, unitary practices could be stimulated / adopted). **FR, SE:** delete the second sentence (see comment on Art. 44 (7)). **PRES:** MS must notify of any existing list of the time of application of this regulation or of any changes of that list.



## CHAPTER IV

# PROCEDURES FOR THE WITHDRAWAL OF INTERNATIONAL PROTECTION<sup>241</sup>

### *Article 51*

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

The determining authority shall start the examination to withdraw international protection from a **third-country national or stateless** [...] person when new elements or findings arise indicating that there are reasons to reconsider [...] **whether he or she qualifies for international protection.**<sup>242</sup>

### *Article 52*

#### **Procedural rules for withdrawal of international protection**<sup>243</sup>

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

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<sup>241</sup> **DE, SI:** scrutiny reservation.

<sup>242</sup> **SK:** add "*in particular*" before "*when new elements*".

<sup>243</sup> **DE:** scrutiny reservation.

- (aa) **he or she shall be informed of the obligation to cooperate fully with the determining authority and other competent authorities, the fact that he or she shall be required to make a written statement or appear for a personal interview or a hearing as well as of the consequences of not cooperating with the determining authority and other competent authorities and that failure to submit the written statement or to attend the personal interview or the hearing without due justification shall not prevent the determining authority or the competent court or tribunal from taking a decision to withdraw international protection<sup>244</sup>.**
- (b) **he or she shall be given the opportunity to submit [...] reasons as to why his or her international protection should not be withdrawn** by means of a written statement **within reasonable time from the date on which he or she receives the information referred to in point (a) [...] or in a personal interview or hearing at a date set by the determining authority or if provided for by national law, the competent court or tribunal [...].**

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

- (a) **[...] shall obtain relevant, precise and up-to-date information from relevant and available national, Union and international [...] sources, [...] and where [...] available, take into account the common analysis on the situation in a specific country of origin and the guidance notes referred to in Article 10 of Regulation No XXX/XXX [...] Regulation on the European Union Agency for Asylum] [...]; and**
- (b) **[...] shall not obtain information from the actors of persecution or serious harm in a manner that would result in such actors being directly informed of the fact that the person concerned is a beneficiary of international protection whose status is under reconsideration, or jeopardise the physical integrity of the person or his or her dependants, or the liberty and security of his or her family members still living in the country of origin.**

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<sup>244</sup> **PRES:** underlined text moved from para 1(b) in document 8673/18

3. The decision [...] to withdraw international protection shall be given in writing. The reasons in fact and in law shall be stated in the decision and information on the manner in which to challenge the decision shall be given in writing.
4. Where the determining authority has taken the decision to withdraw international protection, the provisions of Article [...] **5b**, [...] Articles 15a to [...] **17 and Article 53 (4a)** shall apply.<sup>245</sup>
- 4a. Where the third country national or stateless person does not cooperate, where applicable, by not submitting a written statement or by not attending the personal interview or the hearing without due justification, the absence of the written statement or the personal interview or hearing shall not prevent the determining authority or the competent court or tribunal from taking a decision to withdraw international protection provided that there are sufficient elements to consider that the person no longer qualifies for international protection.**<sup>246</sup>
5. [...] **The procedure set out in this Article shall not apply** [...] where the **third country national or stateless person** [...] <sup>247</sup>:
- (a) [...] **explicitly** [...] <sup>248</sup> renounces [...], **in writing**, his or her recognition as **beneficiary of international protection** [...] or
- (b) **where he or she** [...] has become a national of [...] a Member State [...].<sup>249</sup>

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<sup>245</sup> **CZ, DE, EL:** scrutiny reservation.

<sup>246</sup> **DE, NL, SK:** reservation on para (4a). **DE:** add "*If no response is received within this time limit with an adequate excuse, the competent authority shall decide in accordance with national law on how to consider, and the effects of, the failure to cooperate*" and "*If the person concerned does not comply with this request, he or she shall be informed in writing of the time limit of one month and the legal consequences of failure to comply*".

<sup>247</sup> **DE:** scrutiny reservation on the amendments. Why were these made? **PRES:** MS asked for more clear text. These cases are not grounds for withdrawal., **SK:** reservation.

