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**NOTE**

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From:	Presidency
To:	Delegations
No. Cion doc.:	11317/16
Subject:	Proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU (First reading)

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**DOCUMENT PARTIALLY ACCESSIBLE TO THE PUBLIC (02.02.2018)**

Presidency compromise proposals were discussed in relations to Articles 1-50 during five meetings of the Asylum Working Party (26-27 September, 5-6 October, 24-25 October, 21-22 November and 4-5 December 2017) and the second examination of the proposal was finalised.

This document contains compromise proposals suggested by the Presidency in relation to Articles 1-43 (third examination). The Presidency deems it is important to issue a document that contains a larger number of compromise proposals in order to provide delegations with the opportunity to follow the changes and the links between the relevant provisions.

Taking into account that the examination of the Dublin Regulation has been resumed, the compromise proposals should be read in conjunction with the compromise proposals made in relation to the Dublin Regulation.

The CLS is still examining the provisions concerning data retention, therefore no changes have been proposed in this regard.

The proposed amendments by the Presidency can be summarised as follows:

- technical adaptations to reflect changes in the Qualification Regulation and in the Reception Conditions Directive;
- changes aiming to keep a system of legal assistance, without representation, free of charge in the administrative procedure, and to maintain free legal assistance and representation in the appeal procedure, as provided for in the Asylum Procedure Directive;
- changes aiming to alleviate the administrative burden for the authorities by providing an opportunity for the Commission to draw up a common leaflet to be used for the purposes of providing information to the applicants on their rights and obligations;
- adaptations of the provisions regarding minors mirroring the Council’s mandate for negotiations with the EP on the Reception Conditions Directive;
- adaptations of the provisions related to the Dublin Regulation, in particular as regards the admissibility assessment;
- other clarifications.

Suggested modifications are indicated as follows:

- new text compared to the Commission proposal is in **bold**;
- new text compared to the previous version is in **bold underline**;
- deleted text is in ~~striketrough~~.

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

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2016/0224 (COD)

Proposal for a

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

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

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

Acting in accordance with the ordinary legislative procedure,

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

Whereas:

- (1) The objective of this Regulation is to streamline, simplify and harmonise the procedural arrangements of the Member States by establishing a common procedure for international protection in the Union. To meet that objective, a number of substantive changes are made to Directive 2013/32/EU of the European Parliament and of the Council<sup>2</sup> and that Directive should be repealed and replaced by a Regulation. References to the repealed Directive should be construed as references to this Regulation.
- (2) A common policy on asylum, including a Common European Asylum System which is based on the full and inclusive application of the Geneva Convention Relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967 (Geneva Convention), is a constituent part of the European Union's objective of establishing progressively an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Union. Such a policy should be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States.
- (3) The Common European Asylum System is based on common standards for asylum procedures, recognition and protection offered at Union level, reception conditions and a system for determining the Member State responsible for asylum seekers. Notwithstanding progress achieved so far in the progressive development of the Common European Asylum System, there are still significant disparities between the Member States in the types of procedures used, the recognition rates, the type of protection granted, the level of material reception conditions and benefits given to applicants and beneficiaries of international protection. These divergences are important drivers of secondary movements and undermine the objective of ensuring that in a Common European Asylum System all applicants are equally treated wherever they apply in the Union.

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<sup>2</sup> Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) (OJ L180, 29.6.2013, p. 60).

- (4) In its Communication of 6 April 2016,<sup>3</sup> the Commission set out its options for improving the Common European Asylum System, namely to establish a sustainable and fair system for determining the Member State responsible for asylum seekers, to reinforce the Eurodac system, to achieve greater convergence in the EU asylum system, to prevent secondary movements within the Union and a new mandate for the European Union Agency for Asylum. That Communication is in line with calls by the European Council on 18-19 February 2016 <sup>4</sup> to make progress towards reforming the EU's existing framework so as to ensure a humane and efficient asylum policy. It also proposes a way forward in line with the holistic approach to migration set out by the European Parliament in its own initiative report of 12 April 2016.
- (5) For a well-functioning Common European Asylum System, substantial progress should be made regarding the convergence of national asylum systems. The current disparate asylum procedures in all Member States should be replaced with a common procedure for granting and withdrawing international protection applicable across all Member States pursuant to Regulation (EU) No XXX/XXX of the European Parliament and of the Council (Qualification Regulation) <sup>5</sup> ensuring the timeliness and effectiveness of the procedure. Applications made by the third-country nationals and stateless persons for the international protection should be examined in a procedure, which is governed by the same rules, regardless of the Member State where the application is lodged to ensure equity in the treatment of applications for international protection, clarity and legal certainty for the individual applicant.

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

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

<sup>5</sup> OJ L [...], [...], p. [...].

- (6) A common procedure for granting and withdrawing international protection should limit the secondary movements of applicants for international protection between Member States, where such movements would be caused by differences in legal frameworks, by replacing the current discretionary provisions with harmonised rules and by clarifying the rights and obligations of applicants and the consequences of non-compliance with those obligations, and create equivalent conditions for the application of Regulation (EU) No XXX/XXX (Qualification Regulation) in Member States.
- (7) This Regulation should apply to all applications for international protection made in the territory of the Member States, including those made at the external border, on the territorial sea or in the transit zones of Member States, and the withdrawal of international protection. Persons seeking international protection who are present on the territorial sea of a Member State should be disembarked on land and have their applications examined in accordance with this Regulation.
- (8) This Regulation should apply to applications for international protection in a procedure where it is examined whether the applicants qualify as beneficiaries of international protection in accordance with Regulation (EU) No XXX/XXX (Qualification Regulation). In addition to the international protection, the Member States may also grant under their national law other national humanitarian statuses to those who do not qualify for the refugee status or subsidiary protection status. In order to streamline the procedures in Member States, the Member States should have the possibility to apply this Regulation also to applications for any kind of such other protection.
- (9) With respect to the treatment of persons falling within the scope of this Regulation, Member States are bound by obligations under instruments of international law to which they are party.

- (10) The resources of the Asylum, Migration and Integration Fund should be mobilised to provide adequate support to Member States' efforts in applying this Regulation, in particular to those Member States which are faced with specific and disproportionate pressures on their asylum and reception systems.
- (11) The European Union Agency for Asylum should provide Member State with the necessary operational and technical assistance in the application of this Regulation, in particular by providing experts to assist national authorities to receive, register, and examine applications for international protection and by providing updated information on third countries, including country of origin information and guidance on the situation in specific countries of origin. When applying this Regulation, Member States should take into account operational standards, indicators, guidelines and best practices developed by the European Union Agency for Asylum.
- (12) In the interests of a correct recognition of those persons in need of protection as refugees within the meaning of Article 1 of the Geneva Convention or as persons eligible for subsidiary protection, every applicant should have an effective access to the procedure, the opportunity to cooperate and properly communicate with the responsible authorities so as to present the relevant facts of his or her case and sufficient procedural guarantees to pursue his or her case throughout all stages of the procedure.

- (13) The applicant should be provided with an effective opportunity to present all relevant elements at his or her disposal to the determining authority. For this reason, the applicant should, subject to limited exceptions, enjoy the right to be heard through a personal interview on the admissibility or on merits of his or her application, as appropriate. For the right to a personal interview to be effective, the applicant should be assisted by an interpreter and be given the opportunity to provide his or explanations concerning the grounds for his or her application in a comprehensive manner. The applicant should be given sufficient time to prepare and consult with his or her legal adviser or counsellor, and he or she may be assisted by the legal adviser or counsellor during the interview. The personal interview should be conducted under conditions which ensure appropriate confidentiality and by adequately trained and competent personnel, including where necessary, personnel from authorities of other Member States or experts deployed by the European Union Agency for Asylum. The personal interview may only be omitted when the determining authority is to take a positive decision on the application or is of the opinion that the applicant is unfit or unable to be interviewed owing to enduring circumstance beyond his or her control. Given that the personal interview is an essential part of the examination of the application, the interview should be recorded and the applicants and their legal advisers should be given access to the recording, as well as to the report or transcript of the interview before the determining authority takes a decision, or in the case of an accelerated examination procedure, at the same time as the decision is made.



