COUNCIL OF THE EUROPEAN UNION

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OUTCOME OF PROCEEDINGS

of:	Asylum Working Party
on:	28 June, 5 and 20 July and 27 September 2011
No Cion proposal:	11207/11 ASILE 45 CODEC 980
Subject:	Amended proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on common procedures for granting and withdrawing international protection status (Recast)

At its meetings on 28 June, 5 and 20 July and 27 September 2011, the Asylum Working Party examined above mentioned amended proposal for a Directive on common procedures for granting and withdrawing international protection status (Recast). The result of this examination is set out below with delegations' comments in the footnotes.

New text to the Commission proposal is indicated by underlining the insertion and including it within Council tags: ➲ _ ➲; deleted text is indicated within underlined square brackets as follows: ➲ [...] ➲.

ANNEX

2009/0165 (COD)

Amended proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on common procedures for granting and withdrawing international protection status

(Recast)

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[1],

Having regard to the opinion of the Committee of the Regions[2],

Acting in accordance with the ordinary legislative procedure,

Whereas:

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1 OJ C […], […], p. […].
2 OJ C […], […], p. […].

⇩ new

(1) A number of substantive changes are to be made to Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures for granting and withdrawing refugee status[3]. In the interest of clarity, that Directive should be recast.

🡻 2005/85/EC recital 1 (adapted)
⇨ new

(2) A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of establishing progressively an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the ⌦ Union ⌫ ~~Community~~. ⇨ It should be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. ⇦

🡻 2005/85/EC recital 2

(3) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention of 28 July 1951 relating to the status of refugees, as amended by the New York Protocol of 31 January 1967 (Geneva Convention), thus affirming the principle of non-*refoulement* and ensuring that nobody is sent back to persecution.

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[3] OJ L 326, 13.12.2005, p. 13.

↓ 2005/85/EC recital 3 (adapted)

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

↓ 2005/85/EC recital 4
⇨ new

(5) ⇨ The first phase of a Common European Asylum System was achieved through the adoption of relevant legal instruments foreseen in the Treaties, including Directive 2005/85/EC which was ⇦ ~~The minimum standards laid down in this Directive on procedures in Member States for granting or withdrawing refugee status are therefore~~ a first measure on asylum procedures.

⇩ new

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

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

(8) The European Council, at its meeting of 10-11 December 2009, adopted the Stockholm Programme which reconfirmed the commitment to establishing a common area of protection and solidarity based on a common asylum procedure and a uniform status for those granted international protection based on high protection standards and fair and effective procedures by 2012. The Stockholm Programme affirmed that people in need of international protection must be ensured access to legally safe and efficient asylum procedures. In accordance with the Stockholm Programme, individuals, regardless of the Member State in which their application for asylum is lodged, should be offered the same level of treatment as regards procedural arrangements and status determination. The objective should be that similar cases should be treated alike and result in the same outcome.

(9) The resources of the European Refugee Fund and of the European Asylum Support Office, established by Regulation (EU) No 439/2010 of the European Parliament and of the Council[4], should be mobilised to provide adequate support to the Member States' efforts relating to the implementation of the standards set in the second phase of the Common European Asylum System, in particular to those Member States which are faced with specific and disproportionate pressures on their asylum systems, due in particular to their geographical or demographic situation.

[4] OJ L 132, 29.5.2010, p.11.

(10) In order to ensure a comprehensive and efficient evaluation of the international protection needs of applicants within the meaning of Directive […/.../EU] [on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted (the Qualification Directive)], the Union framework on procedures for granting international protection should be based on the concept of a single asylum procedure.

↓ 2005/85/EC recital 5
⇨ new

(11) The main objective of this Directive is to ⇨ further develop the standards for procedures in Member States for granting and withdrawing international protection with a view to establishing a common asylum procedure in the Union ⇦ ~~introduce a minimum framework in the Community on procedures for granting and withdrawing refugee status~~.

↓ 2005/85/EC recital 6
⇨ new

(12) The approximation of rules on the procedures for granting and withdrawing ⇨ international protection ⇦ ~~refugee status~~ should help to limit the secondary movements of applicants for ⇨ international protection ⇦ ~~asylum~~ between Member States, where such movement would be caused by differences in legal frameworks ⇨ , and create equivalent conditions for the application of Directive […/…/EU] [the Qualification Directive] in Member States ⇦.

↓ 2005/85/EC recital 7
⇨ new

(13) ~~It is in the very nature of minimum standards that~~ Member States should have the power to introduce or maintain more favourable provisions for third country nationals or stateless persons who ask for international protection from a Member State, where such a request is understood to be on the grounds that the person concerned is ⇨ in need of international protection ⇦ ~~a refugee~~ within the meaning of ⇨ Directive […/…/EU] [the Qualification Directive] ⇦ ~~Article 1(A) of the Geneva Convention~~.

↓ 2005/85/EC recital 9
⇨ new

(14) With respect to the treatment of persons falling within the scope of this Directive, Member States are bound by obligations under instruments of international law to which they are party ~~and which prohibit discrimination~~.

↓ 2005/85/EC recital 10
⇨ new

(15) It is essential that decisions on all applications for ⇨ international protection ⇦ ~~asylum~~ be taken on the basis of the facts and, in the first instance, by authorities whose personnel has the appropriate knowledge or has received~~s~~ the necessary training in the field of asylum and ⇨ international protection ⇦ ~~refugee~~ matters.

↓ 2005/85/EC recital 11 (adapted) ⇨ new

~~(16)~~ It is in the interest of both Member States and applicants for ⇨ international protection ⇦ ~~asylum~~ ⌦ that a decision is made ⌫ ~~to make a decision~~ as soon as possible on applications for ⇨ international protection ⇦ ~~asylum~~, ⇨ without prejudice to an adequate and complete examination ⇦. ~~The organisation of the processing of applications for asylum should be left to the discretion of Member States, so that they may, in accordance with their national needs, prioritise or accelerate the processing of any application, taking into account the standards in this Directive.~~

(17) It is also in the interest of both Member States and applicants to ensure a correct recognition of international protection needs already at first instance. To that end, applicants should be provided at first instance, free of charge, with legal and procedural information, taking into account their particular circumstances. The provision of such information should *inter alia* enable the applicants to better understand the procedure, thus helping them to comply with the relevant obligations. It would be disproportionate to require Member States to provide such information only through the services of qualified lawyers. Member States should therefore have the possibility to find the most appropriate modalities for the provision of such information, such as through non-governmental organisations, government officials or specialised services of the State.

(18) In appeals procedures, subject to certain conditions, applicants should be granted free legal assistance and representation provided by persons competent to do so under national law. Furthermore, at all stages of the procedure, applicants should have the right to consult, at their own cost, legal advisers or counsellors permitted as such under national law.

↓ 2005/85/EC recital 12 ⇨ new

(19) The notion of public order may ⇨ *inter alia* ⇦ cover a conviction for committing a serious crime.

↓ 2005/85/EC recital 13 (adapted) ⇨ new

(20) In the interests of a correct recognition of those persons in need of protection as refugees within the meaning of Article 1 of the Geneva Convention ⇨ or as persons eligible for subsidiary protection ⇦, every applicant should~~, subject to certain exceptions,~~ have an effective access to procedures, the opportunity to cooperate and properly communicate with the competent authorities so as to present the relevant facts of his/her case and sufficient procedural guarantees to pursue his/her case throughout all stages of the procedure. Moreover, the procedure in which an application for ⇨ international protection ⇦ ~~asylum~~ is examined should normally provide an applicant at least with the right to stay pending a decision by the determining authority, access to the services of an interpreter for submitting his/her case if interviewed by the authorities, the opportunity to communicate with a representative of the United Nations High Commissioner for Refugees (UNHCR) ⇨ and with organisations providing advice or counselling to applicants for international protection ⇦ ~~or with any organisation working on its behalf~~, the right to appropriate notification of a decision, a motivation of that decision in fact and in law, the opportunity to consult a legal adviser or other counsellor, and the right to be informed of his/her legal position at decisive moments in the course of the procedure, in a language he/she ⇨ understands or ⇦ ⌦ is ⌫ ~~can~~ reasonably ~~be~~ supposed to understand ⇨ and, in the case of a negative decision, the right to an effective remedy before a court of a tribunal ⇦.

↓ 2005/85/EC recital 14

~~In addition, specific procedural guarantees for unaccompanied minors should be laid down on account of their vulnerability. In this context, the best interests of the child should be a primary consideration of Member States.~~

⇩ new

(21) With a view to ensuring an effective access to the examination procedure, officials who first come into contact with persons seeking international protection, in particular those carrying out surveillance of land or maritime borders or conducting border checks, should receive instructions and necessary training on how to recognise and deal with requests for international protection. They should be able to provide third country nationals or stateless persons who are present in the territory, including at the border, in the territorial waters or in the transit zones of the Member States, and wish to request international protection, with all relevant information as to where and how applications for international protection may be lodged. Where those persons are present in the territorial waters of a Member State, they should be disembarked on land and have their applications examined in accordance with this Directive.

(22) In order to facilitate access to the examination procedure at border crossing points and in detention facilities, information should be made available on the possibility to request international protection. Basic communication necessary to enable the competent authorities to understand if persons declare their wish to apply for international protection should be ensured through interpretation arrangements.

(23) In addition, applicants in need of special procedural guarantees, such as minors, unaccompanied minors, persons who have been subjected to torture, rape or other serious acts of violence or disabled persons, should be provided with adequate support in order to create the conditions necessary for their effective access to procedures and presenting the elements needed to substantiate the application for international protection.

(24) National measures dealing with identification and documentation of symptoms and signs of torture or other serious acts of physical or mental violence, including acts of sexual violence, in procedures covered by this Directive should *inter alia* be based on the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

(25) With a view to ensuring substantive equality between female and male applicants, examination procedures should be gender sensitive. In particular, personal interviews should be organised in a way which makes its possible for both female and male applicants to speak about their past experiences in cases involving gender based persecution. The complexity of gender related claims should be properly taken into account in procedures based on the safe third country concept, the safe country of origin concept or the notion of subsequent applications.

(26) The best interests of the child should be a primary consideration of Member States when implementing this Directive, in line with the Charter of Fundamental Rights of the European Union and the 1989 United Nations Convention on the Rights of the Child.

(27) Procedures for examining international protection needs should be organised in a way that makes it possible for the competent authorities to conduct a rigorous examination of applications for international protection.

↓ 2005/85/EC recital 15
⇨ new

(28) Where an applicant makes a subsequent application without presenting new evidence or arguments, it would be disproportionate to oblige Member States to carry out a new full examination procedure. In these cases, Member States should ⇨ be able to dismiss an application as inadmissible in accordance with the *res judicata* principle ⇦ ~~have a choice of procedure involving exceptions to the guarantees normally enjoyed by the applicant~~.

↓ 2005/85/EC recital 16
⇨ new

(29) Many ~~asylum~~ applications ⇨ for international protection ⇦ are made at the border or in a transit zone of a Member State prior to a decision on the entry of the applicant. Member States should be able to ⇨ provide for admissibility and/or substantive examination procedures which make it possible to decide on applications made at the border or in transit zones at those locations in well-defined circumstances ⇦ ~~keep existing procedures adapted to the specific situation of these applicants at the border. Common rules should be defined on possible exceptions made in these circumstances to the guarantees normally enjoyed by applicants. Border procedures should mainly apply to those applicants who do not meet the conditions for entry into the territory of the Member States~~.

↓ 2005/85/EC recital 17
⇨ new

(30) A key consideration for the well-foundedness of an ~~asylum~~ application ⇨ for international protection ⇦ is the safety of the applicant in his/her country of origin. Where a third country can be regarded as a safe country of origin, Member States should be able to designate it as safe and presume its safety for a particular applicant, unless he/she presents ~~serious~~ counter-indications.

↓ 2005/85/EC recital 18

(31) Given the level of harmonisation achieved on the qualification of third country nationals and stateless persons as refugees, common criteria for designating third countries as safe countries of origin should be established.

↓ 2005/85/EC recital 19

~~Where the Council has satisfied itself that those criteria are met in relation to a particular country of origin, and has consequently included it in the minimum common list of safe countries of origin to be adopted pursuant to this Directive, Member States should be obliged to consider applications of persons with the nationality of that country, or of stateless persons formerly habitually resident in that country, on the basis of the rebuttable presumption of the safety of that country. In the light of the political importance of the designation of safe countries of origin, in particular in view of the implications of an assessment of the human rights situation in a country of origin and its implications for the policies of the European Union in the field of external relations, the Council should take any decisions on the establishment or amendment of the list, after consultation of the European Parliament.~~

↓ 2005/85/EC recital 20 (adapted)

(32) ~~It results from the status of Bulgaria and Romania as candidate countries for accession to the European Union and the progress made by these countries towards membership that they should be regarded as constituting safe countries of origin for the purposes of this Directive until the date of their accession to the European Union.~~

↓ 2005/85/EC recital 21 ⇨ new

(33) The designation of a third country as a safe country of origin for the purposes of this Directive cannot establish an absolute guarantee of safety for nationals of that country. By its very nature, the assessment underlying the designation can only take into account the general civil, legal and political circumstances in that country and whether actors of persecution, torture or inhuman or degrading treatment or punishment are subject to sanction in practice when found liable in the country concerned. For this reason, it is important that, where an applicant shows that there are ⇨ valid ⇦ ~~serious~~ reasons to consider the country not to be safe in his/her particular circumstances, the designation of the country as safe can no longer be considered relevant for him/her.

↓ 2005/85/EC recital 22 (adapted)
⇨ new

(34) Member States should examine all applications on the substance, i.e. assess whether the applicant in question qualifies ⌦ for international protection ⌫ ~~as a refugee~~ in accordance with Directive […/…/EU] [the Qualification Directive] ~~Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted~~, except where the present Directive provides otherwise, in particular where it can be reasonably assumed that another country would do the examination or provide sufficient protection. In particular, Member States should not be obliged to assess the substance of an ~~asylum~~ application ⇨ for international protection ⇦ where a first country of asylum has granted the applicant refugee status or otherwise sufficient protection and the applicant will be readmitted to this country.

↓ 2005/85/EC recital 23
⇨ new

(35) Member States should also not be obliged to assess the substance of an an ~~asylum~~ application ⇨ for international protection ⇦ where the applicant, due to a ⇨ sufficient ⇦ connection to a third country as defined by national law, can reasonably be expected to seek protection in that third country ⇨, and there are grounds for considering that the applicant will be admitted or re-admitted to that country ⇦. Member States should only proceed on this basis where this particular applicant would be safe in the third country concerned. In order to avoid secondary movements of applicants, common principles for the consideration or designation by Member States of third countries as safe should be established.

↓ 2005/85/EC recital 24
⇨ new

(36) Furthermore, with respect to certain European third countries, which observe particularly high human rights and refugee protection standards, Member States should be allowed to not carry out, or not to carry out full examination of ~~asylum~~ applications ⇨ for international protection ⇦ regarding applicants who enter their territory from such European third countries. ~~Given the potential consequences for the applicant of a restricted or omitted examination, this application of the safe third country concept should be restricted to cases involving third countries with respect to which the Council has satisfied itself that the high standards for the safety of the third country concerned, as set out in this Directive, are fulfilled. The Council should take decisions in this matter after consultation of the European Parliament.~~

↓ 2005/85/EC recital 25

~~It follows from the nature of the common standards concerning both safe third country concepts as set out in this Directive, that the practical effect of the concepts depends on whether the third country in question permits the applicant in question to enter its territory.~~

⇩ new

(37) In order to facilitate regular exchange of information about the national application of the safe country of origin, safe third country and European safe third country concepts and to prepare possible further harmonisation in the future, Member States should notify or periodically inform the Commission about the third countries to which these concepts are applied.

↓ 2005/85/EC recital 26
⇨ new

(38) With respect to the withdrawal of refugee ⇨ or subsidiary protection ⇦ status, Member States should ensure that persons benefiting from ⇨ international protection ⇦ ~~refugee status~~ are duly informed of a possible reconsideration of their status and have the opportunity to submit their point of view before the authorities can take a motivated decision to withdraw their status. ~~However, dispensing with these guarantees should be allowed where the reasons for the cessation of the refugee status is not related to a change of the conditions on which the recognition was based.~~

↓ 2005/85/EC recital 27 (adapted)
⇨ new

(39) It reflects a basic principle of ⌦ Union ⌫ ~~Community~~ law that the decisions taken on an application for ~~asylum~~ ⇨ international protection, the decisions concerning a refusal to re-open the examination of an application after its discontinuation, ⇦ and ⌦ the decisions ⌫ on the withdrawal of refugee ⇨ or subsidiary protection ⇦ status are subject to an effective remedy before a court or tribunal ~~within the meaning of Article 234 of the Treaty. The effectiveness of the remedy, also with regard to the examination of the relevant facts, depends on the administrative and judicial system of each Member State seen as a whole~~.

↓ 2005/85/EC recital 28

(40) In accordance with Article 72 ~~64~~ of the Treaty on the Functioning of the European Union, this Directive does not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.

↓ 2005/85/EC recital 29
⇨ new

(41) This Directive does not deal with procedures ⇨ between Member States ⇦ governed by ~~Council Regulation (EC) No 343/2003 of 18 February 2003~~ Regulation (EU) No […/…] [establishing the criteria and mechanisms for determining the Member state responsible for examining an ~~asylum~~ application ⇨ for international protection ⇦ lodged in one of the Member States by a third-country national ⇨ or a stateless person ⇦] (the Dublin Regulation).[5]

⇩ new

(42) Applicants with regard to whom Regulation (EU) No […/…] [the Dublin Regulation] applies should enjoy access to the basic principles and guarantees set out in this Directive and to the special guarantees pursuant to Regulation (EU) No […/…] [the Dublin Regulation].

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[5] **DE** considered recital (41) and recital (42) contradictory.

↓ 2005/85/EC recital 30

(43) The implementation of this Directive should be evaluated at regular intervals ~~not exceeding two years~~.

↓ 2005/85/EC recital 31 (adapted)

(44) Since the objectives of this Directive~~, namely to establish minimum standards on procedures in Member States for granting and withdrawing refugee status~~ cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at ⌦ Union ⌫ ~~Community~~ level, the ⌦ Union ⌫ ~~Community~~ may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

↓ 2005/85/EC recital 32

~~In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom has notified, by letter of 24 January 2001, its wish to take part in the adoption and application of this Directive.~~

↓ 2005/85/EC recital 33

~~In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Ireland has notified, by letter of 14 February 2001, its wish to take part in the adoption and application of this Directive.~~

⇩ new

(45) In accordance with Article 4a(1) of Protocol No. 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, and without prejudice to paragraph 2 of that Article, so long as the United Kingdom and Ireland have not notified their wish to accept this measure, in accordance with Article 4 of that Protocol, they are not bound by it and continue to be bound by Directive 2005/85/EC.

↓ 2005/85/EC recital 34

(46) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union ~~establishing the European Community~~, Denmark does not take part in the adoption of this Directive and is not bound by it or subject to its application.

↓ 2005/85/EC recital 8
⇨ new

(47) This Directive respects the fundamental rights and observes the principles recognised ~~in particular~~ by the Charter of Fundamental Rights of the European Union. ⇨ In particular, this Directive seeks to ensure full respect for human dignity and to promote the application of Articles 1, 18, 19, 21, 23, 24, and 47 of the Charter and has to be implemented accordingly. ⇦

⇩ new

(48) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with the earlier Directive. The obligation to transpose the provisions which are unchanged arises under the earlier Directive.