<sup>248</sup> **FI:** add "*personally with an authority*" after "*in writing*". This is an important measure and there should be no room for misuse.

<sup>249</sup> **DE:** scrutiny reservation on para (5).

## CHAPTER V

### APPEAL PROCEDURE<sup>250</sup>

#### *Article 53*

#### **The right to an effective remedy<sup>251</sup>**

1. 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 [...]:
    - (i) rejecting an application as inadmissible [...];
    - (ii) rejecting an application as unfounded or manifestly unfounded in relation to refugee status or subsidiary protection status [...];
    - (iii) rejecting an application as [...] **implicitly** withdrawn [...];
    - (iv) [...].
  - (b) a decision to withdraw international protection [...].<sup>252</sup>

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<sup>250</sup> **FR:** reservation. **CZ, DE, EL, ES, FI, PT, SK, SI:** scrutiny reservation.

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

<sup>252</sup> **DE, EL:** another category of cases should be added, covering disputes between member states and beneficiaries of protection as to whether protection status pursuant to Art. 52 (5) of the Asylum Procedures Regulation has expired by law, i.e. not due to an administrative decision

2. Persons recognised as eligible for subsidiary protection have the right to an effective remedy against a decision considering [...] **the application unfounded in relation to refugee status. Without prejudice to paragraph 1(b), where subsidiary protection status granted by a Member State offers the same rights and benefits as refugee status under Union and national law, the appeal against that decision in that Member State may be considered as inadmissible where provided for in national law.**<sup>253</sup>
3. An effective remedy within the meaning of paragraph 1 shall provide for a full and *ex nunc* examination of both facts and points of law, **at least before a court or tribunal of first instance**, including, where applicable, an examination of the international protection needs pursuant to Regulation (EU) No XXX/XXX (Qualification Regulation).<sup>254</sup>
- 3a. **Member States may provide in national law that [...]**the applicant may only bring forward new elements which are relevant for the examination of his or her application and which he or she could not have been aware of at an earlier stage or which relate to changes to his or her situation.
4. [...] <sup>255</sup>
- 4a. **Applicants shall be provided with interpretation for the purpose of a hearing before the competent court or tribunal where such a hearing takes place and where appropriate communication cannot otherwise be ensured.**<sup>256</sup>

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<sup>253</sup> **EL:** scrutiny reservation. **CZ:** add "*by the court or tribunal*" in the end. **DE:** does "*may*" refer to a legislative option for MS? **SE:** redraft the end as follows "*...that MS may consider an appeal that decision*".

<sup>254</sup> **CZ, HU, PL, SK:** it should not mean that the court will have the power to grant international protection itself. **CZ, EL,** clarify "*including, where applicable, an examination of the international protection needs pursuant to Regulation (EU) No XXX / XXX (Qualification Regulation)*", in the context of the preliminary references to the rulings of the European Court of Justice in cases C-586/17 and C-652/16. **PRES:** the court or tribunal should be able to pronounce itself on the international protection needs but it is not required that the court or tribunal formally issues the decision granting international protection if under national law that competence is reserved to the determining authority.

<sup>255</sup> **EL:** against deletion.

<sup>256</sup> **SK:** scrutiny reservation.

5. **Where the court or tribunal considers it necessary, it shall ensure the translation of relevant documents which have not already been translated in accordance with Article 33(4).**

**If the applicant agrees that the translation is not needed or the documents are not submitted sufficiently in advance for the court or tribunal to ensure their translation, the court or tribunal may refuse to take those documents into account if they are not accompanied by a translation provided by the applicant. [...]**<sup>257</sup>

6. **[...] Member States shall lay down in their national law time-limits for applicants to lodge an appeals against [...] a decision referred to in paragraph 1. Those time-limits shall be set:**<sup>258</sup>

(a) **[...];**

(b) **[...] between a minimum of two days and a maximum of one week in the case of a decision rejecting an application as inadmissible, as implicitly withdrawn, as unfounded or manifestly unfounded if at the time of the decision any of the circumstances listed in Article 40(1) and (5) apply [...] or in cases where the applicant is held in detention or kept at the border;**<sup>259</sup>