- (14) It is in the interests of both Member States and applicants to ensure a correct recognition of international protection needs already at the stage of the administrative procedure by providing good quality information and legal support which leads to more efficient and better quality decision-making. For that purpose, access to legal assistance and representation should be an integral part of the common procedure for international protection. In order to ensure the effective protection of the applicant's rights, particularly the right of defence and the principle of fairness, and to ensure the economy of the procedure, applicants should, upon their request and subject to conditions set out in this Regulation, be provided with free legal assistance and representation during the administrative procedure and in the appeal procedure. The free legal assistance and representation should be provided by persons competent to provide them under national law.
- (15) Certain applicants may be in need of special procedural guarantees due, *inter alia*, to their age, gender, sexual orientation, gender identity, disability, serious illness, mental disorders or as a consequence of torture, rape or other serious forms of psychological, physical, sexual or gender-based violence. It is necessary to systematically assess whether an individual applicant is in need of special procedural guarantees and identify those applicants as early as possible from the moment an application is made and before a decision is taken.
- (16) To ensure that the identification of applicants in need of special procedural guarantees takes place as early as possible, the personnel of the authorities responsible for receiving and registering applications should be adequately trained to detect signs of vulnerability signs and they should receive appropriate instructions for that purpose. Further measures dealing with identification and documentation of symptoms and signs of torture or other serious acts of physical or psychological violence, including acts of sexual violence, in procedures covered by this Regulation should, *inter alia*, be based on the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

- (17) Applicants who are identified as being in need of special procedural guarantees should be provided with adequate support, including sufficient time, in order to create the conditions necessary for their effective access to procedures and for presenting the elements needed to substantiate their application for international protection. Where it is not possible to provide adequate support in the framework of an accelerated examination procedure or a border procedure, an applicant in need of special procedural guarantees should be exempted from those procedures. The need for special procedural guarantees of a nature that could prevent the application of accelerated or border procedures should also mean that the applicant is provided with additional guarantees in cases where his or her appeal does not have automatic suspensive effect, with a view to making the remedy effective in his or her particular circumstances.
- (18) With a view to ensuring substantive equality between female and male applicants, examination procedures should be gender-sensitive. In particular, personal interviews should be organised in a way which makes it possible for both female and male applicants to speak about their past experiences in cases involving gender-based persecution. For this purpose, women should be given an effective opportunity to be interviewed separately from their spouse, partner or other family members. Where possible, women and girls should be provided with female interpreters and interviewers. Medical examinations on women and girls should be carried out by female medical practitioners, in particular having regard to the fact that the applicant may have been a victim of gender-based violence. The complexity of gender-related claims should be properly taken into account in procedures based on the concept of first country of asylum, the concept of safe third country, the concept of safe country of origin and in the notion of subsequent applications.
- (19) When, in the framework of an application being processed, the applicant is searched, that search should be carried by a person of the same sex. This should be without prejudice to a search carried out, for security reasons, on the basis of national law.

- (20) The best interests of the child should be a primary consideration of Member States when applying this Regulation, in accordance with Article 24 of the Charter and the 1989 United Nations Convention on the Rights of the Child. In assessing the best interests of the child, Member States should in particular take due account of the minor's well-being and social development, including his or her background. In view of Article 12 of the United Nations Convention on the Rights of the Child concerning the child's right to be heard, the determining authority shall provide a minor the opportunity of a personal interview unless this is manifestly not in the minor's best interests.
- (21) The common procedure streamlines the time-limits for an individual to accede to the procedure, for the examination of the application by the determining authority as well as for the examination of first level appeals by judicial authorities. Whereas a disproportionate number of simultaneous applications may risk delaying access to the procedure and the examination of the applications, a measure of flexibility to exceptionally extend those time-limits may at times be needed. However, to ensure an effective process, extending those time-limits should be a measure of last resort considering that Member States should regularly review their needs to maintain an efficient asylum system, including by preparing contingency plans where necessary, and considering that the European Union Agency for Asylum should provide Member States with the necessary operational and technical assistance. Where Member States foresee that they would not be able to meet the set time-limits, they should request assistance from the European Union Agency for Asylum. Where no such request is made, and because of the disproportionate pressure the asylum system in a Member State becomes ineffective to the extent of jeopardising the functioning of Common European Asylum System, the Agency may, based on an implementing decision of the Commission, take measures in support of that Member State.

- (22) Access to the common procedure should be based on a three-step approach consisting of the making, registering and lodging of an application. Making an application is the first step that triggers the application of this Regulation. A third-country national or stateless person is considered to have made an application when expressing a wish to receive international protection from a Member State. Such a wish may be expressed in any form and the individual applicant need not necessarily use specific words such as international protection, asylum or subsidiary protection. The defining element should be the expression by the third country national or the stateless person of a fear of persecution or serious harm upon return to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence. In case of doubt whether a certain declaration may be construed as an application for international protection, the third-country national or stateless person should be expressly asked whether he or she wishes to receive international protection. The applicant should benefit from rights under this Regulation and Directive XXX/XXX/EU (Reception Conditions Directive) <sup>6</sup> as soon as he or she makes an application.
- (23) An application should be registered as soon as it is made. At this stage, the authorities responsible for receiving and registering applications, including border guards, police, immigration authorities and authorities responsible for detention facilities should register the application together with the personal details of the individual applicant. Those authorities should inform the applicant of his or her rights and obligations, as well as the consequences for the applicant in case of non-compliance with those obligations. The applicant should be given a document certifying that an application has been made. The time limit for lodging an application starts to run from the moment an application is registered.

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<sup>6</sup> OJ L [...], [...], p. [...].

- (24) The lodging of the application is the act that formalises the application for international protection. The applicant should be given the necessary information as to how and where to lodge his or her application and he or she should be given an effective opportunity to do so. At this stage he or she is required to submit all the elements at his or her disposal needed to substantiate and complete the application. The time-limit for the administrative procedure starts to run from the moment an application is lodged. At that time, the applicant should be given a document which certifies his or her status as an applicant, and which should be valid for the duration of the his or her right to remain on the territory of the Member State responsible for examining the application.
- (25) The applicant should be informed properly of his or her rights and obligations in a timely manner and in a language that he or she understands or is reasonably meant to understand. Having regard to the fact that where, for instance, the applicant refuses to cooperate with the national authorities by not providing the elements necessary for the examination of the application and by not providing his or her fingerprints or facial image, or fails to lodge his or her application within the set time limit, the application could be rejected as abandoned, it is necessary that the applicant be informed of the consequences for not complying with those obligations.
- (26) To be able to fulfil their obligations under this Regulation, the personnel of the authorities responsible for receiving and registering applications should have appropriate knowledge and should receive the necessary training in the field of international protection, including with the support of the European Union Agency for Asylum. They should also be given the appropriate means and instructions to effectively perform their tasks.
- (27) In order to facilitate access to the procedure at border crossing points and in detention facilities, information should be made available on the possibility to apply for international protection. Basic communication necessary to enable the competent authorities to understand if persons declare their wish to receive international protection should be ensured through interpretation arrangements.