(49) This Directive should be without prejudice to the obligations of the Member States relating to the time-limit for transposition into national law of the Directive set out in Annex II, Part B.

↓ 2005/85/EC
⇨ new

HAVE ADOPTED THIS DIRECTIVE[6],

CHAPTER I

GENERAL PROVISIONS

Article 1

Purpose

The purpose of this Directive is to establish ⇨ common ⇦ ~~minimum standards on~~ procedures ~~in Member States~~ for granting and withdrawing ⇨ international protection status by virtue of Directive […/…/EU] [the Qualification Directive] ⇦ ~~refugee status~~.

[6] General scrutiny reservation: **CZ**, **DE**, **EE, EL**, **FI**, **IT**, **LT**, **PT**, **RO**, **SE**, **SK**
Parliamentary scrutiny reservation: **HU**, **LT**
Linguistic reservation: **BG**, **CZ, HU, SE**

Article 2

Definitions

For the purposes of this Directive:

(a) "Geneva Convention" means the Convention of 28 July 1951 relating to the status of refugees, as amended by the New York Protocol of 31 January 1967;

~~(b) "application" or "application for asylum" means an application made by a third country national or stateless person which can be understood as a request for international protection from a Member State under the Geneva Convention. Any application for international protection is presumed to be an application for asylum, unless the person concerned explicitly requests another kind of protection that can be applied for separately;~~

⇩ new

(b) "application" or "application for international protection" means a request made by a third country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status, and who does not explicitly request another kind of protection outside the scope of Directive […/…/EU] [the Qualification Directive], that can be applied for separately;

🡻 2005/85/EC ⇨ new

(c) "applicant" or "applicant for ⇨ international protection ⇦ ~~asylum~~" means a third country national or stateless person who has made an application for ⇨ international protection ⇦ ~~asylum~~ in respect of which a final decision has not yet been taken;

⇩ new

(d)[7] "applicant in need of special procedural guarantees" means an applicant who due to [8]age, gender, sexual orientation, gender identity, disability, serious physical illness, mental illness, post traumatic disorders or consequences of torture, rape or other serious forms of psychological, physical or sexual violence is in need of special guarantees in order to benefit from the rights and comply with the obligations provided for in this Directive;

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[7] Reservation: **AT**, **CZ**, **DE**, **ES**, **FR**, **NL**, **PT**, **RO**, **SI**
Scrutiny reservation: **BG**, **EE**, **EL**, **IT**, **LU**, **SE, SK**
AT, **BG**, **FR**, **IT**, **LU**, **NL, PT, RO** considered the list of grounds for being in need of special procedural needs too extensive.
EE, **FR** proposed to insert after "an applicant who" the specification "has been recognized by a Member State as having special procedural needs".
AT expressed concerns about the definition in relation to the Articles 18 and 24 of this Directive as well as relevant provisions in both the recast of the amended Reception Conditions Directive and the recast of the Dublin Regulation.
CZ, SI expressed concerns about the inclusion of "sexual orientation" and "gender identity".
DE proposed to delete "mental illness" noting in that context that the German translation of this term is not correct.
DE, ES, RO proposed to delete "post-traumatic disorders" considering this term insufficiently clear and *qualitate qua* unrelated to a procedure for examining an application for international protection.
SI proposed to either delete "mental illness" or qualify it by adding "serious".

[8] **BG**, **DE**, **NL** proposed to replace the list of grounds with the phrase "because of his/her individual circumstances".

↓ 2005/85/EC ⇨ new

(e ~~d~~) "final decision" means a decision on whether the third country national or stateless person be granted refugee ⇨ or subsidiary protection ⇦ status by virtue of Directive […/…/EU] [the Qualification Directive] ~~2004/83/EC~~ and which is no longer subject to a remedy within the framework of Chapter V of this Directive irrespective of whether such remedy has the effect of allowing applicants to remain in the Member States concerned pending its outcome~~, subject to Annex III of this Directive~~;

(f ~~e~~) "determining authority" means any quasi-judicial or administrative body in a Member State responsible for examining applications for ⇨ international protection ⇦ ~~asylum~~ competent to take decisions at first instance in such cases~~, subject to Annex I~~;

(g ~~f~~) "refugee" means a third country national or a stateless person who fulfils the requirements of Article 2(d) of Directive […/…/EU] [the Qualification Directive] ~~1 of the Geneva Convention as set out in Directive 2004/83/EC~~;

⇩ new

(h) "person eligible for subsidiary protection" means a third country national or a stateless person who fulfils the requirements of Article 2(f) of Directive […/…/EU] [the Qualification Directive];

(i) "international protection status" means the recognition by a Member State of a third country national or a stateless person as a refugee or a person eligible for subsidiary protection;

🡻 2005/85/EC (adapted)

(j ~~g~~) "refugee status" means the recognition by a Member State of a third country national or ⌦ a ⌫ stateless person as a refugee;

⇩ new

(k) "subsidiary protection status" means the recognition by a Member State of a third country national or a stateless person as a person eligible for subsidiary protection;

(l) "minor" means a third country national or a stateless person below the age of 18 years;

↓ 2005/85/EC (adapted) ⇨ new

(m ~~h~~) "unaccompanied minor" means ⇨ a minor as defined in Article 2(l) of Directive […/…/EU] [the Qualification Directive] ⇦ ~~a person below the age of eighteen who arrives in the territory of the Member States unaccompanied by an adult responsible for him/her whether by law or by custom, and for as long as he/she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he/she has entered the territory of the Member States~~;

(n ~~i~~)[9] "representative" means a ⇨ person or an organisation appointed by the competent bodies to act as a legal guardian in order to assist and represent an unaccompanied minor in procedures provided for in this Directive with a view to ensuring the child's best interests and exercising legal capacity for the minor where necessary. Where an organisation acts as a representative, it shall appoint a person responsible for carrying out the duties of the legal guardian in respect of the minor, in accordance with this Directive ⇦ ~~person acting on behalf of an organisation representing an unaccompanied minor as legal guardian, a person acting on behalf of a national organisation which is responsible for the care and well-being of minors, or any other appropriate representation appointed to ensure his/her best interests~~;

[9] Scrutiny reservation: **DE** in particular with regard to "legal guardian".
NL proposed to replace "guardian" by "representative" and to delete the phrase "Where an organisation… this Directive", arguing that in the Netherlands a legal guardian is appointed to every unaccompanied minor who also is assisted by a legal representative to assist him with regard to the asylum procedure.

(o ~~j~~) "withdrawal of ⇨ international protection ⇦ ~~refugee~~ status" means the decision by a competent authority to revoke, end or refuse to renew ~~the~~ refugee ⇨ or subsidiary protection ⇦ status of a person in accordance with Directive […/…/EU] [the Qualification Directive] ~~2004/83/EC~~;

(p ~~k~~) "remain in the Member State" means to remain in the territory, including at the border or in transit zones, of the Member State in which the application for ⇨ international protection ⇦ ~~asylum~~ has been made or is being examined;~~.~~

⇩ new

(q)[10] "subsequent application" means a further application made after a final[11] decision has been taken on a previous application, including cases where the applicant has explicitly withdrawn his/her application and cases where the determining authority has rejected an application following its implicit withdrawal in accordance with Article 28(1).

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[10] Reservation: **CY, CZ**, **NL** expressing concerns about possible costs and potential abuse. Scrutiny reservation: **EE**, **EL**, **ES**, **FI**, **IT**, **SE, SI, SK**.

[11] **EE**, **NL** proposed to delete "final" arguing that it should be possible to reject a subsequent application while the appeal in the initial application has not yet been finalised.

↓ 2005/85/EC (adapted) ⇨ new

Article 3

Scope

1. This Directive shall apply to all applications for ⇨ international protection ⇦ ~~asylum~~ made in the territory, including at the border ⇨ , in the territorial waters ⇦ or in the transit zones of the Member States, and to the withdrawal of ⇨ international protection ⇦ ~~refugee~~ status.

2. This Directive shall not apply in cases of requests for diplomatic or territorial asylum submitted to representations of Member States.

~~3. Where Member States employ or introduce a procedure in which asylum applications are examined both as applications on the basis of the Geneva Convention and as applications for other kinds of international protection given under the circumstances defined by Article 15 of Directive 2004/83/EC, they shall apply this Directive throughout their procedure.~~

3. ~~4.~~ ~~Moreover,~~ Member States may decide to apply this Directive in procedures for deciding on applications for any kind of international[12] protection ⇨ falling outside of the scope of Directive […/…/EU] [the Qualification Directive] ⇦.

Article 4[13]

Responsible authorities

1.[14] Member States shall designate for all procedures a determining authority which will be responsible for an appropriate examination of ~~the~~ applications in accordance with this Directive~~, in particular Articles 8(2) and 9~~. ⇨ Member States shall ensure that that authority is provided with appropriate means, including sufficient competent personnel, to carry out its tasks in accordance with this Directive. ⇦

~~In accordance with Article 4(4) of Regulation (EC) No 343/2003, applications for asylum made in a Member State to the authorities of another Member State carrying out immigration controls there shall be dealt with by the Member State in whose territory the application is made.~~

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12 **NL** expressed a preference for deleting "international" given that "international protection" is defined in the Qualification Directive whereas "international protection" in this paragraph refers to protection falling outside the scope of that directive.

13 Scrutiny reservation: **FR** (also in relation to the Articles 31 and 43), **PT, SE**

14 **CZ** considered this paragraph difficult to transpose.

2.[15] ~~However,~~ Member States may provide that ⌦ an ⌫ ~~another~~ authority ⌦ other than that referred to in paragraph 1 ⌫ is responsible for the purposes of:

(a) ⇨ processing cases pursuant to Regulation (EU) No […/…] [the Dublin Regulation][16], and ⇦ ~~processing cases in which it is considered to transfer the applicant to another State according to the rules establishing criteria and mechanisms for determining which State is responsible for considering an application for asylum, until the transfer takes place or the requested State has refused to take charge of or take back the applicant;~~

~~(b) taking a decision on the application in the light of national security provisions, provided the determining authority is consulted prior to this decision as to whether the applicant qualifies as a refugee by virtue of Directive 2004/83/EC;~~

~~(c) conducting a preliminary examination pursuant to Article 32, provided this authority has access to the applicant's file regarding the previous application;~~

~~(d) processing cases in the framework of the procedures provided for in Article 35(1);~~

(b ~~e~~) ⇨ granting or ⇦ refusing permission to enter in the framework of the procedure provided for in Article ⇨ 43 ⇦ ~~35(2) to (5)~~, subject to the conditions and as set out therein ⇨ and on the basis of the opinion of the determining authority. ⇦ ~~;~~

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[15] **DE** proposed to delete paragraph 2.
BE, considering this a crucial issue given that, under Belgian national law, the Minister is responsible for the decision to remove an asylum seeker from the territory in case this person is considered a danger to the public order. Given that this decision applies on the whole of the territory and not only to border zones, **BE** proposed to maintain the points (b) and (c) of the directive currently in force.

[16] **AT**, **DE** suggested to avoid references to the Dublin Regulation considering that the scope of this Regulation and the scope of the Asylum Procedures Directive have no overlap.

~~(f) establishing that an applicant is seeking to enter or has entered into the Member State from a safe third country pursuant to Article 36, subject to the conditions and as set out in that Article.~~

⇩ new

3.[17] Member States shall ensure that the personnel of the determining authority are properly trained. To that end, Member States shall provide for initial and, where relevant, follow-up training which shall include the elements listed in Article 6(4) (a) to (e) of Regulation (EU) No 439/2010. Member States shall also take into account the training established and developed by the European Asylum Support Office.

🡻 2005/85/EC (adapted)

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

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[17] Scrutiny reservation: **ES**, **NL**
NL requested clarification whether all elements of the training need to be covered both in the initial training and in the follow-up training.
ES, expressing concerns about the level of detail of the proposed provision, requested clarification on what would be the consequences if EASO would not submit its training proposals in a timely manner**.**

⇩ new

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

🡻 2005/85/EC

⇨ new

Article 5

More favourable provisions

Member States may introduce or maintain more favourable standards on procedures for granting and withdrawing ⇨ international protection ⇦ ~~refugee status~~, insofar as those standards are compatible with this Directive.

CHAPTER II

BASIC PRINCIPLES AND GUARANTEES

Article 6[18]

Access to the procedure

1. Member States may require that applications for ⇨ international protection ⇦ ~~asylum~~ be ⇨ lodged ⇦ ~~made~~ in person and/or at a designated place ⇨, without prejudice to paragraphs 2, 3, and 4 [19]⇦.

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[18] Scrutiny reservation: **AT**, **EE, SK**
AT, **CY** requested clarification as regards the consequences of Member States which not meet the deadlines set out in this article.

[19] **SI** proposed to delete the phrase "without prejudice to paragraphs 2, 3 and 4" considering it superfluous.

⇩ new

2.[20] Member States shall ensure that a person who wishes to make an application for international protection has an effective opportunity to lodge the application as soon as possible.

3.[21] When a person declares his/her wish to make an application for international protection, Member States shall ensure that the fact that that person is an applicant is registered as soon as possible and no later than 72 hours after such declaration. [22]

To that end, Member States shall ensure that the personnel of authorities likely to receive such declarations has relevant instructions and receives the necessary training.

In the implementation of this paragraph, Member States shall take into account relevant guidelines developed by the European Asylum Support Office.[23]

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[20] Scrutiny reservation: **NL** in particular on "as soon as possible" given the delays that result from the "rest- and preparation period" provided for in the Netherlands asylum procedure.

[21] Scrutiny reservation: **LV**

[22] Reservation: **IT, ES, PL**
IT, ES rejected a general deadline of 72 hours for registering as an applicant.
DE proposed "three working days" instead of "72 hours".
CY expressed concerns about a deadline as this could creates new entitlement; nevertheless, in case a deadline would be set, **CY** could support the **DE** proposal.
PL argued that all guarantees to the applicant should derive from lodging the application. In that light, the registration of the application is only a technical matter and should follow the lodging of the application promptly.

[23] **RO**, **SI** proposed to delete this sentence given the absence of the EASO guidelines to which it refers. In response, it was clarified that the EASO guidelines would not become binding as a consequence of the obligation in this provision to take them into account when implementing paragraph 3. **DE** preferred to include a reference to EASO guidelines in a recital.

4.[24] Where a large number of third country nationals or stateless persons simultaneously request international protection, which makes it impossible in practice to respect the 72-hour time limit laid down in paragraph 3, Member States may provide for that time limit to be extended to 7 working days.[25]

↓ 2005/85/EC (adapted)

~~2. Member States shall ensure that each adult having legal capacity has the right to make an application for asylum on his/her own behalf.~~

~~3. Member States may provide that an application may be made by an applicant on behalf of his/her dependants. In such cases Member States shall ensure that dependant adults consent to the lodging of the application on their behalf, failing which they shall have an opportunity to make an application on their own behalf.~~

~~Consent shall be requested at the time the application is lodged or, at the latest, when the personal interview with the dependant adult is conducted.~~

~~4. Member States may determine in national legislation~~

~~(a) the cases in which a minor can make an application on his/her own behalf;~~

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[24] Scrutiny reservation: **FR, LV, NL**

[25] Reservation: **CZ**, **IT, ES**
Scrutiny reservation: **FI**
CZ considered 7 working days too short in case people arrive at the airport.
IT, ES considered 7 working days insufficient in the case of a large influx of applicants for international protection.
FI considered 7 working days too long.

~~(b) the cases in which the application of an unaccompanied minor has to be lodged by a representative as provided for in Article 17(1)(a);~~

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

~~5. Member States shall ensure that authorities likely to be addressed by someone who wishes to make an application for asylum are able to advise that person how and where he/she may make such an application and/or may require these authorities to forward the application to the competent authority.~~

↓ 2005/85/EC article 6
⇨ new

Article 7

Applications made on behalf of dependants or minors

1. ~~2.~~ Member States shall ensure that each adult having legal capacity has the right to make an application for ⇨ international protection ⇦ ~~asylum~~ on his/her own behalf.

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

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

⇩ new

3.[26] Member States shall ensure that a minor has the right to make an application for international protection either on his/her own behalf, if he/she has the legal capacity to act in procedures according to the national law of the Member State concerned, or through his/her parents or other adult family members, or an adult responsible for him/her, whether by law or by national practice of the Member State concerned, or a representative.

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[26] Reservation: **DE** proposing to delete the phrase: "or other adult family members, or an adult responsible for him/her" considering this subject matter for regulation in national law. Scrutiny reservation: **ES** expressing doubts about the possibilities for minors to lodge an application.

4.[27] Member States shall ensure that the appropriate bodies referred to in Article 10 of Directive 2008/115/EC of the European Parliament and of the Council[28] have the right to lodge an application for international protection on behalf of an unaccompanied minor if, on the basis of an individual assessment of his/her personal situation, those bodies are of the opinion that the minor may have protection needs pursuant to Directive […/…/EU] [the Qualification Directive].

↓ 2005/85/EC article 6
⇨ new

5. ~~4.~~ Member States may determine in national legislation:

(a) the cases in which a minor can make an application on his/her own behalf;

(b) the cases in which the application of an unaccompanied minor has to be lodged by a representative as provided for in Article 25 ~~17~~ (1)(a);

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[27] Reservation: **AT**, **DE**, **FI**, **NL, RO, SI**
Scrutiny reservation: **BG**, **EE, ES, FR, PL**
NL referred to the link with Article 2 (n) pointing out that a representative is to be appointed for every unaccompanied minor. As a result **NL** expressed doubts about the need to provide for a right for bodies referred to in Article 10 of the Return Directive to lodge an application for an unaccompanied minor.
SI considered the subject matter of this paragraph should be regulated in the Return Directive and not appear in the Asylum Procedures Directive. In response, **Cion** indicated that this paragraph does not concern return but aims at clarifying access to the procedure for minors.

[28] OJ L 348, 24.12.2008, p. 98

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

⇩ new

Article 8[29]

Information and counselling at border crossing points and in detention facilities

1. [30]Member States shall ensure that information on the possibility to request international protection is available in detention facilities and at border crossing points, including transit zones, at external borders. Member States shall provide interpretation arrangements to the extent necessary to facilitate access to procedure in these areas.

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[29] Reservation: **RO,** fearing abuse, expressed the position that all aliens, and not only applicants for international protection in detention centres and at the border, should have a right to information
Scrutiny reservation: **CY, EL, LV, SE, SK**

[30] Scrutiny reservation: **CZ**, **NL**, **PT, RO**
CZ, EE, RO requested clarification on the implementation of the second sentence. In response, **Cion** indicated that interpretation arrangements supported by UNHCR exist and are in use in several Member States. Furthermore, **Cion** pointed to the risk of refoulement in case no adequate interpretation arrangements would be available.
SI, supported by **AT, EE, RO**, proposed to add in the title and in paragraph 1 the phrase: "for persons who have expressed a wish to make an application". In response, **Cion** indicated that not all persons are able to state an explicit wish to apply for international protection.

2. [31] Member States shall ensure that organisations[32] providing advice and counselling to applicants for international protection have access to the border crossing points, including transit zones, at external borders. Member States may provide for rules covering the presence of such organizations in these areas and that such access is subject to an agreement with the competent authorities of the Member State.