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<sup>257</sup> **BE, FR,;** reservation. **SE:** delete this para or redraft as follows: "*Where the court or tribunal considers it necessary for the examination of the application, relevant documents shall be translated.*"

<sup>258</sup> **SK:** reservation on para (6). **EL:** scrutiny reservation on the time-limits. **DE:** this delegation is in favour of time limits for lodging appeals and applications which correspond to those in national law: for appeals, in principle two weeks; time limits of one week for lodging appeals and applications in case of rejection as inadmissible or manifestly unfounded. **HU, SE, SK, ES:** replace para (6) with the following text: "*Member States shall provide for reasonable time limits and other necessary rules for the applicant to exercise his or her right to an effective remedy. The time limits shall not render such exercise impossible or excessively difficult.*" **FI:** deadlines too short. **FR, LU, PL:** deadlines should be in calendar days and could be shortened. **PRES:** in this case the deadlines will run during weekends and holidays but the authorities will not be able to receive the appeal. The right to lodge an appeal is not guaranteed.

<sup>259</sup> **LV:** scrutiny reservation. **FI:** five days and two weeks instead.

- (c) [...] between a minimum of one week and a maximum of one month in all other cases [...].<sup>260</sup>

[...] Member States may provide for an *ex officio* review of decisions taken pursuant to a border procedure.<sup>261</sup>

The time-limits [...] **referred to** in this paragraph shall start to run from the date when the decision of the determining authority is notified to the applicant [...].<sup>262</sup> **The procedure for notification shall be laid down in national law.**

#### Article 54

#### Suspensive effect of appeal<sup>263</sup>

1. [...] Applicants **shall have the right** to remain on **the [...]** territory of the Member State **responsible** until the time limit within which to exercise their right to an effective remedy **before a court or tribunal of first instance** has expired and, when such a right has been exercised within the time limit, pending the outcome of the remedy.<sup>264</sup>

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<sup>260</sup> **CZ, HU:** deadline too long. **PRES:** this is a balanced compromise. **ES:** two months or no maximum deadline.

<sup>261</sup> **ES, HU:** reservation on the *ex officio* reviewing procedure. **PRES:** it is a “*may*” clause. **SE:** scrutiny reservation on the reference to a border procedure.

<sup>262</sup> **DE:** reservation.

<sup>263</sup> **DE, RO, SI:** scrutiny reservation. **ES:** reservation. **EL:** the case-by-case examination of the right to remain should not be part of the asylum procedure but rather part of the return procedure. We risk overburdening the authorities dealing with second instance examination.

<sup>264</sup> **DE, NL:** reservation; in case of a return decision and/or a decision on removal and/or entry ban has been adopted in accordance with Article 6(6) of Directive 2008/115/EC, this decision shall be suspended accordingly. **FI:** add “*Without prejudice to Article 43 (1)*” in the beginning.

2. **The applicant shall not have the right to remain in accordance with paragraph 1 shall not apply [...]**in case of the following [...] decisions by the determining authority.<sup>265</sup>
- (a) a decision which [...] **rejects** an application [...] **as unfounded or** manifestly unfounded **if at the time of the decision any of the circumstances listed in Article 40(1) and (5) apply or in the cases subject to a border procedure [...]**;<sup>266</sup>
  - (b) a decision which rejects an application as inadmissible pursuant to Article 36(1a)(a) and [...] **(1aa)(a) and (b)**;<sup>267</sup>
  - (c) a decision which rejects an application as [...] **implicitly** withdrawn [...];<sup>268</sup>
  - (ca) a decision to withdraw international protection in accordance with Article 14(1)(b), (d) and (e) and Article 20(1)(b) of Regulation No XXX/XXX (Qualification Regulation).**