- (28) This Regulation should provide for the possibility that applicants lodge an application on behalf of their spouse, partner in a stable and durable relationship, dependant adults and minors. This option allows for the joint examination of those applications. The right of each individual to seek international protection is guaranteed by the fact that if the applicant does not apply on behalf of the spouse, partner, dependant adult or minor within the set time-limit for lodging an application, the spouse or partner may still do in his or her own name, and the dependant adult or minor should be assisted by the determining authority. However, if a separate application is not justified, it should be considered as inadmissible.
- (29) To ensure that unaccompanied minors have effective access to the procedure, they should always be appointed a guardian. The guardian should be a person or a representative of an organisation appointed to assist and guide the minor through the procedure with a view to safeguard the best interests of the child as well his or her general well-being. Where necessary, the guardian should exercise legal capacity for the minor. In order to provide effective support to the unaccompanied minors, guardians should not be placed in charge of a disproportionate number of unaccompanied minors at the same time. Member States should appoint entities or persons responsible for the support, supervision and monitoring of the guardians in the performance of their tasks. An unaccompanied minor should lodge an application in his or her own name or through the guardian. In order to safeguard the rights and procedural guarantees of an unaccompanied minor, the time-limit for him or her to lodge an application should start to run from when his or her guardian is appointed and they meet. Where the guardian does not lodge the application within the set time limit, the unaccompanied minor should be given an opportunity to lodge the application on his or her name with the assistance of the determining authority. The fact that an unaccompanied minor chooses to lodge an application in his or her own name should not preclude him or her from being assigned a guardian.

- (30) In order to guarantee the rights of the applicants, decisions on all applications for international protection should be taken on the basis of the facts, objectively, impartially and on an individual basis after a thorough examination which takes into account all the elements provided by the applicant and the individual circumstances of the applicant. To ensure a rigorous examination of an application, the determining authority should take into account relevant, accurate and up-to-date information relating to the situation in the country of origin of the applicant obtained from the European Union Agency for Asylum and other sources such as the United Nations High Commissioner for Refugees. The determining authority should also take into account any relevant common analysis of country of origin information developed by the European Union Agency for Asylum. Any postponement of concluding the procedure should fully comply with the obligations of the Member States under Regulation (EU) No XXX/XXX (Qualification Regulation) and with the right to good administration, without prejudice to the efficiency and fairness of the procedure under this Regulation.
- (31) In order to guarantee the rights of the applicant, a decision concerning his or her application should be given in writing. Where the decision does not grant international protection, the applicant should be given reasons for the decision and information on the consequences of the decision as well as the manner in which to challenge that decision. Without prejudice to the applicant's right to remain and to the principle of *non-refoulement*, such a decision may include, or may be issued together with, a return decision issued in accordance with Article 6 of Directive 2008/115/EC of the European Parliament and of the Council.<sup>7</sup>

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<sup>7</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).

- (32) It is necessary that decisions on applications for international protection are taken by authorities whose personnel has the appropriate knowledge and has received the necessary training in the field of international protection, and that they perform their activities with due respect for the applicable ethical principles. This should apply to the personnel of authorities from other Member States and experts deployed by the European Union Agency for Asylum deployed to assist the determining authority of a Member State in the examination of applications for international protection.
- (33) Without prejudice to carrying out an adequate and complete examination of an application for international protection, it is in the interests of both Member States and applicants for a decision to be taken as soon as possible. Maximum time-limits for the duration of the administrative procedure as well as for the first level of appeal should be established to streamline the procedure for international protection. In this way, applicants should be able to receive a decision on their application within the least amount of time possible in all Member States thereby ensuring a speedy and efficient procedure.
- (34) In order to shorten the overall duration of the procedure in certain cases, Member States should have the flexibility, in accordance with their national needs, to prioritise the examination of any application by examining it before other, previously made applications, without derogating from normally applicable procedural time limits, principles and guarantees.
- (35) Before determining the Member State responsible in accordance with Regulation (EU) No XXX/XXX of the European Parliament and of the Council (Dublin Regulation),<sup>8</sup> the first Member State in which an application has been lodged should examine the admissibility of that application when a country which is not a Member State is considered as a first country of asylum or safe third country for the applicant. In addition, an application should be considered to be inadmissible when it is a subsequent applicant without new relevant elements or findings and when a separate application by a spouse, partner, dependent adult or minor is not considered to be justified.

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



- (36) The concept of first country of asylum should be applied as a ground for inadmissibility where it can reasonably be assumed that another country would grant protection in accordance with the substantive standards of the Geneva Convention or the applicant would be provided sufficient protection in that country. In particular, the Member States should not examine the merits of an application where a first country of asylum has granted the applicant refugee status or otherwise sufficient protection. Member States should proceed on that basis only where they are satisfied including, where necessary or appropriate, based on assurances obtained from the third country concerned, that the applicant has enjoyed and will continue to enjoy protection in that country in accordance with the Geneva Convention or has otherwise enjoyed and will continue to enjoy sufficient protection, particularly as regards the right of legal residence, appropriate access to the labour market, reception facilities, healthcare and education, and the right to family reunification in accordance with international human rights standards.
- (37) The concept of safe third country should be applied as a ground for inadmissibility where the applicant, due to a connection to the third country including one through which he or she has transited, can reasonably be expected to seek protection in that country, and there are grounds for considering that the applicant will be admitted or readmitted to that country. Member States should proceed on that basis only where they are satisfied including, where necessary or appropriate, based on assurances obtained from the third country concerned, that the applicant will have the possibility to receive protection in accordance with the substantive standards of the Geneva Convention or will enjoy sufficient protection, particularly as regards the right of legal residence, appropriate access to the labour market, reception facilities, healthcare and education, and the right to family reunification in accordance with international human rights standards.

- (38) An application for international protection should be examined on its merits to determine whether an applicant qualifies for international protection in accordance with Regulation (EU) No XXX/XXX (Qualification Regulation). There need not be an examination on the merits where an application should be declared as inadmissible in accordance with this Regulation. However, where from a *prima facie* assessment it is clear that an application may be rejected as manifestly unfounded, the application may be rejected on that ground without examining its admissibility.
- (39) The examination of an application should be accelerated and completed within a maximum of two months in those instances where an application is manifestly unfounded because it is an abusive claim, including where an applicant comes from a safe country of origin or an applicant is making an application merely to delay or frustrate the enforcement of a removal decision, or where there are serious national security or public concerns, where the applicant does not apply for international protection in the first Member State of entry or in the Member State of legal residence or where an applicant whose application is under examination and who made an application in another Member State or who is on the territory of another Member State without a residence document is taken back under the Dublin Regulation. In the latter case, the examination of the application should not be accelerated if the applicant is able to provide substantiated justifications for having left to another Member State without authorisation, for having made an application in another Member State or for having otherwise been unavailable to the competent authorities, such as for instance that he or she was not informed adequately and in a timely manner of his or her obligations. Furthermore, an accelerated examination procedure may be applied to unaccompanied minors only within the limited circumstances set out in this Regulation.

- (40) Many applications for international protection are made at the border or in a transit zone of a Member State prior to a decision on the entry of the applicant. Member States should be able to provide for an examination on admissibility or an examination on the merits which would make it possible for such applications to be decided upon at those locations in well-defined circumstances. The border procedure should not take longer than four weeks and after that period applicants should be allowed entry to the territory of the Member State. It is only where a disproportionate number of applicants lodge their applications at the borders or in a transit zone, that the border procedure may be applied at locations in proximity to the border or transit zone. A border procedure may be applied to unaccompanied minors only within the limited circumstances set out in this Regulation.
- (41) The notion of public order may, *inter alia*, cover a conviction of having committed a serious crime.
- (42) As long as an applicant can show good cause, the lack of documents on entry or the use of forged documents should not *per se* entail an automatic recourse to an accelerated examination procedure or a border procedure.
- (43) Where an applicant either explicitly withdraws his or her application of his or her own motion, or does not comply with the obligations arising from this Regulation, Regulation (EU) No XXX/XXX (Dublin Regulation) or Directive XXX/XXX/EU (Reception Conditions Directive) thereby implicitly withdraws his or her application, the application should not be further examined and it should be rejected as explicitly withdrawn or abandoned, and any application in the Member States by the same applicant further after that decision should be considered to be a subsequent application. However, the implicit withdrawal should not be automatic but the applicant should be allowed the opportunity to report to the determining authority and demonstrate that the failure to comply with those obligations was due to circumstances beyond his control.