↓ 2005/85/EC ⇨ new

Article 9 ~~7~~ [33]

Right to remain in the Member State
pending the examination of the application

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

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[31] Reservation: **AT**, **NL**
AT indicated not to provide advice and counselling at the border and expressed concerns that such arrangement could generate more applications.
Scrutiny reservation: **ES, IT, LT, PT**
Linguistic reservation: **DE**
IT, NL expressed concerns about the security implications of allowing access at border crossing points. These delegations considered the possibility that Member States may provide rules not a sufficient guarantee for tackling these concerns. In response, **Cion** indicated that several Member States already allow NGOs access to border points on the basis of security agreements.
NL proposed to specify that the organisations get access to the applicant and persons who wish to make an application instead of access to border crossing points

[32] **DE, EE** proposed to insert "and persons".

[33] Scrutiny reservation: **CY, CZ, ES**

2.[34] Member States can make an exception only where ~~, in accordance with Articles 32 and 34,~~ ⇨ a person makes ⇦ a subsequent application ⇨ referred to in Article 41[35] ⇦ ~~will not be further examined~~ or where they will surrender or extradite, as appropriate, a person either to another Member State pursuant to obligations in accordance with a European arrest warrant[36] or otherwise, or to a third country, ⇨ with the exception of the country of origin of the applicant concerned, ⇦[37] or to international criminal courts or tribunals.

⇩ new

3.[38] A Member State may extradite an applicant to a third country pursuant to paragraph 2 only where the competent authorities are satisfied that an extradition decision will not result in direct or indirect *refoulement* in violation of international obligations of the Member State.

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[34] Reservation: **DE**
NL proposed to add as a third ground for making an exception the situation where "the person may for serious reasons be considered a danger to the national security or public order of the Member State".

[35] Reservation: **AT**, **NL** on the reference to Article 41.

[36] 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).

[37] **DE** proposed to delete the phrase "with the exception of the country of origin of the applicant concerned,". In response, **Cion** indicated that surrendering or extraditing a persons to the country of origin is forbidden on the bass of case-law.

[38] Scrutiny reservation: **AT**
DE expressed concerns about paragraph 3 arguing it would limit the possibilities for Member States to extradite a person which currently is not allowed as the Directive currently in force only makes a reference to extradition. In that context, **DE** requested clarification whether the legal base of the recast proposal covers this new limitation.

↓ 2005/85/EC ⇨ new

Article 10 ~~9~~[39]

Requirements for the examination of applications

1. ~~Without prejudice to Article 23(4)(i),~~ Member States shall ensure that applications for ⇨ international protection ⇦ ~~asylum~~ are neither rejected nor excluded from examination on the sole ground that they have not been made as soon as possible.

⇩ new

2.[40] When examining [41]applications for international protection, the determining authority shall first determine whether the applicants qualify as refugees and, if not, determine whether the applicants are eligible for subsidiary protection.

[39] Scrutiny reservation: **LU**, **RO**
Linguistic reservation: **RO**

[40] Reservation: **NL**
DE requested clarification whether this provision would make it impossible for a person to make a request for subsidiary protection only. In response, **Cion** indicated that it is possible for a person to apply only for subsidiary protection status but that it is not possible to receive such status without the responsible authority assessing whether the applicant is eligible for refugee status.

[41] **NL** proposed to insert: "the elements of".

↓ 2005/85/EC ⇨ new

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

(a) applications are examined and decisions are taken individually, objectively and impartially;

(b) precise and up-to-date information is obtained from various sources, such as the ⇨ European Asylum Support Office and the ⇦ United Nations High Commissioner for Refugees (UNHCR), as to the general situation prevailing in the countries of origin of applicants ~~for asylum~~ and, where necessary, in countries through which they have transited, and that such information is made available to the personnel responsible for examining applications and taking decisions;

(c) the personnel examining applications and taking decisions have the knowledge with respect to relevant standards applicable in the field of asylum and refugee law; ~~and~~

⇩ new

(d)[42] the personnel examining applications and taking decisions are instructed and have the possibility to seek advice, whenever necessary, from experts on particular issues, such as medical, cultural, religious, child-related or gender issues.

🡻 2005/85/EC (adapted)
⇨ new

4. ~~3.~~ The authorities referred to in Chapter V shall, through the determining authority or the applicant or otherwise, have access to the general information referred to in paragraph 3 ~~2~~(b), necessary for the fulfilment of their task.

5. ~~4.~~ Member States ⇨ shall ⇦ ~~may~~[43] provide for rules concerning the translation of documents relevant for the examination of applications.

[42] Scrutiny reservation: **AT**, **CY**, **DE**, **EL**, **ES**, **FR, IT, NL, PT, RO, SE** as regards the level of detail of this provision and the possible costs involved.
CY, **RO** proposed to delete the phrase ", such as medical, cultural, religious, child-related or gender issues".
AT rejected any obligation to consult experts.

[43] Scrutiny reservation: **CZ**, **DE**, **LV**, **SE**, **SI.** In response, **Cion** pointed to the contribution of rules concerning the translation of documents relevant for the examination of applications in view of improving frontloading in the asylum procedure.
AT, LV, SI expressed a preference for keeping "may".
DE considered this paragraph more appropriately placed in the preamble.

Article 11 ~~9~~

Requirements for a decision by the determining authority

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

2.[44] Member States shall also ensure that, where an application is rejected ⇨ with regard to refugee status and/or subsidiary protection status ⇦[45], the reasons in fact and in law are stated in the decision and information on how to challenge a negative decision is given in writing.

~~Member States need not state the reasons for not granting refugee status in a decision where the applicant is granted a status which offers the same rights and benefits under national and Community law as the refugee status by virtue of Directive 2004/83/EC. In these cases, Member States shall ensure that the reasons for not granting refugee status are stated in the applicant's file and that the applicant has, upon request, access to his/her file.~~

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[44] Reservation: **NL**
NL opposed deletion of the subparagraph given that its national system provides for the grant of a single status and that, sanctioned by the highest court in the Netherlands, no appeal is possible on the issue whether the basis for that status is the Geneva Convention or provisions on subsidiary protection. Against that background, **NL** proposed as first subparagraph:" Member States shall also ensure that, where ~~an application is rejected ⇨ with regard to refugee status and/or subsidiary protection status ⇦~~ a decision not to grant a protection status or not to grant a protection status which contains the same rights applicable to refugees as described in Chapter VII of [the Qualification Directive], the reasons in fact and in law are stated in the decision and information on how to challenge a negative decision is given in writing.".

[45] **CY** proposed to replace the phrase "with regard to refugee status and/or subsidiary protection status" with "application for international protection". **CY** argue that applications are examined in a single procedure and that, consequently, there is no reason to state the reasons in case a refugee status is not granted refugee status while subsidiary protection status is granted.

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

3.[46] For the purposes of Article 7(2) ~~6(3)~~, and whenever the application is based on the same grounds, Member States may take one single decision, covering all dependants ⇨ , unless this would lead to the disclosure of particular circumstances of an applicant which could jeopardize his/her interests, in particular in cases involving gender, sexual orientation, gender identity and/or age based persecution ⇦.

Article 12 ~~10~~

Guarantees for applicants for ⇨ international protection ⇦ ~~asylum~~

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

[46] Reservation: **RO**
Scrutiny reservation: **FR**
RO considered the paragraph too specific and requested clarification as to the coherence with Article 2(d).
RO proposed to delete the phrase: ", in particular in cases….persecution".

(a) they shall be informed in a language which they ⇨ understand or ⇦ ⌦ are ⌫ ~~may~~ reasonably ~~be~~ supposed to understand of the procedure to be followed and of their rights and obligations during the procedure and the possible consequences of not complying with their obligations and not cooperating with the authorities. They shall be informed of the time-frame, ~~as well as~~ the means at their disposal for fulfilling the obligation to submit the elements as referred to in Article 4 of Directive […/…/EU] [the Qualification Directive] ~~2004/83/EC~~ ⇨ , as well as of the consequences of an explicit or implicit withdrawal of the application ⇦. This information shall be given in time to enable them to exercise the rights guaranteed in this Directive and to comply with the obligations described in Article 13 ~~11~~;

(b) they shall receive the services of an interpreter for submitting their case to the competent authorities whenever necessary. Member States shall consider it necessary to give these services at least when ~~the determining authority calls upon~~ the applicant ⌦ is ⌫ to be interviewed as referred to in Articles 14, 15, ~~12 and 13~~ ⇨ 16, 17 and 34 ⇦ and appropriate communication cannot be ensured without such services. In this case and in other cases where the competent authorities call upon the applicant, these services shall be paid for out of public funds;

(c)[47] they shall not be denied the opportunity to communicate with the UNHCR or with any other organisation ⇨ providing legal advice or counselling to applicants for international protection in accordance with the national law of ⇦ ~~working on behalf of the UNHCR in the territory of the Member State pursuant to an agreement with~~ that Member State;

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[47] **RO** suggested to include requirements on the qualifications of staff of organisations providing legal advice or counselling to applicants for international protection.

⇩ new

(d)[48] they and, if applicable, their legal advisers shall not be denied access to the information referred to in Article 10(3)(b), where the determining authority takes that information into consideration for the purpose of taking a decision on their application;

🡻 2005/85/EC (adapted)
⇨ new

(e ~~d~~) they shall be given notice in reasonable time of the decision by the determining authority on their application for ⇨ international protection ⇦ ~~asylum~~. If a legal adviser or other counsellor is legally representing the applicant, Member States may choose to give notice of the decision to him/her instead of to the applicant for ⇨ international protection ⇦ ~~asylum~~;

[48] Reservation: **BE**, **CY, EL**.
Scrutiny reservation: **ES**, **NL**
CY, supported by **BE**, **EL**, took the position that access to this information should only be allowed in case an appeal is lodged against a final decision before the Supreme Court of Justice.
Furthermore, **CY** expressed concern about possible abuse of the - sometimes confidential - content of an applicant's file, including country of origin information. In this context, **NL** pointed to the need to protect the persons in the countries of origin that provide information about the situation in those countries. Finally, **EL** argued that access should be limited to that information that has been important for the decision on the application.
BE, ES requested clarification how it can be determined which information has been taken into consideration for the purpose of taking a decision on the application before that decision is actually taken.

(f ~~e~~) they shall be informed of the result of the decision by the determining authority in a language that they ⇨ understand or ⇦ ⌦ are ⌫ ~~may~~ reasonably ~~be~~ supposed to understand when they are not assisted or represented by a legal adviser or other counsellor ~~and when free legal assistance is not available~~. The information provided shall include information on how to challenge a negative decision in accordance with the provisions of Article 11(2) ~~9(2)~~.

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

Article 13 ~~11~~

Obligations of the applicants for ⇨ international protection ⇦ ~~asylum~~

1. ⇨ Member States shall impose upon applicants for international protection the obligation to cooperate with the competent authorities with a view to establishing their identity and other elements referred to in Article 4(2) of Directive […/…/EU] [the Qualification Directive]. ⇦ Member States may impose upon applicants ~~for asylum~~ ⇨ other ⇦ obligations to cooperate with the competent authorities insofar as these obligations are necessary for the processing of the application.

2. In particular, Member States may provide that:

(a) applicants ~~for asylum~~ are required to report to the competent authorities or to appear before them in person, either without delay or at a specified time;

(b) applicants ~~for asylum~~ have to hand over documents in their possession relevant to the examination of the application, such as their passports;

(c) applicants ~~for asylum~~ are required to inform the competent authorities of their current place of residence or address and of any changes thereof as soon as possible. Member States may provide that the applicant shall have to accept any communication at the most recent place of residence or address which he/she indicated accordingly;

(d)[49] the competent authorities may search the applicant and the items he/she carries with him/her ⇨ , provided the search is carried out by a person of the same sex ⇦ ;

(e) the competent authorities may take a photograph of the applicant; and

(f) the competent authorities may record the applicant's oral statements, provided he/she has previously been informed thereof.

[49] **DE** requested to indicate more specifically the purpose of the search as this enters in private sphere of people.
NL proposed to add "wherever possible".

Article 14 ~~12~~[50]

Personal interview

1.[51] Before a decision is taken by the determining authority, the applicant ~~for asylum~~ shall be given the opportunity of a personal interview on his/her application for ⇨ international protection ⇦ ~~asylum~~ with a person competent under national law to conduct such an interview. ⇨ Interviews on the substance of the application for international protection shall be conducted by the personnel of the determining authority. ⇦

~~Member States may also give the opportunity of a personal interview to each dependant adult referred to in Article 6(3).~~

[50] Scrutiny reservation: **CZ**, **LV**

[51] Scrutiny reservation: **EE, EL, ES, FI, NL, SE, SK**
AT, SE suggested to include a reference to Article 42.2 (b).

⇩ new

Where a large number of third country nationals or stateless persons simultaneously request international protection, which makes it impossible in practice for the determining authority to conduct timely interviews on the substance of an application, Member States may provide that the personnel of another authority be temporarily involved in conducting such interviews. In such cases, the personnel of that authority shall receive in advance the necessary training which shall include the elements listed in Article 6(4)(a) to (e) of Regulation (EU) No 439/2010 and in Article 18(5) of this Directive.[52]

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

[52] Reservation: **SI** considering this paragraph difficult to apply in practice.
Scrutiny reservation: **FI** on training personnel of other authorities than the determining authority.
SI suggested a role of EASO in training personnel other than personnel of the determining authority. In response, **Cion** indicated that the EASO Regulation does not exclude this.

↓ 2005/85/EC (adapted) ⇨ new

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

2.[53] The personal interview on the substance of the application may be omitted where:

(a) the determining authority is able to take a positive decision ⇨ with regard to refugee status ⇦ [54]on the basis of evidence available; or

~~(b) the competent authority has already had a meeting with the applicant for the purpose of assisting him/her with completing his/her application and submitting the essential information regarding the application, in terms of Article 4(2) of Directive 2004/83/EC; or~~[55]

~~(c) the determining authority, on the basis of a complete examination of information provided by the applicant, considers the application to be unfounded in cases where the circumstances mentioned in Article 23(4)(a)~~[56]~~, (e), (g), (h) and (j) apply.~~[57]

~~3. The personal interview may also be omitted where~~

[53] Reservation: **SI**
Scrutiny reservation: **CY, EE, EL, ES, FR, SE**

[54] **SI** opposed the phrase "with regard to refugee status" in relation to Article 10.

[55] **SI** proposed to reinsert point (c) of the Directive currently in force.

[56] **PL** proposed to re-introduce the possibility to omit the personal interview in cases referred to in Article 31.6 (a).

[57] **CY, FR, SI** proposed to reinsert point (c) of the Directive currently in force.

(b)[58] ~~it is not reasonably practicable, in particular where~~ the ⇨ determining ⇦ ~~competent~~ authority is of the opinion that the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond his/her control. When in doubt, ⇨ the determining authority shall consult a medical expert to establish whether the condition that makes the applicant unfit or unable to be interviewed is temporary or permanent [59]⇦ ~~Member States may require a medical or psychological certificate~~.

Where ⌦ a personal interview is not conducted ⌫ ~~the Member State does not provide the applicant with the opportunity for a personal interview~~ pursuant to point (b) ~~this paragraph~~, or where applicable, ⌦ with ⌫ ~~to~~ the dependant, reasonable efforts shall be made to allow the applicant or the dependant to submit further information.

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

4. ~~5.~~ The absence of a personal interview pursuant to paragraph 2(b) ~~and (c) and paragraph 3~~ shall not adversely affect the decision of the determining authority.

5. ~~6.~~ Irrespective of Article 28(1) ~~20(1)~~, Member States, when deciding on the application for ⇨ international protection ⇦ ~~asylum~~, may take into account the fact that the applicant failed to appear for the personal interview, unless he/she had good reasons for the failure to appear.

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[58] **RO** noted that point (b) leaves certain discretion for the determining authority.

[59] **NL** expressed doubts whether it is possible to establish that an applicant is permanently unfit or unable to be interviewed and proposed, supported by **Cion**, to replace "permanent" with long term".

Article 15 ~~13~~[60]

Requirements for a personal interview

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

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

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

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[60] Reservation: **CY**
Scrutiny reservation: **PT**
CY considered, with a view to avoiding abuse, that the right to a same sex interviewer and/or interpreter should only apply to women and that this right should only be honoured wherever possible and when there are valid reasons**.**

(a)[61] ensure that the person who conducts the interview is ~~sufficiently~~ competent to take account of the personal ⇨ and ⇦ ~~or~~ general circumstances surrounding the application, including the applicant's cultural origin ⇨ , gender, sexual orientation, gender identity ⇦[62] or vulnerability ⇨ within the meaning of Article 22 of Directive […/…/EU] [the Reception Conditions Directive] ⇦[63] ~~, insofar as it is possible to do so~~; ~~and~~

⇩ new

(b)[64] wherever possible[65], provide for the interview with the applicant to be conducted by a person of the same sex if the applicant concerned so requests;

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[61] Reservation: **LV**
Scrutiny reservation: **AT, ES**
AT requested clarification what this provision would mean in practise.
ES considered it excessive obliging Member States to take all personal and general circumstances into account.

[62] Reservation **RO** on the terms "gender, sexual orientation".
EE, **SK** proposed to delete "gender, sexual orientation, gender identity" considering these terms sufficiently covered by the reference to "personal.[..] circumstances".

[63] **NL** proposed to delete the reference to Article 22 of the Reception Conditions Directive considering a specification of vulnerability referring to reception conditions not appropriate in the framework of the Asylum Procedures Directive.

[64] Reservation: **AT**
Scrutiny reservation: **EE, PL**
EE considered that the particular situation of smaller Member states to provide same sex interviewers/interpreters should be taken into account.
PL considered that the applicant needs to duly motivate a request for a same sex interviewer.

[65] **FR** considered that, in addition to an interviewer/interpreter of the same sex being available and non-discrimination, a link must exist between the persecution and the claims, on the one hand, and the request for an interviewer/interpreter of the same sex on the other hand. For that reason, **FR**, supported by **PT**, proposed to insert "and as long as the nature of the application justifies it".

2005/85/EC (adapted) ⇨ new

(c ~~b~~) select a~~n~~ ⇨ competent ⇦[66] interpreter who is able to ensure appropriate communication between the applicant and the person who conducts the interview. The communication ⌦ shall ⌫ ~~need not necessarily~~ take place in the language preferred by the applicant ~~for asylum~~ ⌦ unless ⌫ ~~if~~ there is another language which he/she ~~may reasonably be supposed to~~[67] understands and in which he/she is able to communicate ⇨ clearly ⇦[68]. ⇨ Wherever possible[69], Member States shall provide an interpreter of the same sex if the applicant so requests ⇦;

⇩ new

(d)[70] ensure that the person who conducts an interview on the substance of an application for international protection does not wear a military or law enforcement uniform;

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66 Reservation: **EE, ES**, **LU, LV, NL, SK** on "competent".

67 **DE, NL** proposed to maintain "may reasonably be supposed".

68 Reservation: **LV** on "clearly".

69 Scrutiny reservation: **EE, PL**
EE considered that the difficulties for smaller Member States to provide same sex interviewers/interpreters should be taken into account.
PL considered that the applicant needs to duly motivate a request for a same sex interviewer
FR considered that, in addition to an interviewer/interpreter of the same sex being available and non-discrimination, a link must exist between the persecution and the claims, on the one hand, and the request for an interviewer/interpreter of the same sex on the other hand. For that reason, **FR**, supported by **PT**, proposed to insert "and as long as the nature of the application justifies it".