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<sup>265</sup> **DE:** redraft this para as follows: "*The applicant's right to remain on the territory of the Member State in accordance with paragraph 1 shall be excluded: a) in cases where the application is rejected as inadmissible or as manifestly unfounded, b) in cases where international protection is withdrawn pursuant to Article 52 for the following reasons: (i) Article 14 paragraph 1 letter b) in conjunction with Article 12 paragraph 2 of the [Qualification Regulation], (ii) Article 14 paragraph 1 letters d) to f) of the [Qualification Regulation], (iii) Article 20 paragraph 1 letter b) in conjunction with Article 18 paragraph 1 of the [Qualification Regulation] or (iv) Article 20 paragraph 1 letter d) of the [Qualification Regulation]. In cases under sentence 1, a court or tribunal shall have the power to rule whether or not the applicant may remain on the territory of the Member State responsible, either upon the applicant's request or acting ex officio.*" **SE:** hesitant regarding the extension of cases where the suspensive effect is not automatic in 54(2). In particular regarding the new (ca) but also in relation to all cases in the accelerated procedure since the scope of article 40 has been extended compared to article 31(8) of the current directive.

<sup>266</sup> **SE:** delete "*in the cases subject to an accelerated examination procedure or border procedure.*" **PRES:** this is covered under point (ca) and accelerated procedure.

<sup>267</sup> **IT:** reservation. **DE, FI:** include 36(1a)(b).

<sup>268</sup> **DE:** scrutiny reservation on the categories in (a)-(c). **SE:** scrutiny reservation on point (c).



In those cases, a court or tribunal shall have the power to rule following an examination of facts and law whether or not the applicant may remain on the territory of the Member State responsible pending the outcome of the remedy upon the applicant's request. The competent court or tribunal may under national law have the power to decide on this matter *ex officio*. ~~The competent court or tribunal shall rule on whether the applicant may remain following an examination of both facts and law.~~<sup>269</sup> This procedure may be conducted as a part of the appeal procedure and by the same court or tribunal competent to hear the appeal.

3. For the purpose of paragraph 2, the following conditions shall apply<sup>270</sup> [...]:
- (a) the applicant shall have [...] at least 2 days from the date when the decision is notified to the applicant to [...] request [...] to be allowed to remain on the territory pending the outcome of the remedy;<sup>271</sup> [...]
  - (aa) the applicant shall be provided with interpretation in the event of a hearing before the competent court or tribunal, where appropriate communication cannot otherwise be ensured;<sup>272</sup>
  - (ab) the applicant shall be provided, upon request, with free legal assistance and representation, where he or she lacks sufficient resources unless the application has no sufficient prospect of success<sup>273</sup>;
  - (b) [...]

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<sup>269</sup> **SK:** reservation. **RO:** scrutiny reservation. **DE:** must the request be made within a specific time limit? Does Art. 53 (6) apply here? It must be clarified whether a statutory order by the authority is needed for the immediate enforcement or whether the suspensive effect is omitted ipso iure. **PRES:** the deadline is specified in Paragraph 3 of this Article. Art. 53 (6) does not apply here. Suspensive effect is non – automatic.

<sup>270</sup> **CZ:** delete para (3). **SE:** too complicated, administrative burden.

<sup>271</sup> **CZ:** scrutiny reservation.

<sup>272</sup> **DE, SI:** scrutiny reservation. **SK:** add "*where relevant*" in the beginning. **SE:** delete

<sup>273</sup> **IT:** add reference to national law. **SE:** delete

[...] (ba) the applicant shall [...] not be removed from [...] the territory of the Member State responsible:<sup>274</sup>

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

(ii) where the applicant has requested to be allowed to remain within the set time limit, pending the [...] decision of the court or tribunal on whether or not the applicant may remain on the territory. [...]<sup>275</sup>

5. [...]

#### Article 55

#### Duration of the first level of appeal

1. Member States shall lay down in their national law time limits for the court or tribunal to examine the decision of the determining authority.<sup>276</sup> [...]

(a) [...]

(b) [...]

(c) [...]

2. [...]

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<sup>274</sup> **NL:** redraft as follows: "*the applicant shall not be removed from the territory of the Member State responsible until.*"

<sup>275</sup> **SE:** scrutiny reservation on the sub-para. **CZ:** add "*on condition the request has been submitted together with the appeal*" after "*on the territory*". **DE:** reservation on the deletion; replace with the following: "*That decision should regularly be taken within one month from the lodging of the appeal.*"

<sup>276</sup> **SE:** "*may*" instead of "*shall*". **DE:** reservation.