- (44) Where an applicant makes a subsequent application without presenting new evidence or findings which significantly increase his or her likelihood of qualifying as a beneficiary of international protection or which relate to the reasons for which the previous application was rejected as inadmissible, that subsequent application should not be subject to a new full examination procedure. In those cases, following a preliminary examination, applications should be dismissed as inadmissible or as manifestly unfounded where the application is so clearly without substance or abusive that it has no tangible prospect of success, in accordance with the *res judicata* principle. The preliminary examination shall be carried out on the basis of written submissions and a personal interview however the personal interview may be dispensed with in those instances where, from the written submissions, it is clear that the application does not give rise to relevant new elements or findings or that it is clearly without substance and has no tangible prospect of success. In case of subsequent applications, exceptions may be made to the individual's right to remain on the territory of a Member State after a subsequent application is rejected as inadmissible or unfounded, or in the case of a second or further subsequent applications, as soon as an application is made in any Member States following a final decision which had rejected a previous subsequent application as inadmissible, unfounded or manifestly unfounded.
- (45) A key consideration as to whether an application for international protection is well-founded is the safety of the applicant in his or her country of origin. Having regard to the fact that Regulation (EU) No XXX/XXX (Qualification Regulation) aims to achieve a high level of convergence on the qualification of third-country nationals and stateless persons as beneficiaries of international protection, this Regulation establishes common criteria for designating third countries as safe countries of origin and, in view of the need to strengthen the application of the safe country of origin concept as an essential tool to support the swift processing of applications that are likely to be unfounded, this Regulation sets out an EU common list of safe countries of origin.

- (46) The fact that a third country is on the EU common list of safe countries of origin cannot establish an absolute guarantee of safety for nationals of that country and therefore does not dispense with the need to conduct an appropriate individual examination of the application for international protection. By its very nature, the assessment underlying the designation can only take into account the general, civil, legal and political circumstances in that country and whether actors of persecution, torture or inhuman or degrading treatment or punishment are subject to sanction in practice when found liable in that country. For this reason, where an applicant shows that there are serious reasons to consider the country not to be safe in his or her particular circumstances, the designation of the country as safe can no longer be considered relevant for him or her.
- (47) As regards the designation of safe third countries at Union level, this Regulation provides for having such a designation. Third countries should be designated as safe third countries at Union level by means of an amendment to this Regulation based on the conditions set out in this Regulation and after carrying out a detailed evidence-based assessment involving substantive research and broad consultation with Member States and relevant stakeholders.
- (48) The establishment of an EU common list of safe countries of origin and an EU common list for safe third countries should address some of the existing divergences between Member States' national lists of safe countries. While Member States should retain the right to apply or introduce legislation that allows for the national designation of third countries other than those designated as safe third countries at Union level or appearing on the EU common list as safe countries of origin, the establishment of such common designation or list should ensure that the concept is applied by all Member States in a uniform manner in relation to applicants whose countries of origin are on the common list or who have a connection with a safe third country. This should facilitate convergence in the application of procedures and thereby also deter secondary movements of applicants for international protection. For that reason, the possibility of using national lists or designations should come to an end within a period of five years from entry into force of this Regulation.

- (49) The Commission, assisted by the European Union Agency for Asylum, should regularly review the situation in third countries designated as safe third countries at Union level or that are on the EU common list of safe countries of origin. In case of sudden change for the worse in the situation of such a third country, the Commission should be able to suspend the designation of that third country as safe third country at Union level or the presence of that third country from the EU common list of safe countries of origin for a limited period of time by means of a delegated act in accordance with Article 290 of the Treaty on the Functioning of the European Union. Moreover, in this case, the Commission should propose an amendment for the third country not to be designated as a safe third country at Union level any longer or to remove that third country from the EU common list of safe country of origin within 3 months of the adoption of delegated act suspending the third country.
- (50) For the purpose of this substantiated assessment, the Commission should take into consideration a range of sources of information at its disposal including in particular, its Annual Progress Reports for third countries designated as candidate countries by the European Council, regular reports from the European External Action Service and the information from Member States, the European Union Agency for Asylum, the United Nations High Commissioner for Refugees, the Council of Europe and other relevant international organisations. The Commission should be able to extend the suspension of the designation of a third country as a safe third country at Union level or the presence of a third country from the EU common list of safe country of origin for a period of six months, with a possibility to renew that extension once. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (51) When the period of validity of the delegated act and its extensions expires, without a new delegated act being adopted, the designation of the third country as safe third country at Union level or from the EU common list of safe countries of origin should no longer be suspended. This shall be without prejudice to any proposed amendment for the removal of the third country from the lists.

- (52) The Commission, with the assistance of the European Union Agency for Asylum, should regularly review the situation in third countries that have been removed from the EU common list of safe countries of origin or safe third countries, including where a Member State notifies the Commission that it considers, based on a substantiated assessment, that, following changes in the situation of that third country, it fulfils again the conditions set out in this Regulation for being designated as safe. In such a case, Member States could only designate that third country as a safe country of origin or a safe third country at the national level as long as the Commission does not raise objections to that designation. Where the Commission considers that these conditions are fulfilled, it may propose an amendment to the designation of safe third countries at Union level or to the EU common list of safe countries of origin so as to add the third country.
- (53) As regards safe countries of origin, following the conclusions of the Justice and Home Affairs Council of 20 July 2015, at which Member States agreed that priority should be given to an assessment by all Member States of the safety of the Western Balkans, the European Union Agency for Asylum organised an expert-level meeting with the Member States on 2 September 2015, where a broad consensus was reached that Albania, Bosnia and Herzegovina, Kosovo\*,<sup>9</sup> the former Yugoslav Republic of Macedonia, Montenegro and Serbia should be considered as safe countries of origin within the meaning of this Regulation.
- (54) Based on a range of sources of information, including in particular reporting from the European External Action Service and information from Member States, the European Union Agency for Asylum, the United Nations High Commissioner for Refugees, the Council of Europe and other relevant international organisations, a number of third countries are considered to qualify as safe countries of origin.

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<sup>9</sup> \* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/99 and the ICJ Opinion on the Kosovo declaration of independence.

(55) As regards Albania, the legal basis for protection against persecution and mistreatment is adequately provided by substantive and procedural human rights and anti-discrimination legislation, including membership of all major international human rights treaties. In 2014, the European Court of Human Rights found violations in four out of 150 applications. There are no indications of any incidents of expulsion, removal or extradition of own citizens to third countries where, inter alia, there is a serious risk that they would be subjected to the death penalty, torture, persecution or other inhuman or degrading treatment or punishment, or where their lives or freedom would be threatened on account of their race, religion, nationality, sexual orientation, membership of a particular social group or political opinion, or from which there is a serious risk of an expulsion, removal or extradition to another third country. In 2014, Member States considered that 7,8 % (1040) of asylum applications of citizens from Albania were well-founded. At least eight Member States have designated Albania as a safe country of origin. Albania has been designated as a candidate country by the European Council. At the time of designation, the assessment was that Albania fulfilled the criteria established by the Copenhagen European Council of 21-22 June 1993 relating to the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities and Albania will have to continue to fulfil those criteria, for becoming a member in line with the recommendations provided in the Annual Progress Report.