70 Scrutiny reservation: **ES**

(e) ensure that interviews with minors are conducted in a child appropriate manner.[71]

↓ 2005/85/EC

4. Member States may provide for rules concerning the presence of third parties[72] at a personal interview.

~~5. This Article is also applicable to the meeting referred to in Article 12(2)(b).~~

⇩ new

Article 16

Content of a personal interview

When conducting a personal interview on the substance of an application for international protection, the determining authority shall ensure that the applicant is given an adequate[73] opportunity to present elements needed to substantiate the application in accordance with Article 4 of Directive […/…/EU] [the Qualification Directive] as completely as possible. This shall include the opportunity to give an explanation regarding elements which may be missing and/or any inconsistencies or contradictions in his/her statements.

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[71] **AT**, **CY** requested clarification as regards the term "child-appropriate manner".
LU proposed to refer to "minor" instead of "child".

[72] **CY** requested clarification as regards the term "third parties".

[73] **LT** proposed to delete "adequate".

↓ 2005/85/EC

Article 14

Status of the report of a personal interview in the procedure

1. Member States shall ensure that a written report is made of every personal interview, containing at least the essential information regarding the application, as presented by the applicant, in terms of Article 4(2) of Directive 2004/83/EC.

2. Member States shall ensure that applicants have timely access to the report of the personal interview. Where access is only granted after the decision of the determining authority, Member States shall ensure that access is possible as soon as necessary for allowing an appeal to be prepared and lodged in due time.

3. Member States may request the applicant's approval of the contents of the report of the personal interview.

Where an applicant refuses to approve the contents of the report, the reasons for this refusal shall be entered into the applicant's file.

The refusal of an applicant to approve the contents of the report shall not prevent the determining authority from taking a decision on his/her application.

4. This Article is also applicable to the meeting referred to in Article 12(2)(b).

⇩ new

Article 17[74]

Report and recording of personal interviews

1[75]. Member States shall ensure that a thorough report containing all substantial elements is made of every personal interview.

2.[76] Member States may provide for audio or audio-visual recording of the personal interview. In this case, Member States shall ensure that the recording of the personal interview is annexed to the report.

3. Member States shall ensure that the applicant has the opportunity to make comments and/or provide clarifications with regard to any mistranslations or misconceptions 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, Member States shall ensure that the applicant is fully informed of the content of the report, with the assistance of an interpreter if necessary. Member States shall then request the approval of the applicant on the content of the report.[77]

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74 Reservation: **IT** expressing concerns about the possible administrative burden resulting from the proposed obligations concerning reporting on personal interviews.
Scrutiny reservation: **ES**, **FR, SE**

75 Scrutiny reservation: **NL.** In response to the request of **NL** whether a report needs to be made of an interview aimed at analysing the applicant's language, **Cion** indicated that such is not the case.

76 Scrutiny reservation: **FI, NL**

77 **AT**, **NL, RO** opposed the obligation to ask approval of the asylum seeker on the content of the report considering the possibility to make comments sufficient.
NL requested clarification whether paragraph 3 would cover the situation in the Netherlands where the legal counsellor of the applicant receives financial means for engaging an interpreter.

Member States need[78] not request the applicant's approval on the content of the report if the interview is recorded in accordance with paragraph 2 and if the recording is admissible as evidence in procedures referred to in Chapter V.

4. Where an applicant refuses to approve the content of the report, the reasons for this refusal shall be entered into the applicant's file.

The refusal of an applicant to approve the content of the report shall not prevent the determining authority from taking a decision on the application.

5.[79] Applicants shall not be denied access to the report and, where applicable, the recording[80], before the determining authority takes a decision.

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78 **MT** proposed "shall" instead of "need".

79 **DE**, whilst not opposing access as the general rule, proposed to allow for exceptions in certain cases.
BG opposed giving a copy of the report to the applicant for reasons of abuse and explained that in Bulgaria the applicant can only have access to the report after a decision in first decision is made.

80 **CY** proposed to insert "but without taking a copy".

Article 18

Medical reports[81]

[81] Reservation: **AT**, **DE, LU, LV, NL, RO, SI**
Scrutiny reservation: **CZ** (considering the article too detailed), **EE**, **EL** (in particular on paragraph 1), **ES**, **FI**, **FR**, **LT**, **PT, SE, SK**
AT proposed to delete the Article.
DE, proposed to delete the paragraphs 1 and 2 considering them too broad and expressed concerns about their financial implications. More specifically, concerning paragraph 1, **DE**, supported by **LU**, opposed the last sentence arguing it could enable applicants to delay the procedure whilst putting the burden of proof on the Member State. Concerning paragraph 2, **DE**, supported by **RO**, **SI,** opposed the shift of focus from examining whether a person has protection needs to examining whether a person has limitations for medical reasons. DE also rebutted the assumption that all persons suffering from PTSS have reduced possibilities for conducting an interview. Finally, **DE** pointed to the link between this article and the points 2(d) and 2(q).
Considering that no causal link might exist between the medical condition and the asylum claim, **NL** proposed to delete the last two sentences of paragraph 1 and to replace in paragraph 2 the phrase "considers that …the applicant's consent" by "has reasonable grounds to consider that the applicant suffers from post-traumatic stress disorder, and there is reason to believe that this might interfere with the applicants ability to be interviewed and/or to give coherent statements, the determining authority, subject to the consent of the applicant, shall ensure that a medical examination is carried out".
CZ proposed to delete paragraphs 1, 2 and 3 arguing that the text of the article is not adequate in light of its examinations in the field of sexual identity.
SI considered the paragraphs 3, 4 and 5 difficult to implement, in particular for smaller Member States.
AT, **SK** suggested to use the text of the Council position on the previous Commission proposal as laid down11414/2/10 REV 2 as basis of a new compromise text, including, supported by **CY, LV**, the specification that the applicant can have the medical examination "at his/her own costs". In response, **Cion** indicated that asylum applicants are not always in the position to pay for a medical examination themselves.

1. Member States shall allow an applicant to have a medical examination carried out in order to submit a medical certificate to the determining authority in support of his/her statements regarding past persecution or serious harm. Member States may require the applicant to submit the results of the medical examination to the determining authority within a reasonable time limit[82] after he/she has been informed about his/her rights pursuant to this Article. If the applicant fails to submit the results of the medical examination within that time limit without good reasons, it shall not prevent the determining authority from taking a decision on the application for international protection.

2. Without prejudice to paragraph 1, in cases where the determining authority considers that there is reason to believe that the applicant's ability to be interviewed and/or to give accurate and coherent statements does not exist or is limited as a results of post-traumatic stress disorder, past persecution or serious harm, it shall ensure that a medical examination is carried out with the applicant's consent. The applicant's refusal to undergo such a medical examination shall not prevent the determining authority from taking a decision on the application for international protection.

3. Member States shall provide for relevant arrangements[83] in order to ensure that impartial[84] and qualified medical expertise is made available for the purpose of medical examinations referred to in paragraph 2.

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[82] **SI** requested clarification of the phrase "reasonable time limit".
RO expressed concerns about the reference to a time-limit.

[83] Scrutiny reservation: **BG**, **EE, RO, SK, LT** requesting clarification on the concept of "relevant arrangements".

[84] **FR**, **LT** proposed to delete "impartial".

4.[85] Member States shall provide for further rules and arrangements[86] for identification and documentation of symptoms of torture and other forms of physical, sexual or psychological violence, relevant to the application of this Article.

5.[87] Member States shall ensure that the persons interviewing applicants pursuant to this Directive receive training with regard to the awareness of symptoms of torture and of[88] medical problems which could adversely affect the applicant's ability to be interviewed.

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

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[85] **DE, IT, NL** considered this paragraph unnecessary and suggested, if the content of this paragraph would be maintained, to transfer it to the recitals.
EL considered this paragraph unclear.

[86] **ES**, **SK** requested clarification about the phrase "further rules and arrangements".

[87] **CY, DE, ES, FR, IT, LU, PT, SK** considered the training obligations in this paragraph too extensive, in particular in light of Article 4.
Scrutiny reservation: **BG**

[88] **NL** proposed to delete the phrase "symptoms of torture and of", considering that staff of the determining authority cannot be expected to recognise such symptoms.

Article 19

Provision of legal and procedural information free of charge in procedures at first instance[89]

1. Member States shall ensure that legal and procedural information is provided free of charge to applicants, on request, in procedures at first instance provided for in Chapter III. This shall include, at least, the provision of information on the procedure in the light of the applicant's particular circumstances and explanations of reasons in fact and in law[90] in the event of a negative decision.

2.[91] The provision of legal and procedural information free of charge shall be subject to the conditions laid down in Article 21.

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[89] Reservation: **MT**
Scrutiny reservation: **AT, CZ, EL, IT, LT, LV, NL, SK**
LV expressed the position that there should not be a right to free legal assistance in certain situations, such as in case of claims that are manifestly unfounded.

[90] Reservation: **CY,** considering that information on the procedure should be given in general and that the reasons for the rejection is given in the letter of decision, proposed to delete the phrase: "in the light of the applicant's particular circumstances and explanations of reasons in fact and in law".
Scrutiny reservation on last sentence: **FR** wanting to further consider the implications of the reference to particular circumstances.
RO proposed to end the sentence after ".. circumstances".
In response, **Cion** indicated that the Member States should provide personalised information to the applicant.

[91] Scrutiny reservation: **CY**

Article 20

Free legal assistance and representation in appeals procedures[92]

↓ 2005/85/EC article 15(2)
⇨ new

1. ~~In the event of a negative decision by the determining authority,~~ Member States shall ensure that free legal assistance and~~/or~~ representation is granted on request ~~subject to the provisions of paragraph 3~~ ⇨ in appeals procedures provided for in Chapter V. This shall include, at least, the preparation of the required procedural documents and participation in the hearing before the court or tribunal of first instance on behalf of the applicant. ⇦

⇩ new

2.[93] Member States may also provide free legal assistance and/or representation in procedures at first instance provided for in Chapter III. In such cases, Article 19 shall not apply.

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92 Scrutiny reservation: **AT, CY, CZ, EL, IT, LT, LV, NL, SK**

93 Scrutiny reservation: **FR** considering this paragraph on free legal assistance and/or representation in procedures at first instance out of place in the Article which mainly deals with legal assistance in appeals.

3.[94] Member States may provide that free legal assistance and representation not be granted if the applicant's appeal is considered by a court or tribunal to have no tangible prospect of success.

In such a case, Member States shall ensure that legal assistance and representation is not arbitrarily restricted and that the applicant's effective access to justice is not hindered.

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

Article 21

Conditions for the provision of legal and procedural information free of charge and free legal assistance and representation[95]

1. Member States may provide that the legal and procedural information referred to in Article 19 and the legal assistance and representation referred to in Article 20 are provided by non-governmental organisations, government officials, or specialised services of the State.

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[94] **DE** preferred a provision following the logic of the Directive currently in force which would allow Member States to provide in their national legislation that free legal assistance and/or representation is granted only if the appeal or review is likely to succeed.
LV requested clarification about the consistency of this paragraph pointing out that legal assistance is already needed to ascertain that there are no tangible prospects of success.

[95] Scrutiny reservation: **AT, CY, CZ, EL, IT, LT, LV, NL, SK**

↓ 2005/85/EC article 15 (adapted)
⇨ new

~~1. Member States shall allow applicants for asylum the opportunity, at their own cost, to consult in an effective manner a legal adviser or other counsellor, admitted or permitted as such under national law, on matters relating to their asylum applications.~~

2. ~~3.~~ Member States may provide ~~in their national legislation~~ that ⇨ the provision of legal and procedural information free of charge referred to in Article 19 and ⇦ free legal assistance and~~/or~~ representation ⌦ referred to in Article 20 ⌫ ⌦ are ⌫ ~~is~~ granted[96]:

~~(a) only for procedures before a court or tribunal in accordance with Chapter V and not for any onward appeals or reviews provided for under national law, including a rehearing of an appeal following an onward appeal or review; and/or~~[97]

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

(b ~~c~~) only ⌦ through the services provided by ⌫ ~~to~~ legal advisers or other counsellors specifically designated by national law to assist and/or represent applicants for ⇨ international protection ⇦ ~~asylum. and/or~~

~~(d) only if the appeal or review is likely to succeed.~~

~~Member States shall ensure that legal assistance and/or representation granted under point (d) is not arbitrarily restricted.~~

[96] **DE** proposed to add the phrase: "in accordance with national rules on legal assistance and representation".

[97] Reservation: **FR** on deletion point (a) proposing to maintain this point.

3. ~~4.~~ Rules concerning the modalities for filing and processing requests for ⇨ legal and procedural information under Article 19 and ⇦ legal assistance and/~~or~~ representation ⌦ under Article 20 ⌫ may be provided by Member States.

4. ~~5.~~ Member States may also:

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

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

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

↓ 2005/85/EC article 15(1) (adapted)
⇨ new

Article 22

Right to legal assistance and representation at all stages of the procedure[98]

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

⇩ new

2. Member States may allow non-governmental organisations to provide legal assistance and/or representation to applicants for international protection in procedures provided for in Chapter III and Chapter V. [99]

[98] Scrutiny reservation: **AT, CZ, EL, IT, LT, LV, NL, SK**

[99] **NL** requested clarification how this paragraph is related to Article 21(1).
CY proposed to specify that legal assistance is provided by lawyers working for the NGOs.

↓ 2005/85/EC (adapted) ⇨ new

Article 23 ~~16~~

Scope of legal assistance and representation

1.[100] Member States shall ensure that a legal adviser or other counsellor admitted or permitted as such under national law, and who assists or represents an applicant for ⇨ international protection ⇦ ~~asylum~~ under the terms of national law, shall enjoy access to ⌦ the ⌫ ~~such~~ information in the applicant's file ⇨ upon which a decision is or will be made ⇦ ~~as is liable to be examined by the authorities referred to in Chapter V, insofar as the information is relevant to the examination of the application~~.

Member States may make an exception where disclosure of information or sources would jeopardise national security, the security of the organisations or person(s) providing the information or the security of the person(s) to whom the information relates or where the investigative interests relating to the examination of applications for ~~of~~ ⇨ international protection ⇦ ~~asylum~~ by the competent authorities of the Member States or the international relations of the Member States would be compromised. In these cases, ⌦ Member States shall: ⌫

[100] Reservation: **DE**, **MT**
Scrutiny reservation: **EL, NL, PL, SE**
MT opposed allowing access of the legal adviser to the file before the appeal stage with a view to avoiding lengthening of the procedure.
NL wanted to maintain its national system whereby a judge, having access to all information, decides on disclosure of information.
Furthermore, **NL**, supported by **SE**, rejected any obligation to establish a new authority for granting access.

⇩ new

(a)[101] grant access to the information or sources in question to a legal adviser or counsellor who has undergone a security check or, at least, to specialised services of the State that are allowed under national law to represent the applicant for this specific purpose, insofar as the information is relevant to the examination of the application or taking a decision to withdraw international protection[102];

[101] Reservation **CY, DE**
CY proposed to delete the references to "counsellors" throughout the article considering that only legal advisers should have access to the information referred to in this article; **FR** opposed this proposal. In response, **Cion** indicated that this terminology already is used in the directive currently in force.
Furthermore, **CY** wanted only disclosure of information in cases of appeal before the Supreme Court of Justice.
Scrutiny reservation: **BG**, **CZ**, **EE**, **ES**, **FI, LV, RO, SK**
SK feared abuse of documents of the intelligence service.
RO expressed concerns about possible delays in the procedure in case a Member State would decide not to allow access.
ES requested clarification about the scope of the information to which access should be allowed.
BG requested clarification whether this provision would mean that the legal adviser would receive copies of the documents considering this not acceptable before the decision is taken. In response, **Cion** indicated that the provision reflects case law of the European Court of Human Rights (see in this context document 11354/10). Moreover, **Cion** indicated that the reference to national law in the provision leaves a certain degree of flexibility to Member States.

[102] **SE** proposed to add: ". Material related to national security is not relevant to legal advisers.". **SE** indicated that no access should be given to the information itself but that, instead, it could be considered to give access a summary of that information.

↓ 2005/85/EC (adapted) ⇨ new

(b)[103] ⌦ make ⌫ access to the information or sources in question ~~shall be~~ available to the authorities referred to in Chapter V[104] ~~, except where such access is precluded in cases of national security~~[105].

2.[106] Member States shall ensure that the legal adviser or other counsellor[107] who assists or represents an applicant ~~for asylum~~ has access to closed areas, such as detention facilities and transit zones, for the purpose of consulting that applicant ⇨ , in accordance with Article 10(4) and Article 18(2)(b) and (c) of Directive […/…/EU] [the Reception Conditions Directive] ⇦. ~~Member States may only limit the possibility of visiting applicants in closed areas where such limitation is, by virtue of national legislation, objectively necessary for the security, public order or administrative management of the area, or in order to ensure an efficient examination of the application, provided that access by the legal adviser or other counsellor is not thereby severely limited or rendered impossible.~~

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103 Scrutiny reservation: **RO**

104 On request of **EL**, **Presidency** clarified that the authorities referred to in Chapter V concern the appeal bodies mentioned in this Chapter.

105 **DE** opposed the proposed deletion of the phrase "except where such access is precluded in cases of national security".

106 **CZ** noted that this paragraph has an overlap with Article 8.2.

107 **DE**, supported by **ES**, proposed to insert "authorised by national law".

⇩ new

3.[108] Member States shall allow the applicant to bring [109]to the personal interview a legal adviser or other counsellor admitted or permitted as such under national law.

🡻 2005/85/EC
⇨ new

4. ~~3.~~ Member States may provide rules covering the presence of legal advisers or other counsellors at all interviews in the procedure, without prejudice to this Article or to Article 25(1)(b)[110] ~~17(1)(b)~~.

~~4. Member States may provide that the applicant is allowed to bring with him/her to the personal interview a legal adviser or other counsellor admitted or permitted as such under national law.~~

Member States may require the presence of the applicant at the personal interview, even if he/she is represented under the terms of national law by such a legal adviser or counsellor, and may require the applicant to respond in person to the questions asked.

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

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[108] Reservation: **FR, LV**
Scrutiny reservation: **EL, ES**

[109] **LT** proposed to insert ", at his/her own costs,"

[110] Reservation: **NL** on reference to Article 25.1 (b)

⇩ new

Article 24

Applicants in need of special procedural guarantees[111]

1. [112]Member States shall ensure that applicants in need of special procedural guarantees are identified in due time[113]. To that end, Member States may use the mechanism provided for in Article 22 of Directive […/…/EU] [the Reception Conditions Directive].

Member States shall ensure that this Article also applies if it becomes apparent at a later stage in the procedure that an applicant is in need of special procedural guarantees.

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111 Reservation: **AT, BG, CZ, DE, EE, SI**
Scrutiny reservation: **CY**, **FR**, **NL**, **PT, SK**
AT, DE, **PT**, rejected a shift from the focus of examining applications for international protection to examining the medical situation of the applicant also fearing that such shift would increase abuse.
Furthermore, **AT, DE, SI** considered the provision too broad and insufficiently clear and expressed concerns on the implications for costs and possible delays.
DE further expressed misgivings because of the relation of this article with Article 2(d) - supported by **BG**, **CZ**, **LU**, **NL**, **SI** - and with Article 18 - supported by **CZ**.
AT, BG, FR, HU, NL, RO expressed concerns on the reference to Article 22 of the recast of the Reception Conditions Directive. In this context, **NL** remarked that, given that reception and procedural needs are different, a shared identification mechanism seems not appropriate.