## CHAPTER VI

### FINAL PROVISIONS

#### *Article 56*

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

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

#### *Article 57*

##### **Cooperation**<sup>277</sup>

1. Each Member State shall appoint a national contact point and send its address to the Commission. The Commission shall send that information to the other Member States.
2. Member States shall, in liaison with the Commission, take all appropriate measures to establish direct cooperation and an exchange of information between the responsible authorities.
3. When resorting to the measures referred to in Article 27(3), Article 28(3) and Article 34(1) and (3), Member States shall inform the Commission and the European Union Agency for Asylum as soon as the reasons for applying those exceptional measures have ceased to exist and at least on an annual basis. That information shall, where possible, include data on the percentage of the applications for which derogations were applied to the total number of applications processed during that period.<sup>278</sup>

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<sup>277</sup> **DE:** scrutiny reservation.

<sup>278</sup> **SK:** scrutiny reservation. **RO:** delete reference to Article 34.

Article 57a

Data storage<sup>279</sup>

1. ~~Where an application is rejected, the competent authorities shall store the data referred to in Article 13(1), Article 27 (1) and Article 28 (4) for ten years from the date of a final decision rejecting that application. If, during that period a subsequent application is registered, the data storage period referred to in this paragraph shall start to run anew from the date on which information related to the subsequent application is added to the applicant's file.~~
2. ~~Where international protection is granted, the competent authorities shall store the data referred to in Article 13(1), Article 27 (1) and Article 28 (4) for ten years from the date of the final decision granting international protection. If during that period, a procedure for withdrawing international protection is initiated, the data storage period referred to in this paragraph shall start to run anew from the date on which information on the procedure for withdrawing international protection is added to the applicant's file.~~
3. ~~Upon expiry of the retention period referred to in paragraphs 1 and 2, the data in question shall automatically be erased.~~

Member States shall store the data referred to in Articles 13, 27 and 28 for as long as necessary in their national system, in compliance with the GDPR, including the principle of purpose and storage limitation.<sup>280</sup>

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<sup>279</sup> **DE:** scrutiny reservation.

<sup>280</sup> **SE:** data may be stored solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes. Regulation (EU) 2016/679 shall apply to processing for such purposes.

## Article 57b

### Calculation of time limits

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

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

## *Article 58*

### **Committee Procedure<sup>281</sup>**

1. The Commission shall be assisted by the committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.<sup>282</sup>

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<sup>281</sup> **MT:** scrutiny reservation. **NL:** delete this article.

<sup>282</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
3. [...]

*Article 59*

**Delegated acts**<sup>283</sup>

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in paragraph 1 shall be conferred on the Commission for a period of five years from the date of entry into force of this Regulation. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of power may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect on the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts such a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

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<sup>283</sup> **DE, ES, MT:** scrutiny reservation.

5. Such a delegated act and its extensions shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of one month from notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object.<sup>284</sup>

#### *Article 60*

### **Monitoring and evaluation**<sup>285</sup>

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

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

#### *Article 61*

### **Repeal**

Directive 2013/32/EU is repealed.

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

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<sup>284</sup> **FR:** this delegation strongly opposes the suggestion of the EP to resort to emergency procedures in case of sudden changes in a country that is on the lists of safe countries of origin: in our view, the one-month time-limit is already very short, which makes it a balanced compromise between the need to act quickly and the need to respect the powers of the co-legislators.

<sup>285</sup> **SE:** add the following: "*By [18 months after entry into force], the Commission shall review the application of the lists of safe countries.*"

*Article 62*

**Entry into force and application**

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

This Regulation shall start to apply from [...]two years from its entry into force].<sup>286</sup>

**This Regulation shall apply to the procedure for granting international protection in relation to applications made as from the date of application of this Regulation. Applications for international protection made before that date shall be governed by Directive 2013/32/EU.**

**This Regulation shall apply to the procedure for withdrawing international protection where the examination to withdraw international protection started as from the date of application of this Regulation. Where the examination to withdraw international protection started before the date of application of this Regulation the procedure for withdrawing international protection shall be governed by Directive 2013/32/EU.**

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

Done at Brussels,

*For the European Parliament*

*The President*

*For the Council*

*The President*

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<sup>286</sup> **DE:** scrutiny reservation.