(56) As regards Bosnia and Herzegovina, its Constitution provides the basis for the sharing of powers between the country's constituent peoples. The legal basis for protection against persecution and mistreatment is adequately provided by substantive and procedural human rights and anti-discrimination legislation, including membership of all major international human rights treaties. In 2014, the European Court of Human Rights found violations in five out of 1196 applications. There are no indications of any incidents of expulsion, removal or extradition of own citizens to third countries where, inter alia, there is a serious risk that they would be subjected to the death penalty, torture, persecution or other inhuman or degrading treatment or punishment, or where their lives or freedom would be threatened on account of their race, religion, nationality, sexual orientation, membership of a particular social group or political opinion, or from which there is a serious risk of an expulsion, removal or extradition to another third country. In 2014, Member States considered that 4,6 % (330) of asylum applications of citizens from Bosnia and Herzegovina were well-founded. At least nine Member States have designated Bosnia and Herzegovina as a safe country of origin.

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

- (58) As regards Kosovo\*, the legal basis for protection against persecution and mistreatment is adequately provided by substantive and procedural human rights and anti-discrimination legislation. The non-accession of Kosovo\* to relevant international human rights instruments such as the ECHR results from the lack of international consensus regarding its status as a sovereign State. There are no indications of any incidents of expulsion, removal or extradition of own citizens to third countries where, inter alia, there is a serious risk that they would be subjected to the death penalty, torture, persecution or other inhuman or degrading treatment or punishment, or where their lives or freedom would be threatened on account of their race, religion, nationality, sexual orientation, membership of a particular social group or political opinion, or from which there is a serious risk of an expulsion, removal or extradition to another third country. In 2014, Member States considered that 6,3 % (830) of asylum applications of citizens of Kosovo\* were well-founded. At least six Member States have designated Kosovo\* as a safe country of origin.
- (59) This Regulation is without prejudice to Member States' position on the status of Kosovo, which will be decided in accordance with their national practice and international law. In addition, none of the terms, wording or definitions used in this Regulation constitute recognition of Kosovo by the Union as an independent State nor does it constitute recognition by individual Member States of Kosovo in that capacity where they have not taken such a step. In particular, the use of the term "countries" does not imply recognition of statehood.

(60) As regards Montenegro, the legal basis for protection against persecution and mistreatment is adequately provided by substantive and procedural human rights and anti-discrimination legislation, including membership of all major international human rights treaties. In 2014, the European Court of Human Rights found violations in one out of 447 applications. There are no indications of any incidents of expulsion, removal or extradition of own citizens to third countries where, inter alia, there is a serious risk that they would be subjected to the death penalty, torture, persecution or other inhuman or degrading treatment or punishment, or where their lives or freedom would be threatened on account of their race, religion, nationality, sexual orientation, membership of a particular social group or political opinion, or from which there is a serious risk of an expulsion, removal or extradition to another third country. In 2014, Member States considered that 3,0 % (40) of asylum applications of citizens of Montenegro were well-founded. At least nine Member States have designated Montenegro as a safe country of origin. Montenegro has been designated as a candidate country by the European Council and negotiations have been opened. At the time of designation, the assessment was that Montenegro fulfilled the criteria established by the Copenhagen European Council of 21-22 June 1993 relating to the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. Montenegro will have to continue to fulfil those criteria, for becoming a member in line with the recommendations provided in the Annual Progress Report.

(61) As regards Serbia, the Constitution provides the basis for self-governance of minority groups in the areas of education, use of language, information and culture. The legal basis for protection against persecution and mistreatment is adequately provided by substantive and procedural human rights and anti-discrimination legislation, including membership of all major international human rights treaties. In 2014, the European Court of Human Rights found violations in 16 out of 11 490 applications. There are no indications of any incidents of expulsion, removal or extradition of own citizens to third countries where, inter alia, there is a serious risk that they would be subjected to the death penalty, torture, persecution or other inhuman or degrading treatment or punishment, or where their lives or freedom would be threatened on account of their race, religion, nationality, sexual orientation, membership of a particular social group or political opinion, or from which there is a serious risk of an expulsion, removal or extradition to another third country. In 2014, Member States considered that 1,8 % (400) of asylum applications of citizens from Serbia were well- founded. At least nine Member States have designated Serbia as a safe country of origin. Serbia has been designated as a candidate country by the European Council and negotiations have been opened. At the time of designation, the assessment was that Serbia fulfilled the criteria established by the Copenhagen European Council of 21-22 June 1993 relating to the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. Serbia will have to continue to fulfil those criteria, for becoming a member in line with the recommendations provided in the Annual Progress Report.

- (62) As regards Turkey, the legal basis for protection against persecution and mistreatment is adequately provided by substantive and procedural human rights and anti-discrimination legislation, including membership of all major international human rights treaties. In 2014, the European Court of Human Rights found violations in 94 out of 2 899 applications. There are no indications of any incidents of expulsion, removal or extradition of own citizens to third countries where, inter alia, there is a serious risk that they would be subjected to the death penalty, torture, persecution or other inhuman or degrading treatment or punishment, or where their lives or freedom would be threatened on account of their race, religion, nationality, sexual orientation, membership of a particular social group or political opinion, or from which there is a serious risk of an expulsion, removal or extradition to another third country. In 2014, Member States considered that 23,1 % (310) of asylum applications of citizens of Turkey were well-founded. One Member State has designated Turkey as a safe country of origin. Turkey has been designated as a candidate country by the European Council and negotiations have been opened. At the time, the assessment was that Turkey sufficiently meets fulfilled the political criteria established by the Copenhagen European Council of 21-22 June 1993 relating to stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, and Turkey will have to continue to fulfil those criteria, for becoming a member in line with the recommendations provided in the Annual Progress Report.
- (63) With respect to the withdrawal of refugee or subsidiary protection status, and in particular in view of the regular status review to be carried out on the basis of Regulation (EU) No XXX/XXX (Qualification Regulation), Member States should ensure that persons benefiting from international protection are duly informed of a possible reconsideration of their status and that they are given the opportunity to submit their point of view, within a reasonable time, by means of a written statement and in a personal interview, before the authorities can take a reasoned decision to withdraw their status.

- (64) Decisions taken on an application for international protection, including the decisions concerning the explicit or implicit withdrawal of an application, and the decisions on the withdrawal of refugee or subsidiary protection status should be subject to an effective remedy before a court or tribunal in compliance with all requirements and conditions laid down in Article 47 of the Charter. To ensure the effectiveness of the procedure, the applicant should lodge his or her appeal within a set time-limit. For the applicant to be able to meet those time-limits and with a view to ensuring effective access to judicial review, he or she should be able to be assisted by an interpreter as well as be entitled to free legal assistance and representation.
- (65) For an applicant to be able to exercise his or her right to an effective remedy, he or she should be allowed to remain on the territory of a Member State until the time-limit for lodging a first level of appeal expires, and when such a right is exercised within the set time-limit, pending the outcome of the remedy. It is only in limited cases set out in this Regulation that the suspensive effect of an appeal is not automatic and where the applicant would need to request the court or tribunal to stay the execution of a return decision or the court would act of its own motion to this effect. Where an exception is made to the right to a remedy with automatic suspensive effect, the applicant's rights of defence should be adequately guaranteed by providing him or her with the necessary interpretation and legal assistance, as well as by allowing sufficient time for the applicant to prepare and submit his or her request to the court or tribunal. Furthermore, in this framework, the court or tribunal should be able to examine the decision refusing to grant international protection in terms of fact and law. The applicant should be allowed to remain on the territory pending the outcome of the procedure to rule on whether or not he or she may remain. However, that decision should be taken within one month.
- (66) Having regard to the need for equity in the management of applications and effectiveness in the common procedure for international protection, time-limits should not only be set for the administrative procedure but they should also be established for the appeal stage, at least insofar as the first level of appeal is concerned. This should be without prejudice to an adequate and complete examination of an appeal, and therefore a measure of flexibility should still be maintained in cases involving complex issues of fact or law.