112 Scrutiny reservation: **RO**

113 **NL** requested clarification on the phrase "in due time" given that procedural needs often only become apparent after the applicant has been interviewed.

2. [114]Member States shall take appropriate measures to ensure that applicants in need of special procedural guarantees are granted sufficient time and relevant support to present the elements of their application as completely as possible and with all available evidence.

[115]In cases where the determining authority considers that an applicant has been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, Article 31(6)[116] and Article 32(2) shall not apply.

↓ 2005/85/EC (adapted)
⇨ new

Article 25 ~~17~~

Guarantees for unaccompanied minors[117]

1.[118] With respect to all procedures provided for in this Directive and without prejudice to the provisions of Articles 14 ⇨ , 15, 16, ⇦ and 17 ~~12 and 14~~, Member States shall:

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[114] **DE**, **ES**, **NL, LV** considered the paragraph too broad and the terms used insufficiently specific and therefore open to abuse.

[115] Reservation: **BG**, **CZ**, **DE**, **EE**, **FR**
Scrutiny reservation: **FI**, **PL**, **SE**
FR proposed to delete this subparagraph.
PL remarked that an applicant can have been subjected to psychological or physical violence such as rape but that this need not be related to the asylum claim.

[116] **AT, NL, SI** did not see any reason for exempting accelerated procedures from this article on applicants with special procedural needs.

[117] Reservation: **FI**

[118] Scrutiny reservation: **SE**

(a)[119] ⌦ take measures ⌫ as soon as possible ~~take measures~~ to ensure that a representative[120] represents and~~/or~~ assists the unaccompanied minor ⇨ to enable him/her to benefit from the rights and comply with the obligations provided for in this Directive ⇦ ~~with respect to the examination of the application~~. ⇨ The representative shall have the necessary expertise in the field of childcare[121] and shall perform his/her duties in accordance with the principle of the best interests of the child. ⇦ ⌦ The ⌫ ~~This~~ representative can also be the representative referred to in Directive […/…/EU] [the Reception Conditions Directive] ~~Article 19 of Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers~~[122];

(b)[123] ensure that the representative is given the opportunity to inform the unaccompanied minor about the meaning and possible consequences of the personal interview and, where appropriate, how to prepare himself/herself for the personal interview. Member States shall ⇨ ensure[124] that ⇦ ~~allow~~ ⌦ a ⌫ ~~the~~ representative ⇨ and/or a legal adviser or other counsellor admitted as such under national law are ⇦ ~~to be~~ present at that interview and ⇨ have an opportunity ⇦ to ask questions or make comments, within the framework set by the person who conducts the interview.

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119 Scrutiny reservation: **PT**
HU suggested to specify that another representative is nominated in case the initial representative cannot participate in the interview so as to avoid postponement of the interview.

120 Reservation: **NL, RO** because of the reference to "representative".

121 Reservation: **HU, PT, RO** proposing to delete the phrase: "shall have the necessary expertise in the field of childcare". In this context, **RO** expressed doubts whether the legal basis of the Directive was sufficient for including this phrase.

122 ~~OJ L 31, 6.2.2003, p. 18.~~

123 Reservation: **CY**
ES requested clarification if an official of a ministry could act as legal adviser or other counsellor admitted as such under national law.
FR requested clarification in relation to Article 24.4 whether it would be possible that only the representative of the minor would be present and not the legal adviser. In response, **Cion** indicated that either the representative or the legal adviser must be present.

124 **NL** proposed "allow" instead of "ensure".

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

2. Member States may refrain from appointing a representative where the unaccompanied minor~~:~~

~~(a)~~ will in all likelihood reach the age of ⇨ 18 years ⇦ ~~maturity~~ before a decision at first instance is taken~~; or~~

~~(b) can avail himself, free of charge, of a legal adviser or other counsellor, admitted as such under national law to fulfil the tasks assigned above to the representative; or~~

~~(c) is married or has been married~~.[125]

~~3. Member States may, in accordance with the laws and regulations in force on 1 December 2005, also refrain from appointing a representative where the unaccompanied minor is 16 years old or older, unless he/she is unable to pursue his/her application without a representative.~~[126]

3. ~~4.~~ Member States shall ensure that:

(a) if an unaccompanied minor has a personal interview on his/her application for ⇨ international protection ⇦ ~~asylum~~ as referred to in Articles 14, 15, ⇨ 16, ⇦ 17, and ⇨ 34 ⇦ ~~12, 13 and 14,~~ that interview is conducted by a person who has the necessary knowledge of the special needs of minors;

(b)[127] an official with the necessary knowledge of the special needs of minors prepares the decision by the determining authority on the application of an unaccompanied minor.

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125 **BG**, **LV** opposed the proposed deletion of point (c).

126 **CY** opposed the proposed deletion of this paragraph.

127 Reservation: **CY** considering a general reference to the training requirements of interviewers in the recitals sufficient**.**

⇩ new

4.[128] Unaccompanied minors, together with the representative, shall be provided, free of charge, with legal and procedural information as referred to in Article 19 also for the procedures for the withdrawal of international protection status provided for in Chapter IV.

🡻 2005/85/EC
⇨ new

5.[129] Member States may use medical examinations to determine the age of unaccompanied minors within the framework of the examination of an application for ⇨ international protection ⇦ ~~asylum~~ ⇨ where, following general statements[130] or other relevant evidence, Member States still have doubts concerning the applicant's age. If those doubts persist after the medical examination, Member States shall assume that the applicant is a minor ⇦[131].

[128] Reservation: **CZ, LV, SK**

[129] Reservation: **CY**, **DE, FR**
Scrutiny reservation: **PT**

[130] **HU** requested clarification of the term "general statement". In response, **Cion** indicated this refers to what the unaccompanied minor states and that this is one of the elements of an examination procedure that the determining authority needs to be taken into consideration in its decision on the application.

[131] **ES, DE, PT** requested clarification about the application of the principle of doubt considering that 100% certainty is not possible. In this context, **HU** suggested to make use of a second opinion.
FR suggested to specify that the doubts refer to the doubts of a Member State.
CY proposed to delete the last sentence of this subparagraph as it refers to medical experts and not to the authority examining an application for international protection.

⇩ new

Any medical examination shall be performed in full respect of the individual's dignity, selecting the less invasive examinations[132].

🡻 2005/85/EC (adapted)
⇨ new

In cases where medical examinations are used, Member States shall ensure that:

(a) unaccompanied minors are informed prior to the examination of their application for ⇨ international protection ⇦ ~~asylum~~, and in a language which they ~~may reasonably be supposed to~~ understand, of the possibility that their age may be determined by medical examination. This shall include information on the method of examination and the possible consequences of the result of the medical examination for the examination of the application for ⇨ international protection ⇦ ~~asylum~~, as well as the consequences of refusal on the part of the unaccompanied minor to undergo the medical examination;

(b) unaccompanied minors and/or their representatives consent to ~~carry out~~ an examination ⌦ being carried out ⌫ to determine the age of the minors concerned; and

[132] **HU** requested clarification of the term "less invasive examinations" giving the example of an X-ray.

(c) the decision to reject an application for ⇨ international protection ⇦ ~~asylum~~ from an unaccompanied minor who refused to undergo this medical examination shall not be based solely on that refusal.

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

⇩ new

6.[133] Article 20(3), Article 31(6), Article 32(2), Article 33(2)(c), Article 38, and Article 43 shall not apply to unaccompanied minors.

🡻 2005/85/EC

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

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[133] Reservation: **AT, DE, FR, SI**
Scrutiny reservation: **EE, ES, LV, NL, PL, PT, SE**
PL expressed doubts about general derogations for unaccompanied minors.
AT, PT did not see any reason for a general derogation of the rules on accelerated procedures on unaccompanied minors.
In response, **Cion** indicated that unaccompanied minors should be exempted from the procedures listed in paragraph 6 because these procedures put an applicant in a disadvantageous position and can have serious consequences such as non suspensive effect not being applicable.
HU suggested to set the same conditions with regard to the removal of unaccompanied minors from the Member State's territory as in Article 10.2 of the Return Directive: "the authorities shall be satisfied that he or she will be returned to a member of his or her family, a nominated guardian or adequate reception facilities in the state of return.

↓ 2005/85/EC (adapted) ⇨ new

Article 26 ~~18~~

Detention[134]

1. Member States shall not hold a person in detention for the sole reason that he/she is an applicant for ⇨ international protection ⇦ ~~asylum~~. ⇨ Grounds and conditions of detention as well as guarantees available to detained applicants for international protection shall be in accordance with Directive […/…/EU] [the Reception Conditions Directive] ⇦.

2. Where an applicant for ⇨ international protection ⇦ ~~asylum~~ is held in detention, Member States shall ensure that there is a possibility of speedy judicial review ⇨ in accordance with Directive […/…/EU] [the Reception Conditions Directive] ⇦.

Article 27 ~~19~~

Procedure in ⌦ the ⌫ case of withdrawal of the application

1. Insofar as Member States provide for the possibility of explicit withdrawal of the application under national law, when an applicant ~~for asylum~~ explicitly withdraws his/her application for ⇨ international protection ⇦ ~~asylum~~, Member States shall ensure that the determining authority takes a decision to either discontinue the examination or reject the application.

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[134] Reservation: **AT, FR, SK** and scrutiny reservation: **CY, ES, PT, RO** in relation to the reference to the recast of the Reception Conditions Directive.

2. Member States may also decide that the determining authority can decide to discontinue the examination without taking a decision. In this case, Member States shall ensure that the determining authority enters a notice in the applicant's file.

Article 28 ~~20~~

Procedure in the case of implicit withdrawal or abandonment of the application[135]

1.[136] When there is reasonable cause to consider that an applicant for ⇨ international protection ⇦ ~~asylum~~ has implicitly withdrawn or abandoned his/her application ~~for asylum~~, Member States shall ensure that the determining authority takes a decision to either discontinue the examination or ⇨, provided that the determining authority considers the application to be unfounded on the basis of an adequate examination of its substance in line with Article 4 of Directive […/…/EU] [the Qualification Directive] and further to a personal interview, ⇦ reject the application ~~on the basis that the applicant has not established an entitlement to refugee status in accordance with Directive 2004/83/EC~~.

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135 Reservation: **SI**

136 Reservation: **AT, FI**
Scrutiny reservation: **DE, EE, NL**
FI opposed the general assumption underlying paragraph 1 that a decision on an asylum application is only possible in case an interview has been conducted.
AT proposed to delete the phrase: "provided that the … a personal interview" expressing, moreover its preference for the text laid down in document 11414/2/10 REV 2.
NL explained that, in the Netherlands, an applicant who has disappeared needs to be interviewed before the authorities can take the decision to stop examining the application.
NL further requested clarification about the reference to Article 4 of the Qualification Directive, in particular as regards the question if an application can be rejected when the application lacks sufficient justification. In response, **Cion** indicated that the reference to Article 4 ensures that all relevant elements have been taken into account. In case no interview has been conducted, a Member State can discontinue the examination from which moment on the one year time-limit starts running.

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

(a) he/she has failed to respond to requests to provide information essential to his/her application in terms of Article 4 of Directive […/…/EU] [the Qualification Directive] ~~2004/83/EC~~ or has not appeared for an personal interview as provided for in Articles 14, 15, ⇨ 16 ⇦[137] and 17 ~~12, 13 and 14~~ ⌦ of this Directive ⌫ , unless the applicant demonstrates within a reasonable time that his/her failure was due to circumstances beyond his/her control;

(b) he/she has absconded or left without authorisation the place where he/she lived or was held, without contacting the competent authority within a reasonable time, or he/she has not within a reasonable time complied with reporting duties or other obligations to communicate.

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

[137] **EE**, **RO** proposed to delete the reference to Article 16 on the content of a personal interview.

2.[138] Member States shall ensure that the applicant who reports again to the competent authority after a decision to discontinue as referred to in paragraph 1 of this Article is taken, is entitled to request that his/her case be reopened ⇨ or entitled to make a new application which shall not be subject to the procedure referred to in Articles 40 and 41 ⇦[139] ~~, unless the request is examined in accordance with Articles 32 and 34~~.

Member States may provide for a time limit ⇨ of at least one year ⇦[140] after which the applicant's case can no longer be re-opened ⇨ or the new application may be treated as a subsequent application and subject to the procedure referred to in Articles 40 and 41 ⇦.

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

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

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[138] Scrutiny reservation: **CZ, HU**
CZ considered this paragraph too favourable for an applicant who fails to cooperate with the authorities on his asylum application and who probably left the territory of the Member State.
HU explained that in Hungary it is not allowed to start a new procedure in case the applicant has disappeared.
Furthermore, **HU** remarked that the provision should refer to the Articles 33 and 40 instead of 40 and 41.

[139] **CY**, **SI** opposed that the entitlement to make a new application would not be subject to the arrangements concerning subsequent applications. In response, **Cion** explained that a Member State can consider an application as a subsequent application after the time-limit of at least one year; from that moment on, the applicant needs to submit new elements for having his application examined again.

[140] Reservation: **EE, ES, SI** considering the one year time limit too long.
CY opposed that Member States are allowed to set different time-limits.

⇩ new

3.[141] This Article shall be without prejudice to Regulation (EU) No […/…] [the Dublin Regulation].

🡻 2005/85/EC (adapted)
⇨ new

Article 29 ~~21~~

The role of UNHCR

1. Member States shall allow the UNHCR:

(a) to have access to applicants for ⇨ international protection ⇦ ~~asylum~~, including those in detention ⇨ , at the border and ⇦ ⌦ in the ⌫ ~~and in airport or port~~ transit zones;

(b) to have access to information on individual applications for ⇨ international protection ⇦ ~~asylum~~, on the course of the procedure and on the decisions taken, provided that the applicant ~~for asylum~~ agrees thereto;

[141] Reservation: **DE,**
Scrutiny reservation: **EE, SI**
DE proposed to delete this paragraph arguing that the Dublin Regulation concerns different issues than the Asylum Procedures Directive and that making the reference to the Dublin Regulation creates unnecessary confusion.
In response, **Cion** indicated that the reference to the Dublin Regulation is already in the directive currently in force and that the reference is intended as a clarification.

(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 ⇦ ~~asylum~~ at any stage of the procedure.

2. Paragraph 1 shall also apply to an organisation which is working in the territory of the Member State concerned on behalf of the UNHCR pursuant to an agreement with that Member State.

Article 30 ~~22~~

Collection of information on individual cases

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

(a) ~~directly~~ disclose information regarding individual applications for ⇨ international protection ⇦ ~~asylum~~, or the fact that an application has been made, to the alleged actor(s) of persecution ⇨ or serious harm ⇦ ~~of the applicant for asylum~~;

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

CHAPTER III

PROCEDURES AT FIRST INSTANCE

SECTION I

Article 31 ~~23~~

Examination procedure[142]

1. Member States shall process applications for ⇨ international protection ⇦ ~~asylum~~ in an examination procedure in accordance with the basic principles and guarantees of Chapter II.

2. Member States shall ensure that such a procedure is concluded as soon as possible, without prejudice to an adequate and complete examination.

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142 Scrutiny reservation: **LU**, **PT**

⇩ new

3.[143] Member States shall ensure that a procedure is concluded within six months after the application is lodged.

Member States may extend that time limit for a period [144]not exceeding a further six months, where:

(a) complex issues of fact and law are involved;

(b) a large number of third country nationals or stateless persons simultaneously request international protection which makes it impossible in practice to conclude the procedure within the six-month time-limit;

(c) where the delay can clearly be attributed to the failure of the applicant to comply with his/her obligations under Article 13.[145]

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[143] Reservation: **CY, DE,**
CY considered this paragraph too rigid.
CY, **DE, SI** opposed setting any time-limits. More specifically, **SI** considered that time-limits should be a recommendation and not an obligation. Moreover, in case time-limits would remain, than **DE** would consider the initial six months followed by a six months extension too short.
Scrutiny reservation: **CZ, ES, FI, FR, LU, NL, PL, RO, SE, SI, SK** expressing concerns about the extension with a further six months which these delegations considered too short.
FR proposed in case of extension a time-limit of 12 months.

[144] **HU** proposed to insert "strictly necessary to complete the procedure and, ".

[145] **NL** considered a six month deadline not logical in the cases where the delay can be attributed to the applicant.

Member States may postpone concluding the procedure where the determining authority cannot reasonably be expected to decide within the time limits laid down in this paragraph due to an uncertain situation in the country of origin which is expected to be temporary.[146]

↓ 2005/85/EC
⇨ new

4.[147] Member States shall ensure that, where a decision cannot be taken within six months, the applicant concerned shall ~~either~~:

(a) be informed of the delay; ⇨ and ⇦[148] ~~or~~

(b) receive, upon his/her request, information on the ⇨ reasons for the delay and the ⇦ time-frame within which the decision on his/her application is to be expected. ~~Such information shall not constitute an obligation for the Member State towards the applicant concerned to take a decision within that time-frame.~~

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[146] On request of **CZ**, **Cion** clarified that the six month period for further extension does not apply to this subparagraph.
HU proposed to set a time-limit for the cases covered by this subparagraph in order to avoid uncertainty for the applicants about the moment a decision on their application will be made.
NL requested clarification whether this subparagraph covers the issue laid down in Article 8.3 of the Qualification Directive currently in force which provides that an applicant is not in need of international protection and can therefore be returned notwithstanding technical obstacles.

[147] Scrutiny reservation: **AT, SE**
SI requested clarification when the examination procedure is considered to be concluded: at the moment that the decision is made at first instance or at a later stage.

[148] **FR** proposed "or" instead of "and".

⇩ new

The consequences of failure to adopt a decision within the time limits laid down in paragraph 3 shall be determined in accordance with national law.[149]

🡻 2005/85/EC
⇨ new

5. ~~3.~~[150] Member States may prioritise ~~or accelerate any~~ an examination ⇨ of an application for international protection ⇦ in accordance with the basic principles and guarantees of Chapter II~~, including where the application is likely to be well-founded or where the applicant has special needs~~:

[149] Reservation: **CY** proposing to delete this subparagraph.
FR, RO, SE requested clarification why this subparagraph is proposed. In response, **Cion** indicated that a consequences could be that an applicant can file a complaint or go to court.
CZ, LU requested clarification whether it is sufficient that the Member State informs the applicant about the delay and the reason for that delay.
NL, supported by **SI**, requested clarification if a Member State would be allowed to determine in national law that there would be no consequences in case of failure to adopt a decision within the time limits.

[150] Scrutiny reservation: **AT** expressing a preference to delete paragraph 5.

⇩ new

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

[151](b) where the applicant is vulnerable within the meaning of Article 22 of Directive […/…/EU] [the Reception Conditions Directive], or is in need of special procedural guarantees, in particular unaccompanied minors;

[152](c) in other cases with the exception of applications referred to in paragraph 6.

[153]

[151] Scrutiny reservation: **PT**

[152] **NL**, **PT** requested clarification about point (c).

[153] **HU** proposed to add as an additional ground for prioritisation cases where the applicant is detained.