- (67) In accordance with Article 72 of the Treaty on the Functioning of the European Union, this Regulation does not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.
- (68) Regulation (EU) No 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) <sup>10</sup> applies to the processing of personal data by the Member States carried out in application of this Regulation.
- (69) Any processing of personal by the European Union Agency for Asylum within the framework of this Regulation should be conducted in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council,<sup>11</sup> as well as Regulation (EU) No XXX/XXX (EU Asylum Agency Regulation) <sup>12</sup> and it should, in particular, respect the principles of necessity and proportionality.

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<sup>10</sup> OJ L 119, 4.5.2016, p. 1.

<sup>11</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

<sup>12</sup> OJ L [...], [...], p. [...].



- (70) Any personal data collected upon registration or lodging of an application for international protection and during the personal interview should be considered to be part of the applicant's file and it should be kept for a number of years since third-country nationals or stateless persons who request international protection in one Member State may try to request international protection in another Member State or may submit further subsequent applications in the same or another Member State for years to come. Given that most third-country nationals or stateless persons who have stayed in the Union for several years will have obtained a settled status or even citizenship of a Member State after a period of ten years from when they are granted international protection, that period should be considered a necessary period for the storage of personal details, including fingerprints and facial images.
- (71) In order to ensure uniform conditions for the implementation of this Regulation, in particular as regards the provision of information, documents to the applicants and measures concerning applicants in need of special procedural guarantees including minors, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>13</sup> of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers.

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

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

(77) [In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, those Member States have notified their wish to take part in the adoption and application of this Regulation]

OR

*[In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption of this Regulation and are not bound by it or subject to its application.]*

OR

*[(XX) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, the United Kingdom is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.*

*(XX) In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Ireland has notified (, by letter of ...,) its wish to take part in the adoption and application of this Regulation.]*

OR

*[(XX) In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom has notified (, by letter of ...,) its wish to take part in the adoption and application of this Regulation.*

*(XX) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.]*

- (78) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (79) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Regulation seeks to ensure full respect for human dignity and to promote the application of Articles 1, 4, 8, 18, 19, 21, 23, 24, and 47 of the Charter.

HAVE ADOPTED THIS REGULATION:

## **CHAPTER I**

### **GENERAL PROVISIONS**

#### *Article 1*

#### **Subject matter**

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

## Article 2

### Scope<sup>14</sup>

1. This Regulation applies to all applications for international protection made in the territory of the Member States, including at the external border, in the territorial sea or in the transit zones of the Member States, and to the withdrawal of international protection.<sup>15</sup>
2. This Regulation does not apply to applications for international protection and to requests for diplomatic or territorial asylum submitted to representations of Member States.<sup>16</sup>

## ~~Article 3~~

### ~~Extension of the scope of application~~

~~Member States may decide to apply this Regulation to applications for protection to which Regulation (EU) No XXX/XXX (Qualification Regulation) does not apply.<sup>17</sup>~~

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<sup>14</sup> **SE:** scrutiny reservation.

<sup>15</sup> **DE:** the alternative use of "*border*" and "*external border*" in the proposal needs clarification. **COM:** the definition of the "*external border*" is the one contained in the Schengen Border Code and this term should be used in the whole text.

<sup>16</sup> **DE:** add "*or the EU*" at the end ("*representations of Member States or the EU*"). **PRES:** currently no requests for international protection/diplomatic or territorial asylum can be made in an EU delegation

<sup>17</sup> **DE:** why was this Article deleted?

## Article 4

### Definitions<sup>18</sup>

1. For the purposes of this Regulation, the following definitions referred to in Article 2 of Regulation (EU) No XXX/XXX (Qualification Regulation) apply:
  - (a) 'Geneva Convention';
  - (b) 'refugee';
  - (c) 'beneficiary of subsidiary protection';
  - (d) 'international protection' **means refugee status and subsidiary protection status as defined in points (e) and (f);**
  - (e) 'refugee status' **means the recognition by a Member State of a third-country national or a stateless person as a refugee;**
  - (f) 'subsidiary protection status' **means the recognition by a Member State of a third-country national or a stateless person as a person eligible for subsidiary protection;**
  - (g) 'minor';
  - (h) 'unaccompanied minor'.

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<sup>18</sup> **PL:** should be simplified by making cross-references to QR for all definitions. **LV, PT:** definitions should be aligned between the different proposals. **LU:** a definition for "family" should be included. **PRES:** definitions between all CEAS acts were harmonised under MT PRES. Only the procedural definitions such as 'applicant', 'subsequent application' are included in APR:

2. In addition to paragraph 1, the following definitions apply<sup>19</sup>:

- (a) 'application for international protection' or 'application' means a request made by a third-country national or a stateless person for protection from a Member State, who can be understood as seeking refugee status or subsidiary protection status<sup>20</sup>;
- (b) 'applicant' means a third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been ~~made~~ **taken**<sup>21</sup>;
- (e) 'applicant in need of special procedural guarantees' means an applicant whose ability to benefit from the rights and comply with the obligations provided for in this Regulation is limited due to individual circumstances<sup>22</sup>;

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<sup>19</sup> **DE:** add a definition of the term “border” which clarifies that borders may also include internal borders within the meaning of Art. 2 (1) of Regulation (EU) 2016/399. Background: the Commission argued that the Asylum Procedure Regulation always refers to external borders, even if the word “borders” is not further specified. Germany does not share this interpretation because Art. 41 on the border procedure must apply also to MS without EU external land borders in case of a temporary reintroduction of controls at the internal borders pursuant to Chapter II of Regulation (EU) 2016/399.

<sup>20</sup> **BE:** scrutiny reservation. **EL:** the deletion of the part existing in the current acquis (“and who does not explicitly request another kind of protection outside the scope of Directive 2011/95/EU, that can be applied for separately”) might have effects on the substance; keep the sentence, it improves clarity. **IT:** add “and/or lodged” after “made”.

<sup>21</sup> **BE:** scrutiny reservation. **PL:** not clear if the term “the applicant” concerns only a person who makes an application or also his family members. **PRES:** from the moment the application is made, a person is being considered as applicant.

<sup>22</sup> **IE:** scrutiny reservation. **DE:** the definition derogates from the definition in Art. 2 (13) of RCD. The definition should be the same in all legal acts. The Commission pointed out that there is a difference between the term “applicant in need of special procedural guarantees” in the APR and the term “applicant with special reception needs”. In this case, it would be particularly important to clarify the difference by listing the most frequently affected groups of people – some of which may be different – in both definitions. **COM:** in practice the person targeted in APR and RCD could be the same but APR targets the specific procedural needs. The special needs in RCD cover a wider range.

(d) **DELETED**



- (m) 'examination of an application for international protection' means examination of the admissibility or the merits of an application for international protection in accordance with this Regulation and Regulation (EU) No XXX/XXX (Qualification Regulation), by the determining authority, except for procedures for determining the Member State responsible in accordance with Regulation (EU) No XXX/XXX (Dublin Regulation);<sup>24</sup>
- (en) 'determining authority' means any quasi-judicial or administrative body in a Member State responsible for examining **and taking decisions on** applications for international protection ~~competent to take decisions at first instance~~ **at the administrative stage of the procedure and, where applicable, on the withdrawal of international protection**;<sup>25</sup>
- (fo) ~~'guardian' means a person or an organisation appointed to assist and represent an unaccompanied minor with a view to safeguarding the best interests of the child and his or her general well being in procedures provided for in this Regulation and exercising legal capacity for the minor where necessary;~~<sup>26</sup>
- (gp) 'withdrawal of international protection' means the decision by a determining authority **or a competent court or tribunal** to revoke, **or end, including by refusing** ~~or refuse to renew, the international protection~~ **refugee status or subsidiary protection status of a person**;

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<sup>24</sup> **CZ, EL, MT, SE, SK:** scrutiny reservation. **CY:** reservation. **CZ, EL:** unclear what exactly should be excluded from this definition; it is not possible to exclude the whole Dublin procedure (e.g. Article 10 which states that the admissibility interview may be conducted together with the Dublin interview). **MT:** concerns in relation to the obligation to have an admissibility check for all applications. Moreover, the reference in this definition should be to the Determining Authority and not to the competent authorities. **SK:** no support for a separated procedure for determining the MS responsible; in Slovakia the Dublin procedure is part of the asylum procedure. **BE:** replace "*competent authority*" by "*determining authority*".

<sup>25</sup> **PL:** align with QR.

<sup>26</sup> **DE:** a definition of "representative" and of "temporary representative" is needed.

(hr) 'remain in the Member State' means to remain in the territory, including at the border or in transit zones, of the Member State in which the application for international protection has been made or is being examined;

(is) **DELETED**

(jt) 'Member State responsible' means the Member State responsible for the examination of an application in accordance with Regulation (EU) No XXX/XXX (Dublin Regulation)<sup>28</sup>;

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<sup>28</sup> ES: reservation.

- (u) ‘minor’ means a third-country national or a stateless person below the age of 18 years;<sup>29</sup>
- (v) ‘unaccompanied minor’ means a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her, whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such an adult; it includes a minor who is left unaccompanied after he or she has entered the territory of Member States.<sup>30</sup>

*Article 5*

**DELETED**

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<sup>29</sup> **LU:** scrutiny reservation because of link to Article 21.

<sup>30</sup> **IT:** the reference to “adult” is too general and leaves room for uncertainty on what adult is responsible for him/her; replace "*an adult*" with "*a parent or a legal representative*" and "*of such an adult*" with "*the aforementioned persons*".

**DELETED**

**DELETED**

Article 5a

Cooperation<sup>36</sup>

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

*Article 5b [former Article 18]*

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

1. **Member States shall allow the United Nations High Commissioner for Refugees:**
  - (a) **to have access to applicants, including those in reception centres, detention, at the border and in transit zones;**

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<sup>36</sup> **NL, SE:** scrutiny reservation. **RO:** clarify if the legal and administrative aspects of this assistance will be agreed by the States concerned or a provision to that effect under the Regulation should be introduced.

- (b) to have access to information on individual applications for international protection, on the course of the procedure and on the decisions taken, subject to the consent of the applicant;
  - (c) to present its views, in the exercise of its supervisory responsibilities under Article 35 of the Geneva Convention, to any competent authorities regarding individual applications for international protection at any stage of the procedure.
2. Paragraph 1 shall also apply to an organisation which is working in the territory of the Member State concerned on behalf of the United Nations High Commissioner for Refugees pursuant to an agreement with that Member State.<sup>37</sup>

*Article 6*

*Confidentiality principle<sup>38</sup>*

1. **DELETED**

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<sup>37</sup> **CZ:** unclear if this provision is still used by MS in practice (could be obsolete).

<sup>38</sup> **SE:** scrutiny reservation. **DE:** how does this provision articulate with the Data Protection Regulation?

2. Throughout the procedure for international protection and after a final decision on the application has been taken, the authorities shall not<sup>40</sup>:
- (a) disclose information regarding the individual application for international protection or the fact that an application has been made, to the alleged actors of persecution or serious harm;
  - (b) obtain any information from the alleged actors of persecution or serious harm in a manner that would result in such actors being directly informed of the fact that an application has been made by the applicant in question, and would jeopardise the physical integrity of the applicant or his or her dependants, or the liberty and security of his or her family members still living in the country of origin.

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<sup>40</sup> **SE:** a reference to national provisions should be introduced.



## CHAPTER II

### BASIC PRINCIPLES AND GUARANTEES<sup>41</sup>

#### SECTION I

#### RIGHTS AND OBLIGATIONS OF APPLICANTS

##### *Article 7*

**DELETED**

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<sup>41</sup> **PL:** Chapter II would not prevent secondary movements.

**DELETED**

**DELETED**

**DELETED**

*Article 8*

**DELETED**

**DELETED**

**DELETED**

**DELETED**



**DELETED**

*Article 9*

**Right to remain ~~pending~~ during the administrative procedure  
~~examination of the application~~<sup>65</sup>**

1. An applicants shall have the right to remain in the **territory of the Member State where he or she is required to be present in accordance with Article 4(2a) of Regulation (EU) No XXX/XXX [Dublin Regulation]** responsible, for the sole purpose of the procedure, until the determining authority has taken a decision **on the application is taken by the Member State responsible** in accordance with the administrative procedure ~~provided for in Chapter III~~ and **without prejudice to the implementation of transfer decisions in accordance with Regulation (EU) No XXX/XXX [Dublin Regulation].<sup>66</sup>**

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<sup>65</sup> **BE, DE, EL, ES, IT, PT:** scrutiny reservation. **FR:** reservation.

<sup>66</sup> **PL, SE:** scrutiny reservation. **DE,** supported by **EL:** the provision does not specify the applicable right to remain during the Dublin procedure. It needs to be clarified that the right to remain also applies while the responsible MS is being identified. **HU,** supported by **RO:** clarify that it refers to only the first administrative procedure. **DE:** what are the cases to be covered "*without prejudice to the implementation of transfer decisions in accordance with Regulation (EU) No XXX/XXX [Dublin Regulation]*"? Is this wording and the provision compatible with Art. 7 (1) no. 1 of the Dublin Implementing Regulation (transfer on own initiative)? **SE:** it should be read together with Dublin (comment valid also for para (1a)).

- 1a. *[Where an applicant is in a Member State other than the one where he or she is required to be present in accordance with the Dublin Regulation, the provisions of that Regulation apply and that applicant is not considered as illegally staying in the territory of Member States within the meaning of Directive 2008/115/EC.<sup>67</sup>]*
2. The right to remain shall not constitute an entitlement to a residence permit ~~and it shall not give the applicant the right to travel to the territory of other Member States without authorisation as referred to in Article 6 of Directive XXX/XXX/EU (Reception Conditions Directive).~~

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<sup>67</sup> **CY, CZ, DE, IE, IT, SE:** scrutiny reservation. **EL:** reservation on the reference to Art. 20 of Dublin. **CZ:** the text should be moved to Dublin and discussed in that framework. **SE:** not appropriate to state in a Regulation the way a Directive should apply. **PRES:** this text will be moved to recitals.