↓ 2005/85/EC (adapted) ⇨ new

6. ~~4.~~[154] Member States may ~~also~~ provide that an examination procedure in accordance with the basic principles and guarantees of Chapter II be ~~prioritised or~~ accelerated ⇨ and/or conducted at the border in accordance with Article 43 ⇦ [155]if:

(a) the applicant, in submitting his/her application and presenting the facts, has only raised issues that are not relevant ~~or of minimal relevance~~ to the examination of whether he/she qualifies as a refugee ⇨ or a person eligible for subsidiary protection ⇦ by virtue of Directive […/…/EU] [the Qualification Directive] ~~2004/83/EC~~; or

~~(b) the applicant clearly does not qualify as a refugee or for refugee status in a Member State under Directive 2004/83/EC; or~~[156]

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[154] Scrutiny reservation: **AT**, **CZ**, **DE**, **EE**, **FR, HU, LV, PT, RO, SE, SI, SK**
EE, ES, **NL, PT** expressed doubts about the need to enumerate in the article a list of cases in which accelerated procedures are possible considering the heading setting the condition that these procedures need to be in accordance with the basic principles and guarantees of Chapter II sufficient.
SE suggested to make use of the more general ground laid down in Article 23.4(b) of the directive currently in force, extended to subsidiary protection, instead of listing specific grounds for accelerated procedures.
DE considered that the points (b),(e) and (k) are the most important points that need to be re-inserted.
SI considered that the points (i) and (n) are the most important points that need to be re-inserted.

[155] **FR, RO** requested clarification of the implications of the reference to border procedures.

[156] **DE**, **SI** opposed the proposed deletion proposing at the same time to include subsidiary protection. In response, **Cion** indicated that this point was deleted because it is rather vague.

~~(c) the application for asylum is considered to be unfounded;~~[157]

(b ~~i~~) ~~because~~ the applicant is from a safe country of origin within the meaning of this Directive ~~Articles 29, 30 and 31,~~ or

~~(ii) because the country which is not a Member State, is considered to be a safe third country for the applicant, without prejudice to Article 28(1); or~~[158]

(c ~~d~~) the applicant has misled the authorities by presenting false information or documents or by withholding relevant information or documents with respect to his/her identity and/or nationality that could have had a negative impact on the decision; or

~~(e) the applicant has filed another application for asylum stating other personal data; or~~[159]

(d ~~f~~) ~~the applicant has not produced information establishing with a reasonable degree of certainty his/her identity or nationality, or~~ it is likely that, in bad faith, ⌦ the applicant ⌫ ~~he/she~~ has destroyed or disposed of an identity or travel document that would have helped establish his/her identity or nationality; or

(e ~~g~~) the applicant has made ~~inconsistent, contradictory,~~ ⇨ clearly false or obviously ⇦ improbable ~~or insufficient~~ representations ⇨ which contradict sufficiently verified country-of-origin information, ⇦ ⌦ thus making ⌫ ~~which make~~ his/her claim clearly unconvincing in relation to ⇨ whether he/she qualifies as a refugee or a person eligible for subsidiary protection by virtue of ⇦ ~~his/her having being the object of persecution referred to in~~ Directive […/…/EU] [the Qualification Directive] ~~Directive 2004/83/EC~~[160]; or

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157 **SI** opposed the proposed deletion In response, **Cion** indicated that this point was deleted because it should be the end-result of an examination.

158 **DE** opposed the proposed deletion.

159 **CZ, DE, SK** opposed the proposed deletion.

160 **DE**, **FR** preferred the wording of point (g) in the Directive currently in force.

~~(h) the applicant has submitted a subsequent application which does not raise any relevant new elements with respect to his/her particular circumstances or to the situation in his/her country of origin; or~~[161]

~~(i) the applicant has failed without reasonable cause to make his/her application earlier, having had opportunity to do so; or~~[162]

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

~~(k) the applicant has failed without good reason to comply with obligations referred to in Article 4(1) and (2) of Directive 2004/83/EC or in Articles11(2)(a) and (b) and 20(1) of this Directive; or~~[163]

~~(l) the applicant entered the territory of the Member State unlawfully or prolonged his/her stay unlawfully and, without good reason, has either not presented himself/herself to the authorities and/or filed an application for asylum as soon as possible, given the circumstances of his/her entry; or~~[164]

(g ~~m~~) the applicant ⇨ may for serious reasons be considered ⇦ ~~is~~ a danger to the national security or public order of the Member State, or the applicant has been forcibly expelled for serious reasons of public security ⌦ or ⌫ ~~and~~ public order under national law.~~; or~~

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[161] **FR** opposed the proposed deletion.

[162] **CZ**, **DE**, **EE**, **PT, SI** opposed the proposed deletion. In response, **Cion** indicated that this point was deleted because it is not related to the substance of the claim.

[163] **DE**, **EE**, **PT, SK** opposed the proposed deletion. In response, **Cion** indicated that this point was deleted because it is not related to the substance of the claim.

[164] **CZ, DE, EE, SI, SK** opposed the proposed deletion. In response, **Cion** indicated that this point was deleted because it is not related to the substance of the claim.

~~(n) the applicant refuses to comply with an obligation to have his/her fingerprints taken in accordance with relevant Community and/or national legislation; or~~[165]

~~(o) the application was made by an unmarried minor to whom Article 6(4)(c) applies, after the application of the parents or parent responsible for the minor has been rejected and no relevant new elements were raised with respect to his/her particular circumstances or to the situation in his/her country of origin.~~

⇩ new

7.[166] Member States shall lay down reasonable time limits[167] for the adoption of a decision in the procedure at first instance pursuant to paragraph 6 which ensure adequate and complete examination[168].

8.[169] The fact that an application for international protection was submitted after an irregular entry into the territory or at the border, including in transit zones, as well as the lack of documents or use of forged documents, shall not *per se* entail an automatic recourse to the procedure at first instance pursuant to paragraph 6.

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165 **CZ**, **FR**, **LT, LV, PT, SI, SK** opposed the proposed deletion. In response, **Cion** indicated that this point is similar to point (c) and not related to the substance of the claim.

166 Reservation: **CY**, supported by **AT**, proposing to delete this paragraph.
Scrutiny reservation: **EE**, **FI, FR, PT, RO**
FI opposed an obligation to set time-limits.

167 Scrutiny reservation: **LT, PT, RO** on the term "reasonable time-limit". In response, **Cion** indicated this term is taken from case-law of the European Court of Human Rights.

168 **ES**, **PT, RO, SI, SK** proposed to delete "and complete".

169 Reservation: **DE**
Scrutiny reservation: **AT**, **FR, SI**
AT considered paragraph 6 a more appropriate place for the text of paragraph 8 and further disagreed with the content of this text.
DE proposed to delete the phrase: ", as well as the lack of documents or use of false documents,". In response, **Cion** indicated that asylum applicants rather frequently have difficulties obtaining proper documents because of the situation in their country f origin.

↓ 2005/85/EC

Article 24

Specific procedures

1. Member States may provide for the following specific procedures derogating from the basic principles and guarantees of Chapter II:

(a) a preliminary examination for the purposes of processing cases considered within the framework set out in Section IV;

(b) procedures for the purposes of processing cases considered within the framework set out in Section V.

2. Member States may also provide a derogation in respect of Section VI.

↓ 2005/85/EC article 28 ⇨ new

Article 32

Unfounded applications[170]

1. Without prejudice to Article~~s~~ 27[171] ~~19~~ ~~and 20~~, Member States may only consider an application ~~for asylum~~ as unfounded if the determining authority has established that the applicant does not qualify for ⇨ international protection ⇦ ~~refugee~~ status pursuant to Directive […/…/EU] [the Qualification Directive] ~~2004/83/EC~~.

2.[172] ~~In the cases mentioned in Article 23(4)(b) and~~ In ~~in~~ cases of unfounded applications ~~for asylum~~ in which any of the circumstances listed in Article 31(6) ⇨ (a) to (f) [173]⇦ ~~23(4)(a) and (c) to (o)~~ apply, Member States may also consider an application as manifestly unfounded, where it is defined as such in the national legislation.

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170 **HU** pointed to the relation between this article and Article 46.

171 **DE** proposed to insert "and 28".

172 Scrutiny reservation: **FR**, **SE**
AT requested clarification on the added value and the implications of distinguishing "manifestly unfounded" applications. In response, **Cion** indicated that several Member States apply this concept, which has implications such as specific time-limits for lodging an appeal, is applied in their national legislation.

173 **CZ, DE, SE** requested clarification why point (g) has not been included. In response, **Cion** indicated that national security need not be referred to because it is unrelated to a claim being manifestly unfounded.

↓ 2005/85/EC
⇨ new

SECTION II

Article 33 ~~25~~[174]

Inadmissible applications[175]

1. In addition to cases in which an application is not examined in accordance with Regulation (EU) No […/…] [the Dublin Regulation] ~~(EC) No 343/2003~~, Member States are not required to examine whether the applicant qualifies ⇨ for international protection ⇦ ~~as a refugee~~ in accordance with Directive […/…/EU] [the Qualification Directive] ~~2004/83/EC~~ where an application is considered inadmissible pursuant to this Article.

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174 Scrutiny reservation: **EE**, **FI**, **FR, SE**
SE requested clarification on the relation between Article 33 and Article 34.

175 In view of a ruling of its Supreme Court, **CZ** requested clarification if in case of an inadmissible application, the grounds for granting subsidiary protection need to be examined.

2. Member States may consider an application for ⇨ international protection ⇦ ~~asylum~~ as inadmissible ⇨ only ⇦ ~~pursuant to this Article~~ if: [176]

(a) another Member State has granted refugee status;

(b) a country which is not a Member State is considered as a first country of asylum for the applicant, pursuant to Article 35 ~~26~~;

(c) a country which is not a Member State is considered as a safe third country for the applicant, pursuant to Article 38 ~~27~~;

[177]

~~(d) the applicant is allowed to remain in the Member State concerned on some other grounds and as result of this he/she has been granted a status equivalent to the rights and benefits of the refugee status by virtue of Directive 2004/83/EC;~~

~~(e) the applicant is allowed to remain in the territory of the Member State concerned on some other grounds which protect him/her against refoulement pending the outcome of a procedure for the determination of status pursuant to point (d);~~

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[176] **HU** suggested to add to the list of inadmissible applications a reference to "the application of an unaccompanied minor who lodges an application after an application has been made on his/her behalf pursuant to Article 7(5)(c) without any facts which justify a separate application" so as to achieve coherency with Article 40.6 (b).

[177] **NL** proposed to add a new point (c1): "the applicant is protected against refoulement in accordance with Article 21 of the Directive […/…/EU] [the Qualification Directive] because he is authorised to remain in the territory of a Member State by means of a residence permit or pending the outcome of a judicial process." In response, **Cion** indicated this would be incompatible inter alia with the right to asylum in Article 18 of the Charter. In the same vein, **BE, SE** considered that other grounds for inadmissibility should be added for instance the situation that a Member States grants another form of protection than subsidiary protection or refugee protection.

(d ~~f~~)[178] ⇨ the application is a subsequent application[179], where no [180]new elements or findings [181]relating to the examination of whether the applicant qualifies as a refugee or a person eligible for subsidiary protection by virtue of Directive […/…/EU] [the Qualification Directive] have arisen or have been presented by the applicant ⇦ ~~the applicant has lodged an identical application after a final decision~~;

(e ~~g~~) a dependant of the applicant lodges an application, after he/she has in accordance with Article 7(2) ~~6(3)~~ consented to have his/her case be part of an application made on his/her behalf, and there are no facts relating to the dependant's situation, which justify a separate application.

⇩ new

Article 34[182]

Special rules on an admissibility interview [183]

1. Member States shall allow applicants to present their views with regard to the application of the grounds referred to in Article 33 in their particular circumstances before a decision to consider an application inadmissible is taken. To that end, Member States shall conduct a personal interview on the admissibility of the application. Member States may make an exception only in accordance with Article 42 in the case of a subsequent application.

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178 Reservation: **SI** considering that in case there are no new elements a protection status should automatically be denied.
Scrutiny reservation: **AT, DE, ES, FI, RO, SK**

179 **CY** agreed in principle to this point but opposed the term "subsequent application".

180 **SK** proposed to insert "relevant".

181 **RO** proposed to insert "that could not have been proposed earlier".

182 Scrutiny reservation: **EE**, **FR, SE, SI**

183 **CY** disagreed the obligation to conduct a personal interview on admissibility of the application arguing that the competent authorities, because of the financial implications, should have the discretion to decide on the admissibility of an application without such interview.

2.[184] Paragraph 1 shall be without prejudice to Article 5 of Regulation (EU) No […/…] [the Dublin Regulation].

3.[185] Member States shall ensure that the person who conducts the interview on the admissibility of the application does not wear a military or law enforcement uniform.

↓ 2005/85/EC
⇨ new

SECTION III

Article 35 ~~26~~[186]

The concept of first country of asylum

A country can be considered to be a first country of asylum for a particular applicant for ⇨ international protection ⇦ ~~asylum~~ if:

(a) he/she has been recognised in that country as a refugee and he/she can still avail himself/herself of that protection, or

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[184] **DE** proposed to delete this paragraph.
HU requested clarification on the reference to the personal interview in the context of the Dublin Regulation considering this provision to have a different objective than the personal interview in the context of the Asylum Procedures Directive.

[185] Scrutiny reservation: **LT**
HU considered this paragraph superfluous given the general provisions of Chapter II.
EE, ES, LT considered that more flexibility is needed given that a request for asylum made at the border is usually addressed to a policeman in uniform. In response, **Cion** indicated that at least people in military uniforms should be covered.

[186] Scrutiny reservation: **CZ**, **DE**, **EL, IT** in particular as regards the possibility for the applicant to challenge the application of the first country of asylum concept in his/her particular circumstances. **DE** requested clarification why a separate challenge is needed in view of the right of appeal. In response, **Cion** specified that the challenge should take place at the administrative level at first instance.

(b) he/she otherwise enjoys sufficient protection in that country, including benefiting from the principle of non-*refoulement*,

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

In applying the concept of first country of asylum to the particular circumstances of an applicant for ⇨ international protection ⇦ ~~asylum~~, Member States may take into account Article 38(1) ~~27(1)~~.
⇨ The applicant shall be allowed to challenge the application of the first country of asylum concept in his/her particular circumstances. ⇦

↓ 2005/85/EC (adapted)

~~*Article 27*~~

~~The safe third country concept~~

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

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

~~(b) the principle of non-refoulement in accordance with the Geneva Convention is respected;~~

~~(c) the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected; and~~

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

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

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

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

~~(c) rules in accordance with international law, allowing an individual examination of whether the third country concerned is safe for a particular applicant which, as a minimum, shall permit the applicant to challenge the application of the safe third country concept on the grounds that he/she would be subjected to torture, cruel, inhuman or degrading treatment or punishment.~~

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

~~(a) inform the applicant accordingly; and~~

~~(b) provide him/her with a document informing the authorities of the third country, in the language of that country, that the application has not been examined in substance.~~

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

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

~~*Article 28*~~

~~**Unfounded applications**~~

~~1. Without prejudice to Articles 19 and 20, Member States may only consider an application for asylum as unfounded if the determining authority has established that the applicant does not qualify for refugee status pursuant to Directive 2004/83/EC.~~

2. In the cases mentioned in Article 23(4)(b) and in cases of unfounded applications for asylum in which any of the circumstances listed in Article 23(4)(a) and (c) to (o) apply, Member States may also consider an application as manifestly unfounded, where it is defined as such in the national legislation.

↓ 2005/85/EC

Article 29

Minimum common list of third countries regarded as safe countries of origin

1. The Council shall, acting by a qualified majority on a proposal from the Commission and after consultation of the European Parliament, adopt a minimum common list of third countries which shall be regarded by Member States as safe countries of origin in accordance with Annex II.

2. The Council may, acting by a qualified majority on a proposal from the Commission and after consultation of the European Parliament, amend the minimum common list by adding or removing third countries, in accordance with Annex II. The Commission shall examine any request made by the Council or by a Member State to submit a proposal to amend the minimum common list.

3. When making its proposal under paragraphs 1 or 2, the Commission shall make use of information from the Member States, its own information and, where necessary, information from UNHCR, the Council of Europe and other relevant international organisations.

~~4. Where the Council requests the Commission to submit a proposal for removing a third country from the minimum common list, the obligation of Member States pursuant to Article 31(2) shall be suspended with regard to this third country as of the day following the Council decision requesting such a submission.~~

~~5. Where a Member State requests the Commission to submit a proposal to the Council for removing a third country from the minimum common list, that Member State shall notify the Council in writing of the request made to the Commission. The obligation of this Member State pursuant to Article 31(2) shall be suspended with regard to the third country as of the day following the notification to the Council.~~

~~6. The European Parliament shall be informed of the suspensions under paragraphs 4 and 5.~~

~~7. The suspensions under paragraphs 4 and 5 shall end after three months, unless the Commission makes a proposal before the end of this period, to withdraw the third country from the minimum common list. The suspensions shall in any case end where the Council rejects a proposal by the Commission to withdraw the third country from the list.~~

~~8. Upon request by the Council, the Commission shall report to the European Parliament and the Council on whether the situation of a country on the minimum common list is still in conformity with Annex II. When presenting its report, the Commission may make such recommendations or proposals as it deems appropriate.~~

↓ 2005/85/EC (adapted)

~~*Article 30*~~

~~National designation of third countries as safe countries of origin~~

~~1. Without prejudice to Article 29, Member States may retain or introduce legislation that allows, in accordance with Annex II, for the national designation of third countries other than those appearing on the minimum common list, as safe countries of origin for the purposes of examining applications for asylum. This may include designation of part of a country as safe where the conditions in Annex II are fulfilled in relation to that part.~~

~~2. By derogation from paragraph 1, Member States may retain legislation in force on 1 December 2005 that allows for the national designation of third countries, other than those appearing on the minimum common list, as safe countries of origin for the purposes of examining applications for asylum where they are satisfied that persons in the third countries concerned are generally neither subject to:~~

~~(a) persecution as defined in Article 9 of Directive 2004/83/EC; nor~~

~~(b) torture or inhuman or degrading treatment or punishment.~~

~~3. Member States may also retain legislation in force on 1 December 2005 that allows for the national designation of part of a country as safe, or a country or part of a country as safe for a specified group of persons in that country, where the conditions in paragraph 2 are fulfilled in relation to that part or group.~~

~~4. In assessing whether a country is a safe country of origin in accordance with paragraphs 2 and 3, Member States shall have regard to the legal situation, the application of the law and the general political circumstances in the third country concerned.~~

~~5. The assessment of whether a country is a safe country of origin in accordance with this Article shall be based on a range of sources of information, including in particular information from other Member States, the UNHCR, the Council of Europe and other relevant international organisations.~~

~~6. Member States shall notify to the Commission the countries that are designated as safe countries of origin in accordance with this Article.~~

↓ 2005/85/EC (adapted) ⇨ new

Article 36 ~~31~~[187]

The safe country of origin concept

1. A third country designated as a safe country of origin in accordance with ⌦ this Directive ⌫ ~~either Article 29 or 30~~ may, after an individual examination of the application, be considered as a safe country of origin for a particular applicant ~~for asylum~~ only if:

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

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

   and he/she has not submitted any serious grounds for considering the country not to be a safe country of origin in his/her particular circumstances and in terms of his/her qualification as a refugee ⇨ or a person eligible for subsidiary protection ⇦ in accordance with Directive […/…/EU] [the Qualification Directive] ~~2004/83/EC~~.

~~2. Member States shall, in accordance with paragraph 1, consider the application for asylum as unfounded where the third country is designated as safe pursuant to Article 29.~~

2. ~~3.~~[188] Member States shall lay down in national legislation further rules and modalities for the application of the safe country of origin concept.

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187 Scrutiny reservation: **EL**

188 Reservation: **CY** requesting this paragraph not to be mandatory.

↓ 2005/85/EC article 30 ⇨ new

Article 37[189]

National designation of third countries as safe countries of origin[190]

1. ~~Without prejudice to Article 29,~~ Member States may retain or introduce legislation that allows, in accordance with Annex I ~~II~~, for the national designation of ~~third countries other than those appearing on the minimum common list, as~~ safe countries of origin for the purposes of examining applications for ⇨ international protection ⇦ ~~asylum~~. ~~This may include designation of part of a country as safe where the conditions in Annex II are fulfilled in relation to that part.~~

~~2. By derogation from paragraph 1, Member States may retain legislation in force on 1 December 2005 that allows for the national designation of third countries, other than those appearing on the minimum common list, as safe countries of origin for the purposes of examining applications for asylum where they are satisfied that persons in the third countries concerned are generally neither subject to:~~

~~(a) persecution as defined in Article 9 of Directive 2004/83/EC; nor~~

~~(b) torture or inhuman or degrading treatment or punishment.~~

~~3. Member States may also retain legislation in force on 1 December 2005 that allows for the national designation of part of a country as safe, or a country or part of a country as safe for a specified group of persons in that country, where the conditions in paragraph 2 are fulfilled in relation to that part or group.~~

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189 Scrutiny reservation: **EL, FR**

190 **HU** considered that it should also be possible to designate part of a country as safe. In response, **Cion** indicated that the Qualification Directive provides for this possibility even though with a lesser sense of permanence.

~~4. In assessing whether a country is a safe country of origin in accordance with paragraphs 2 and 3, Member States shall have regard to the legal situation, the application of the law and the general political circumstances in the third country concerned.~~

⇩ new

2. Member States shall ensure a regular review of the situation in third countries designated as safe in accordance with this Article.

🡻 2005/85/EC article 30
⇨ new

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

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

↓ 2005/85/EC article 27 ⇨ new

Article 38[191]

The safe third country concept

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

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

⇩ new

(b)[192] there is no risk of serious harm as defined in Directive […/…/EU] [the Qualification Directive];

↓ 2005/85/EC article 27 ⇨ new

(c ~~b~~) the principle of non-refoulement in accordance with the Geneva Convention is respected;

[191] Reservation: **ES**
Scrutiny reservation: **CY**, **EL**

[192] Scrutiny reservation: **ES**, **RO**, **SI** considering this a matter that is to be examined at the level of the individual and not at country level.

(d ~~e~~) the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected; and

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

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

(a) rules requiring a connection between the person seeking ⇨ international protection ⇦ ~~asylum~~ and the third country concerned on the basis of which it would be reasonable for that person to go to that country;

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

(c) rules in accordance with international law, allowing an individual examination of whether the third country concerned is safe for a particular applicant which, as a minimum, shall permit the applicant to challenge the application of the safe third country concept on the grounds that ⇨ that the third country is not safe in his/her particular circumstances ⇦ ~~he/she would be subjected to torture, cruel, inhuman or degrading treatment or punishment~~. ⇨ The applicant shall also be allowed to challenge the existence of a connection between him/her and the third country in accordance with point (a). ⇦

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

(a) inform the applicant accordingly; and

(b) provide him/her with a document informing the authorities of the third country, in the language of that country, that the application has not been examined in substance.

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

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

🡻 2005/85/EC article 36 ⇨ new

Article 39 [193]

The European safe third <u>country</u> ~~countries~~ concept

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

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[193] Scrutiny reservation: **CY**, **EL**

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

(a) it has ratified and observes the provisions of the Geneva Convention without any geographical limitations;

(b) it has in place an asylum procedure prescribed by law; and

(c) it has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms and observes its provisions, including the standards relating to effective remedies~~; and~~

~~(d) it has been so designated by the Council in accordance with paragraph 3~~.

~~3. The Council shall, acting by qualified majority on a proposal from the Commission and after consultation of the European Parliament, adopt or amend a common list of third countries that shall be regarded as safe third countries for the purposes of paragraph 1.~~

~~4~~3. The Member States concerned shall lay down in national law the modalities for implementing the provisions of paragraph 1 and the consequences of decisions pursuant to those provisions in accordance with the principle of non-refoulement ~~under the Geneva Convention~~, including providing for exceptions from the application of this Article for humanitarian or political reasons or for reasons of public international law.

~~5~~4. When implementing a decision solely based on this Article, the Member States concerned shall:

(a) inform the applicant accordingly; and

(b) provide him/her with a document informing the authorities of the third country, in the language of that country, that the application has not been examined in substance.

~~6~~5. Where the safe third country does not re-admit the applicant ~~for asylum~~, Member States shall ensure that access to a procedure is given in accordance with the basic principles and guarantees described in Chapter II.

⇩ new

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

🡻 2005/85/EC article 36

~~7. Member States which have designated third countries as safe countries in accordance with national legislation in force on 1 December 2005 and on the basis of the criteria in paragraph 2(a), (b) and (c), may apply paragraph 1 to these third countries until the Council has adopted the common list pursuant to paragraph 3.~~

↓ 2005/85/EC (adapted)
⇨ new

SECTION IV

Article 40 ~~32~~[194]

Subsequent application[195]

1.[196] Where a person who has applied for ⇨ international protection ⇦ ~~asylum~~ in a Member State makes further representations or a subsequent application in the same Member State, that Member State ⇨ shall ⇦ ~~may~~ examine these further representations or the elements of the subsequent application in the framework of the examination of the previous application or in the framework of the examination of the decision under review or appeal, insofar as the competent authorities can take into account and consider all the elements underlying the further representations or subsequent application within this framework.

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[194] Reservation: **CZ**, **NL, SI**
Scrutiny reservation: **AT, EE, EL, ES, FI, FR, HU, IT, RO, SE, SK**
NL found the change from "may" into "shall" problematic given that the Dutch system does not have the concept of admissibility.
HU pointed out that an application made after an implicit withdrawal that resulted in discontinuation of the examination of the application on the basis of Article 82(2) is not covered by the regime of subsequent applications provided for in Article 40 in conjunction with Article 2(q).

[195] **CY** opposed the term "subsequent application". **CY** proposed not to allow appeal in case it is established that no new elements are presented.

[196] **CZ** requested clarification whether the "shall" provision has as a consequence that examination procedures need to be merged and that separate procedures for each application are no longer allowed. In response, **Cion** indicated that, on the basis of the paragraph, throughout the first instance procedure and the appeal stage, all further representations of a subsequent application need to be attached to the ongoing procedure.

~~2. Moreover, Member States may apply a specific procedure as referred to in paragraph 3, where a person makes a subsequent application for asylum:~~

~~(a) after his/her previous application has been withdrawn or abandoned by virtue of Articles 19 or 20;~~[197]

~~(b) after a decision has been taken on the previous application. Member States may also decide to apply this procedure only after a final decision has been taken.~~

2. ~~3.~~[198] ⇨ For the purpose of taking a decision on the admissibility of an application for international protection pursuant to Article 33(2)(d), ⇦ a ~~A~~ subsequent application for ⇨ international protection ⇦ ~~asylum~~ shall be subject first to a preliminary examination as to whether ~~, after the withdrawal of the previous application or after the decision referred to in paragraph 2(b) of this Article on this application has been reached,~~[199] new elements or findings ⌦ have arisen or have been presented by the applicant which relate ⌫ ~~relating~~ to the examination of whether ⌦ the applicant ⌫ ~~he/she~~ qualifies as a refugee ⇨ or a person eligible for subsidiary protection ⇦ by virtue of Directive […/…/EU] [the Qualification Directive] ~~2004/83/EC~~ ~~have arisen or have been presented by the applicant~~.

3. ~~4.~~ If~~, following~~ the preliminary examination referred to in paragraph 2 ~~3~~ ~~of this Article~~ ⌦ concludes that ⌫ new elements or findings ⌦ have ⌫ arisen or ⌦ been ⌫ ~~are~~ presented by the applicant which significantly add to the likelihood of the applicant qualifying as a refugee ⇨ or a person eligible for subsidiary protection ⇦ by virtue of Directive ⌦ […/…/EU] [the Qualification Directive] ⌫ ~~2004/83/EC~~, the application shall be further examined in conformity with Chapter II. ⌦ Member States may also provide for other reasons for a subsequent application to be further examined. ⌫

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197 **HU**, **SI** opposed deletion of paragraph 2 of the Directive currently in force.

198 **HU** pointed to the different phrasing in paragraphs 2 and 3. Paragraph 2 uses the phrase "new elements or findings have arisen or have been presented by the applicant which relate" and paragraph 3 uses the phrase "new elements or findings have arisen or have been presented by the applicant which significantly add to the likelihood". In order to avoid a different level of proof, **HU** suggested to use in both cases the former phrase.

199 **HU** opposed the proposed deletion of the phrase "after the withdrawal…has been reached".

~~5. Member States may, in accordance with national legislation, further examine a subsequent application where there are other reasons why a procedure has to be re-opened.~~

4. ~~6.~~ Member States may decide to further examine the application only if the applicant concerned was, through no fault of his/her own, incapable of asserting the situations set forth in paragraphs 2 and 3 ~~3, 4 and 5~~ of this Article in the previous procedure, in particular by exercising his/her right to an effective remedy pursuant to Article 46 ~~39~~.

⇩ new

5.[200] When a subsequent application is not further examined pursuant to this Article, it shall be considered inadmissible, in accordance with Article 33(2)(d).

🡻 2005/85/EC (adapted)
⇨ new

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

(a) a dependant who lodges an application after he/she has, in accordance with Article 7(2) ~~6(3)~~, consented to have his/her case be part of an application made on his/her behalf ⇨ , and/or ⇦

(b) ⇨ an unmarried minor who lodges an application after an application has been made on his/her behalf pursuant to Article 7(5)(c) ⇦ .

In ⇨ those cases ⇦ ~~this case~~, the preliminary examination referred to in paragraph 2 ~~3~~ ~~of this Article~~ will consist of examining whether there are facts relating to the dependant's ⇨ or the unmarried minor's ⇦ situation which justify a separate application.

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[200] **SI** proposed to delete this paragraph.

⇩ new

7.[201] Where a person with regard to whom a transfer decision has to be enforced pursuant to Regulation (EU) […/…] [the Dublin Regulation] makes further representations or a subsequent application in the transferring Member State, those representations or subsequent applications shall be examined by the responsible Member State, as defined in Regulation (EU) […/…] [the Dublin Regulation], in accordance with this Directive.

Article 41[202]

Specific rules following the rejection or inadmissibility of a subsequent application

Where a person makes a new application[203] for international protection in the same Member State after a final decision to consider an application inadmissible pursuant to Article 40(5) or after a final decision[204] to reject a previous subsequent application as unfounded, Member States may do any of the following:

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[201] **DE**, **SI** proposed to delete this paragraph.

[202] Reservation: **AT**, **DE**, **EE**, **ES**, **FI**, **FR**, **HU**, **IT**, **LT**, **NL, RO, SE, SI** considering the regime laid down in Article 41 should apply as of the second application. In response, **Cion** indicated that applying the regime laid down in Article 41 would not be justified for several reasons including that, in some cases, implicit or explicit withdrawal, there has never been a full examination of the asylum application
In case the proposal that the regime applies only as of the second subsequent application would remain, **NL** proposed to include, as an exception, that for *persona non grata* with a criminal past, the regime would be applicable as of the first subsequent application.
Scrutiny reservation: **CZ, EE, EL, ES, FI, FR, HU, IT, LT, RO, SE, SK**
CZ expressed doubts whether the second and further subsequent applications would need to be considered as applications for international protection**.**
CZ also requested clarification how in particular point (a) could be applied in practice.
FR rejected an obligation to conduct a personal interview after the first subsequent application.

[203] **CZ** proposed "expresses the intention to lodge an application for international protection" instead of "makes a new application".

[204] Scrutiny reservation: **PL** requesting to clarify whether the scope of the definition in Article 2(e) covers both decisions which are specified in Article 41 as "final" decisions.

(a)[205] make an exception to the right to remain in the territory, provided the determining authority is satisfied that a return decision will not lead to direct or indirect refoulement in violation of international and Union obligations of that Member State,

(b)[206] provide that the examination procedure be accelerated in accordance with Article 31(6)(f); in such case, Member States may also derogate from the time limits normally applicable in accelerated procedures, in accordance with national legislation,

(c)[207] derogate from the time limits normally applicable to admissibility procedures provided for in Articles 33 and 34, in accordance with national legislation.

↓ 2005/85/EC

~~*Article 33*~~[208]

~~**Failure to appear**~~

~~Member States may retain or adopt the procedure provided for in Article 32 in the case of an application for asylum filed at a later date by an applicant who, either intentionally or owing to gross negligence, fails to go to a reception centre or appear before the competent authorities at a specified time.~~

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[205] **AT** considered the reference to the non refoulement principle in point (a) not appropriate pointing out that this point should be examined in relation to Article 9.2.
In response to a request for clarification of **CZ**, **Cion** explained that the return decision refers to decision taken on the basis of the Return Directive.

[206] **AT** requested clarification on the reference to time limits.

[207] **AT** requested clarification on the reference to time-limits given that the Articles 33 and 34 do not contain any time-limits. In response, **Cion** indicated that these time-limits refer to the time-limits laid down in national law.

[208] **DE** opposed the proposed deletion of Article 33 of the Directive currently in force. In response, **Cion** indicated that the subject matter of this Article is sufficiently covered in the provisions ion implicit withdrawal.

↓ 2005/85/EC (adapted) ⇨ new

Article 42 ~~34~~[209]

Procedural rules

1.[210] Member States shall ensure that applicants for ⇨ international protection ⇦ ~~asylum~~ whose application is subject to a preliminary examination pursuant to Article 40 ~~32~~ enjoy the guarantees provided for in Article 12(1) ~~10(1)~~.

2. Member States may lay down in national law rules on the preliminary examination pursuant to Article 40 ~~32~~. Those rules may, *inter alia*:

(a) oblige the applicant concerned to indicate facts and substantiate evidence which justify a new procedure;

~~(b) require submission of the new information by the applicant concerned within a time limit after he/she obtained such information;~~[211]

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209 Scrutiny reservation: **FR.**
FR also noted that Article 42 and Article 45 have the same title.

210 Reservation: **CY** considered that a person who is subject of a preliminary examination does not have the status of an applicant. In this light, **CY** proposed this provision to be voluntary for the Member States.
In the same vein, **SI** proposed to specify that the person is "an applicant for the introduction of a new procedure". In this light, **SI** requested clarification whether such persons can be excluded from the material conditions laid down in the Reception Conditions Directive until it is established that relevant new elements have been presented.
In response, **Cion** indicated that no changes have been proposed in paragraph 1 with the exception of the standard broadening of the scope to include all applicants for international protection.

211 **CZ**, **DE**, **ES**, **MT** opposed the proposed deletion of point (b) of the Directive currently in force considering it a useful provision.

(b ~~e~~) permit the preliminary examination to be conducted on the sole basis of written submissions without a personal interview ⇨ , with the exception of cases referred to in Article 40(6) ⇦.[212]

⌦ Those rules ⌫ ~~The conditions~~ shall not render impossible the access of applicants ~~for asylum~~ to a new procedure or result in the effective annulment or severe curtailment of such access.

3. Member States shall ensure that:

~~(a)~~ the applicant is informed in an appropriate manner of the outcome of the preliminary examination and, in case the application will not be further examined, of the reasons for this and the possibilities for seeking an appeal or review of the decision;

~~(b) if one of the situations referred to in Article 32(2) applies, the determining authority shall further examine the subsequent application in conformity with the provisions of Chapter II as soon as possible.~~

[212] **SE** proposed to add: "when the dependent or unmarried minor has not undergone a personal interview during the asylum procedure".

SECTION V

Article 43 ~~25~~[213]

Border procedures

1.[214] Member States may provide for procedures, in accordance with the basic principles and guarantees of Chapter II, in order to decide at the border or transit zones of the Member State on:

(a) ⇨ the admissibility of an ⇦ application~~s~~ ⇨ , pursuant to Article 33, ⇦ made at such locations; ⇨ and/or ⇦

⇩ new

(b) the substance of an application[215] in a procedure pursuant to Article 31(6). [216]

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213 Reservation: **NL**
In response to **NL, Cion** confirmed that the regime for border procedures laid down in Article 43 would apply to the Schiphol centre as it is located at the border. In the Schiphol centre all sorts of applications are examined and not only applications on their admissibility and applications in accelerated procedure. In the light of this response, **NL** requested clarification whether examinations of applications at the Schiphol centre can only take place when the conditions laid down in Article 31(6) apply and that other examinations are not possible irrespective of the question whether these are done in full respect of Chapter II.
Scrutiny reservation: **BE** (sharing the concern of **NL**), **EE, ES, HU, PT, RO**

214 Scrutiny reservation: **CZ, FR**
CZ considered that at border or transit zones, other cases, such as subsequent applications, should be added, to the cases mentioned in points (a) and (b).

215 **CZ** requested clarification on the term "substance of an application". In response, **Cion** indicated that this term was used to contrast point (b) with point (a) on admissibility.

216 Reservation: **DE** in relation to Article 31(6).
Scrutiny reservation: **AT** in relation to Article 31(6).
HU wanted to add additional grounds allowing an examination at the border of manifestly unfounded applications. These additional grounds (bad faith and failure to apply within a reasonable period) could be added to the list of Article 31(6) or be included in Article 32 or 43.

↓ 2005/85/EC (adapted)
⇨ new

2. However, when procedures as set out in paragraph 1 do not exist, Member States may maintain, subject to the provisions of this Article and in accordance with the laws or regulations in force on 1 December 2005, procedures derogating from the basic principles and guarantees described in Chapter II, in order to decide at the border or in transit zones as to whether applicants for asylum who have arrived and made an application for asylum at such locations, may enter their territory.

3. The procedures referred to in paragraph 2 shall ensure in particular that the persons concerned:

(a) are allowed to remain at the border or transit zones of the Member State, without prejudice to Article 7;

(b) are be immediately informed of their rights and obligations, as described in Article 10(1) (a);

(c) have access, if necessary, to the services of an interpreter, as described in Article 10(1)(b);

(d) are interviewed, before the competent authority takes a decision in such procedures, in relation to their application for asylum by persons with appropriate knowledge of the relevant standards applicable in the field of asylum and refugee law, as described in Articles 12, 13 and 14;

(e) can consult a legal adviser or counsellor admitted or permitted as such under national law, as described in Article 15(1); and

~~(f) have a representative appointed in the case of unaccompanied minors, as described in Article 17(1), unless Article 17(2) or (3) applies.~~

~~Moreover, in case permission to enter is refused by a competent authority, this competent authority shall state the reasons in fact and in law why the application for asylum is considered as unfounded or as inadmissible.~~

2. ~~4.~~ Member States shall ensure that a decision in the framework of the procedures provided for in paragraph 1 ~~2~~ is taken within a reasonable time. When a decision has not been taken within four weeks[217], the applicant ~~for asylum~~ shall be granted entry to the territory of the Member State in order for his/her application to be processed in accordance with the other provisions of this Directive.

3. ~~5.~~ In the event of ~~particular types of arrivals, or~~ arrivals involving a large number of third country nationals or stateless persons lodging applications for ⇨ international protection ⇦ ~~asylum~~ at the border or in a transit zone, which makes it ~~practically~~ impossible ⌦ in practice ⌫ to apply there the provisions of paragraph 1 ~~or the specific procedure set out in paragraphs 2 and 3~~, those procedures may also be applied where and for as long as these third country nationals or stateless persons are accommodated normally at locations in proximity to the border or transit zone.

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[217] In response to a request for clarification of **ES**, **PT, Cion**, noting that this time-period is already included in the Directive currently in force, indicated that the 4 weeks concern the first instance procedure and not the appeal stage.

↓ 2005/85/EC

~~*Article 36*~~

~~The European safe third countries concept~~

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

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

~~(a) it has ratified and observes the provisions of the Geneva Convention without any geographical limitations;~~

~~(b) it has in place an asylum procedure prescribed by law;~~

~~(c) it has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms and observes its provisions, including the standards relating to effective remedies; and~~

~~(d) it has been so designated by the Council in accordance with paragraph 3.~~

~~3. The Council shall, acting by qualified majority on a proposal from the Commission and after consultation of the European Parliament, adopt or amend a common list of third countries that shall be regarded as safe third countries for the purposes of paragraph 1.~~

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

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

~~(a) inform the applicant accordingly; and~~

~~(b) provide him/her with a document informing the authorities of the third country, in the language of that country, that the application has not been examined in substance.~~

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

~~7. Member States which have designated third countries as safe countries in accordance with national legislation in force on 1 December 2005 and on the basis of the criteria in paragraph 2(a), (b) and (c), may apply paragraph 1 to these third countries until the Council has adopted the common list pursuant to paragraph 3.~~

↓ 2005/85/EC

⇨ new

CHAPTER IV

PROCEDURES FOR THE WITHDRAWAL OF ⇨ INTERNATIONAL PROTECTION ⇦ ~~REFUGEE~~ STATUS

Article 44 ~~37~~[218]

Withdrawal of ⇨ international protection ⇦ ~~refugee~~ status

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

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[218] **HU** suggested that an examination to withdraw the status may also commence following an ex officio review. In response, **Cion** indicated that the basic principles of effective remedy apply also in relation to this provision.

Article 45 ~~38~~

Procedural rules

1. Member States shall ensure that, where the competent authority is considering withdrawing the ⇨ international protection ⇦ ~~refugee~~ status of a third country national or stateless person in accordance with Article 14 ⇨ or Article 19 ⇦ of Directive […/…/EU] [the Qualification Directive] ~~2004/83/EC~~, the person concerned ~~shall~~ enjoys the following guarantees:

   (a) to be informed in writing that the competent authority is reconsidering his or her qualification for ⇨ international protection ⇦ ~~refugee~~ status and the reasons for such a reconsideration; and

   (b) to be given the opportunity to submit, in a personal interview in accordance with Article 12(1)(b) ~~10(1)(b)~~ and Articles 14, 15, ⇨ 16 ⇦ and 17 ~~12, 13 and 14~~ or in a written statement, reasons as to why his/her ⇨ international protection ⇦ ~~refugee~~ status should not be withdrawn.

   In addition, Member States shall ensure that within the framework of such a procedure:

   (a) the competent authority is able to obtain precise and up-to-date information from various sources, such as, where appropriate, from ⇨ the European Asylum Support Office and ⇦ the UNHCR, as to the general situation prevailing in the countries of origin of the persons concerned; and

(b) where information on an individual case is collected for the purposes of reconsidering the ⇨ international protection ⇦ ~~refugee~~ status, it is not obtained from the actor(s) of persecution ⇨ or serious harm ⇦ in a manner that would result in such actor(s) being directly informed of the fact that the person concerned is a ⇨ beneficiary of international protection ⇦ ~~refugee~~ whose status is under reconsideration, nor jeopardise the physical integrity of the person and his/her dependants, or the liberty and security of his/her family members still living in the country of origin.

2. Member States shall ensure that the decision of the competent authority to withdraw the ⇨ international protection ⇦ ~~refugee~~ status is given in writing. The reasons in fact and in law shall be stated in the decision and information on how to challenge the decision shall be given in writing.

3. Once the competent authority has taken the decision to withdraw the ⇨ international protection ⇦ ~~refugee~~ status, Article 20 ~~15, paragraph 2~~, ⇨ Article 22 ⇦ , Article 23(1) ~~16, paragraph 1~~ and Article 29 ~~21~~ are equally applicable.[219]

4.[220] [221] By derogation to paragraphs 1, 2 and 3 of this Article, Member States may decide[222] that the ⇨ international protection ⇦ ~~refugee~~ status shall lapse by law ~~in case of cessation in accordance with Article 11(1)(a) to (d) of Directive 2004/83/EC or~~ if the ⇨ beneficiary of international protection ⇦ ~~refugee~~ has unequivocally renounced his/her recognition as a ⇨ beneficiary of international protection ⇦ ~~refugee~~. ⇨ Member States may also provide that the international protection status shall lapse by law where the beneficiary of international protection has become a citizen of that Member State. ⇦

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[219] In response to **DE, Cion** indicated that Article 21 applies via Article 20.

[220] **DE** proposed to maintain the wording of the Directive currently in force, in particular the phrase "in case of cessation in accordance with Article 11(1)(a) to (d) of Directive 2004/83/EC".

[221] **CZ** proposed to include as a derogation that the status shall lapse in case of death of an applicant. In response, **Cion** indicated that the relevant provisions in the Qualification Directive apply.

[222] **CZ** proposed "establish" instead of "decide". In response, **Cion** indicated this concerns a part of the Directive on which the Commission has not made proposals.

CHAPTER V

APPEALS PROCEDURES

Article 46 ~~39~~[223]

The right to an effective remedy

1. Member States shall ensure that applicants for ⇨ international protection ⇦ ~~asylum~~ have the right to an effective remedy before a court or tribunal, against the following:

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

⇩ new

(i) to consider an application unfounded in relation to refugee status and/or subsidiary protection status,

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[223] Reservation **NL**
NL presented its proposal to amend Article 46 which is laid down in document 13131/11. This proposal is aimed at making Article 46 compatible with the single status system in the Netherlands.
Scrutiny reservation: **CZ, EE, FR, IT, SE** (in particular as regards paragraphs 6 and 7)
SE expressed the view that persons with a criminal past should not be allowed to remain on the territory.

↓ 2005/85/EC
⇨ new

(ii ~~i~~) to consider an application inadmissible pursuant to Article 33 ~~25~~ (2),

(iii ~~ii~~) taken at the border or in the transit zones of a Member State as described in Article 43(1) ~~35(1)~~,

~~(iii) not to conduct an examination pursuant to Article 36;~~

(b) a refusal to re-open the examination of an application after its discontinuation pursuant to Articles 27 and 28 ~~19 and 20~~;

~~(c) a decision not to further examine the subsequent application pursuant to Articles 32 and 34;~~

~~(d) a decision refusing entry within the framework of the procedures provided for under Article 35(2);~~

(c ~~e~~) a decision to withdraw ⇨ international protection ⇦ ~~refugee~~ status pursuant to Article 45 ~~38~~.

⇩ new

2.[224] Member States shall ensure that persons recognised by the determining authority as eligible for subsidiary protection have the right to an effective remedy as referred to in paragraph 1 against a decision to consider an application unfounded in relation to refugee status.

The person concerned shall be entitled to the rights and benefits guaranteed to beneficiaries of subsidiary protection pursuant to Directive […/…/EU] [the Qualification Directive] pending the outcome of the appeal procedures.

3.[225] Member States shall ensure that the effective remedy referred to in paragraph 1 provides for a full examination of both facts and points of law, including an *ex nunc* examination of the international protection needs pursuant to Directive […/…/EU] [the Qualification Directive], at least in appeal procedures before a court or tribunal of first instance.

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[224] Reservation: **BE**, **CY, CZ, ES**
Scrutiny reservation: **FI, PL, SK**
CY, CZ, ES, SK expressed the view that a person should not be entitled to the rights and benefits guaranteed to beneficiaries of subsidiary protection in case the beneficiary of subsidiary protection makes an appeal against the decision to consider an application unfounded in relation to refugee status.
BE explained that the court in Belgium has the competence to change the status grated by the determining authority. This means that, in case of a person who appeals the decision of the determining authority to grant the status of subsidiary protection, the court can confirm this status, determine that this person should be granted refugee status or withdraw the status of beneficiary of subsidiary protection. For that reason, beneficiaries of subsidiary protection only receive the entitlements connected to that status after the deadline of 30 days for making an appeal on the decision to grant subsidiary status has passed. Furthermore, in case an appeal is made, the asylum seeker only maintains the entitlements connected to the subsidiary protection status for the period of the appeal.

[225] Reservation: **CY, PL** (in connection with paragraph 1)
Scrutiny reservation: **AT, ES, IT, SI, SK** requesting clarification on the *ex nunc* examination.
NL expressed its preference for an *ex nunc* examination only and not a full examination as proposed, in particular in the case of clear abuse by the applicant.
Cion indicated that the proposal was drawn up in the light of the case-law. **Cion** further pointed out that *ex nunc* examination was important as it enabled the court or tribunal to look at the situation in the country of origin at the time of the ruling.

↓ 2005/85/EC
⇨ new

4. 2. [226] Member States shall provide for ⇨ reasonable ⇦ time limits and other necessary rules for the applicant to exercise his/her right to an effective remedy pursuant to paragraph 1.

⇩ new

The time limits shall not render impossible or excessively difficult the access of applicants to an effective remedy pursuant to paragraph 1.

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

↓ 2005/85/EC

~~3. Member States shall, where appropriate, provide for rules in accordance with their international obligations dealing with:~~

~~(a) the question of whether the remedy pursuant to paragraph 1 shall have the effect of allowing applicants to remain in the Member State concerned pending its outcome;~~

[226] Scrutiny reservation: **ES, LT**
LT requested clarification what would be considered as a "reasonable" time-limit. In response, **Cion** indicated that case-law gave rather clear indications what time-limits should be considered as reasonable and that this has to be determined on a case-by-case basis.
CZ suggested to establish a time-limit

~~(b) the possibility of legal remedy or protective measures where the remedy pursuant to paragraph 1 does not have the effect of allowing applicants to remain in the Member State concerned pending its outcome. Member States may also provide for an ex officio remedy; and~~

~~(c) the grounds for challenging a decision under Article 25(2)(c) in accordance with the methodology applied under Article 27(2)(b) and (c).~~

⇩ new

5.[227] Without prejudice to paragraph 6, Member States shall allow applicants to remain in the territory until the time limit within which to exercise their right to an effective remedy has expired or, when this right has been exercised within the time limit, pending the outcome of the remedy.

6.[228] In the case of a decision to consider an application unfounded where any of the circumstances listed in Article 31(6)(a) to (g) apply or of a decision to consider an application inadmissible pursuant to Article 33(2)(a) or (d), and where, in such cases, the right to remain in the Member State pending the outcome of the remedy is not foreseen under national legislation, a court or tribunal shall have the power to rule whether or not the applicant may remain on the territory of the Member State, either upon request of the concerned applicant or acting on its own motion.

This paragraph shall not apply to procedures referred to in Article 43.[229]

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227 Scrutiny reservation: **SK** supporting the **NL** proposal regarding paragraph 5.

228 Scrutiny reservation: **AT**, **DE**, **ES (**in particular as regards the phrase "on its own motion"), **HU**, **SK**.
SE considered that not only a court or tribunal but also administrative authorities should be able to decide whether an applicant may remain on the territory.
AT, DE, FR, SE suggested including additional exceptions. In response, **CION** indicated it could not envisage further exceptions in the light of the case-law.
HU proposed to add cases where a final decision has been taken to discontinue the examination of the application.

229 **CZ, EE, IT** requested clarification as regards the implications of this sentence.

7.[230] Member States shall allow the applicant to remain in the territory pending the outcome of the procedure to rule whether or not the applicant may remain on the territory, laid down in paragraph 6.

8.[231] Paragraphs 5, 6 and 7 shall be without prejudice to Article 26 of Regulation (EU) No […/…] [the Dublin Regulation].

↓ 2005/85/EC

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

~~5. Where an applicant has been granted a status which offers the same rights and benefits under national and Community law as the refugee status by virtue of Directive 2004/83/EC, the applicant may be considered as having an effective remedy where a court or tribunal decides that the remedy pursuant to paragraph 1 is inadmissible or unlikely to succeed on the basis of insufficient interest on the part of the applicant in maintaining the proceedings.~~

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

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[230] Scrutiny reservation: **DE**, **ES**, **FI**, **SI, SK**
ES requested clarification what would happen in case of an unfounded application.

[231] Reservation: **SI** proposing to delete this paragraph.

CHAPTER VI

GENERAL AND FINAL PROVISIONS

Article 47 ~~40~~

Challenge by public authorities

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

Article 48 ~~41~~

Confidentiality

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

⇩ new

Article 49

Cooperation

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

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

↓ 2005/85/EC (adapted) ⇨ new

Article 50 ~~42~~

Report

No later than ~~1 December 2009~~ ⇨ .....[232] ⇦, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose any amendments that are necessary. Member States shall send the Commission all the information that is appropriate for drawing up this report. After presenting the report, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States at least every ⇨ five ⇦ ~~two~~ years.

Article 51 ~~43~~[233]

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with ~~this Directive by 1 December 2007~~ ⌦ Articles […] [the Articles that have been changed as to the substance by comparison with the earlier Directive] by […] at the latest ⌫. ~~Concerning Article 15, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 December 2008.~~ They shall forthwith ⌦ communicate to ⌫ ~~inform~~ the Commission ~~thereof~~ ⌦ the text of those provisions and a correlation table between those provisions and this Directive ⌫.

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232 Four years after the date of adoption of this Directive.

233 Scrutiny reservation: **CY, ES, FR, HU, IT, LV, MT, PT**

⇩ new

2. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 31(3) by [*3 years from the date of the transposition deadline*]. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

🡻 2005/85/EC (adapted)

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

4. Member States shall communicate to the Commission the text of the ⌦ main ⌫ provisions of national law which they adopt in the field covered by this Directive ⌦ and a correlation table between those provisions and this Directive ⌫.

↓ 2005/85/EC (adapted) ⇨ new

Article 52 ~~44~~

Transitional provisions

Member States shall apply the laws, regulations and administrative provisions ⌦ referred to ⌫ ~~set out~~ in Article 51(1) ~~43~~ to applications for ⇨ international protection ⇦ ~~asylum~~ lodged after ⇨ […] ⇦ ~~1 December 2007~~ and to procedures for the withdrawal of ⇨ international protection ⇦ ~~refugee status~~ started after ⇨ […] ⇦ ~~1 December 2007~~. ⇨ Applications submitted before […] and procedures for the withdrawal of refugee status initiated before […] shall be governed by the laws, regulations and administrative provisions adopted pursuant to Directive 2005/85/EC. ⇦

⇩ new

Member States shall apply the laws, regulations and administrative provisions referred to in Article 51(2) to applications for international protection lodged after […]. Applications submitted before […] shall be governed by the laws, regulations and administrative provisions in accordance with Directive 2005/85/EC.

↓

Article 53

Repeal

Directive 2005/85/EC is repealed for the Member States bound by this Directive with effect from [day after the date set out in Article 51(1) of this Directive], without prejudice to the obligations of the Member States relating to the time-limit for transposition into national law of the Directive set out in Annex II, Part B.

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

↓ 2005/85/EC

Article 54 ~~45~~

Entry into force

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

↓

Articles […] shall apply from [day after the date set out in Article 51(1)].

↓ 2005/85/EC (adapted)

Article 55 ~~46~~

Addressees

This Directive is addressed to the Member States in ~~conformity with the Treaty establishing the European Community~~ ⌦ accordance with the Treaties ⌫.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

↓ 2005/85/EC

~~**ANNEX I**~~

~~Definition of "determining authority"~~

~~When implementing the provision of this Directive, Ireland may, insofar as the provisions of section 17(1) of the Refugee Act 1996 (as amended) continue to apply, consider that:~~

~~- "determining authority" provided for in Article 2 (c) (f) of this Directive shall, insofar as the examination of whether an applicant should or, as the case may be, should not be declared to be a refugee is concerned, mean the Office of the Refugee Applications Commissioner; and~~

~~- "decisions at first instance" provided for in Article 2 (c) (f) of this Directive shall include recommendations of the Refugee Applications Commissioner as to whether an applicant should or, as the case may be, should not be declared to be a refugee.~~

~~Ireland will notify the Commission of any amendments to the provisions of section 17(1) of the Refugee Act 1996 (as amended).~~

ANNEX I II[234]

Designation of safe countries of origin for the purposes of Articles 29 and 30 37(1)

A country is considered as a safe country of origin where, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is generally and consistently no persecution as defined in Article 9 of Directive […/…/EU] [the Qualification Directive] Directive 2004/83/EC, no torture or inhuman or degrading treatment or punishment and no threat by reason of indiscriminate violence in situations of international or internal armed conflict.

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

(a) the relevant laws and regulations of the country and the manner in which they are applied;

(b) observance of the rights and freedoms laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms and/or the International Covenant for Civil and Political Rights and/or the Convention against Torture, in particular the rights from which derogation cannot be made under Article 15(2) of the said European Convention;

(c) respect of the non-refoulement principle according to the Geneva Convention;

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

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234 Scrutiny reservation: **EL**

↓ 2005/85/EC

⇨ new

~~ANNEX III~~

~~Definition of "applicant" or "applicant for asylum"~~

~~When implementing the provisions of this Directive Spain may, insofar as the provisions of "Ley 30/1992 de Régimen jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común" of 26 November 1992 and "Ley 29/1998 reguladora de la Jurisdicción Contencioso-Administrativa" of 13 July 1998 continue to apply, consider that, for the purposes of Chapter V, the definition of "applicant" or "applicant for asylum" in Article 2(e) of this Directive shall include "recurrente" as established in the abovementioned Acts.~~

~~A "recurrente" shall be entitled to the same guarantees as an "applicant" or an "applicant for asylum" as set out in this Directive for the purposes of exercising his/her right to an effective remedy in Chapter V.~~

~~Spain will notify the Commission of any relevant amendments to the abovementioned Act.~~

↓

ANNEX II ~~IV~~

Part A

Repealed Directive

(referred to in Article 53)

Council Directive 2005/85/EC (OJ L 326, 13.12.2005, p. 13)

Part B

Time-limit for transposition into national law

(referred to in Article 51)

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

ANNEX III

CORRELATION TABLE

Directive 2005/85/EC	This directive
Article 1	Article 1
Article 2 (a) to (c)	Article 2 (a) to (c)
-	Article 2 (d)
Article 2 (d) to (f)	Article 2 (e) to (g)
-	Article 2 (h) and (i)
Article 2 (g)	Article 2 (j)
-	Article 2 (k) and (l)
Article 2 (h) to (k)	Article 2 (m) to (p)
-	Article 2 (q)
Article 3 (1) and (2)	Article 3 (1) and (2)
Article 3 (3)	-
Article 3 (4)	Article 3 (3)
Article 4 (1) first subparagraph	Article 4 (1) first subparagraph
Article 4 (1) second subparagraph	-
Article 4 (2) (a)	Article 4 (2) (a)
Article 4 (2) (b) to (d)	-
Article 4 (2) (e)	Article 4 (2) (b)
Article 4 (2) (f)	-
-	Article 4 (3)
Article 4 (3)	Article 4 (4)

-	Article 4 (5)
Article 5	Article 5
Article 6 (1)	Article 6 (1)
-	Article 6 (2) to (4)
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