3. The ~~responsible~~ **competent** authorities of Member States may **provide for an exception from revoke** the applicant's right to remain on their territory during **the** administrative procedure where<sup>68</sup>:
- (a) ~~a person makes a subsequent application in accordance with Article 42 and in accordance with the conditions laid down in Article 43~~ **are fulfilled**,<sup>69</sup>

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<sup>68</sup> **CZ** (supported by **PL, SI, SK**): the "may" clause should be justified; modify this as follows: "~~The responsible authorities of Member States may revoke the applicant's right to remain on their~~ the territory of Member States may be considered as revoked during administrative procedure where:" (the aim of this modification is to keep the mechanism of the current APD, where it is possible to revoke the right to remain ex lege and no decision is necessary). **IT**: should be a "shall" clause; "*competent authorities*" instead of "*determining authorities*". **FR**: scrutiny reservation to assess if there are other cases which may justify to limit the right to remain. **AT**: reservation on the relation between "shall" and "may". **RO**: unclear wording, keep initial drafting ("revoke"); it is necessary to clarify the legal situation of the asylum procedure of the applicant when the right to remain on the territory is revoked and the alien is removed from the territory of the Member State. Also, clarifications are needed regarding the provisions of letter (b) in terms of both the legal consequences of extradition / surrender and re-extradition procedure. Thus, what happens when a MS receives an application for international protection from a third country / stateless national residing in a third country, having at the same time an arrest warrant issued by another MS? Who is responsible for examining the application for international protection? Does the Dublin Regulation also apply if the person filed a new application for international protection in the MS that issued the arrest warrant? What happens to the asylum procedure in MS in which the first application was filed? Should this be terminated without a decision? **SE**: scrutiny reservation; unclear how this should be dealt with in practice. Is it a general decision that in all these cases there is no right, or is it determined on a case by case basis? If on a case by case basis a specific decision would have to be taken that would be appealable. If a general decision is taken it should be by the MS and not by the authorities. **NL**: add a new point drafted as follows: "*a person is a danger for public order or the national security, without prejudice to Art. 12 and 18 of the Qualification Regulation*".

<sup>69</sup> **IT**: this must be better coordinated with Art. 19 (2) (c) of RCD. **NL**: include public order. **SE**: clarify this provision. **EL**: reservation, leads to a possible refusal of the right to an effective remedy after a subsequent application is considered inadmissible, delete it.

(b) a person is surrendered or extradited, as appropriate, to another Member State pursuant to obligations in accordance with a European arrest warrant <sup>70</sup> or to a third country ~~or to international criminal courts or tribunals~~; <sup>71</sup>

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

4. A Member State may extradite an applicant to a third country pursuant to paragraphs 3(b) only where the determining competent authority **considers** ~~is satisfied~~ that an extradition decision will not result in direct or indirect *refoulement* in breach of the international and Union obligations of that Member State<sup>72</sup>. **In the case of an extradition, a surrender or transfer to a third country, the international criminal court or another international court or tribunal pursuant to paragraph 3(ba), the determining authority or a national court or tribunal may take into account elements in the decision which may be relevant for an assessment of the risk of direct or indirect refoulement.**

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<sup>70</sup> Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1).

<sup>71</sup> **DE:** reservation: it must be up to the MS to decide which authority examines the prerequisites of paragraph (4). **IT:** add a letter (c) that would read as follows: "*(c) a person is a danger for public security, without prejudice to art. 12 and 18 of the Regulation [...] on standards for the qualification [...].*" **PL:** add a point (c): a person poses a clear danger to public security. **EL:** reservation, delete "or to a third country"; not possible to guarantee the safeguard of para (4), that in the third country where the applicant will be extradited, the principle of non refoulement will be respected.

<sup>72</sup> **IT, PT:** scrutiny reservation. **RO:** reservation, reword the second sentence as follows: "*the competent authorities to deal with the extradition request must also consider the risk of direct or indirect return*". **CZ** (supported by **SI**): justify the "may" clause. **DE:** reservation; it must be up to the MS to decide which authority examines the prerequisites of paragraph (4). **EL:** the drafting suggests that the determining authority can question the extradition decision. **IT:** understands that the determining authority simply gives an opinion on a decision issued by another authority on extradition before the decision is enforced; therefore, replace "*is satisfied*" with "*has given an opinion*". **BE, IE, SK:** "*competent authority*" instead of "*determining authority*". **FI:** at national level different authorities are involved in the procedure; therefore this provision needs to be clarified. We should also take into account the safe third country of origin. **SE:** the added part is redundant; a Regulation does need to state what a court may take into account.

## SECTION II

### PERSONAL INTERVIEWS

*Article 10*

**DELETED**

**DELETED**

Article 11

**Substantive interview<sup>77</sup>**

1. Before a decision is taken by the determining authority on the merits of an application for international protection, the applicant shall be given the opportunity of a substantive interview on his or her application<sup>78</sup>.
2. In the substantive interview, the applicant shall be given an ~~adequate~~<sup>79</sup> opportunity to present the elements needed to substantiate his or her application in accordance with Regulation (EU) No XXX/XXX (Qualification Regulation), and he or she shall provide all the elements at his or her disposal as completely as possible. The applicant shall be given the opportunity to provide an explanation regarding elements which may be missing or any inconsistencies or contradictions in the applicant's statements.
3. ~~A person who conducts the substantive interview of an application shall not wear a military or law enforcement uniform.~~<sup>80</sup>

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<sup>77</sup> **EL:** scrutiny reservation. **PL:** unclear if "*applicant*" include all persons comprised by the application; against interviewing all of them; if they want to be interviewed, they can launch their own application; interviewing minors is problematic.

<sup>78</sup> **DE:** unclear if other authorities can be involved. **SE:** COM proposal is preferable since not all applications are examined on the merits.

<sup>79</sup> **DE:** clarification needed as to why this has been deleted.

<sup>80</sup> **PRES:** this paragraph was moved to Article 12, as it refers to the requirements of the interview, rather than explaining what the substantive interview stands for.

## Article 12

### Requirements for personal interviews<sup>81</sup>

1. The **Every** applicant shall be given an opportunity of a personal interview on his or her application, **including dependent adults without legal capacity under national law and minors** in accordance with **subject to** the conditions established in this Regulation.
2. ~~The personal interviews shall be conducted under conditions which ensure appropriate confidentiality and which allow applicants to present the grounds for their applications in a comprehensive manner.~~<sup>82</sup>

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<sup>81</sup> **BE, LV:** reservation. **DE, ES, IE:** scrutiny reservation. **HU:** the deadline for the interview should be clarified. **FR:** the applicant should provide evidence; a reference to Art. 43 (2) should be included. **NL:** prefers to have separate interviews for each adult as provided for in Article 14(1) of APD. **LV,** supported by **PL:** there should be a possibility also for other national institutions, not only the determining authority, to conduct admissibility interviews. Current wording of Article 12(3) and 12(4) already allows the determining authority to be assisted by the personnel of institutions of other MS or future European Union Agency for Asylum. However, a more general/flexible approach, which would provide for a possibility for other national authorities to conduct admissibility interviews would be preferable. In such a way MS could retain their national practice as regards the division of tasks among national authorities involved in the asylum procedure, which works well in practice and is integrated with other elements of the procedure. Furthermore, admissibility interviews take place in the very beginning of the procedure, and are rather limited in their scope, therefore, we believe, that the involvement of other authorities is possible and does not have a negative impact on the procedure or the rights of the applicant. It should also be noted that in any case high standards for the quality of interviews and qualification of relevant personnel are complied with. **BE, ES:** keep current acquis as to whom should conduct the interview and include the use of electronic means (videoconference). **DE:** unclear if the use of videoconference is acceptable. **IT:** the possibility to merge the administrative and substantive interview should be clearly stated, it should be clear that/if other authorities can be involved. **COM:** the admissibility and substantive interview under APR could be carried out at the same time; the responsible authorities are the determining authorities who can be assisted by authorities of other MS and by EASO experts; the admissibility interviews under APR and Dublin could be carried out at the same time; the admissibility and the substantive interview under APR are carried out by the determining authorities, the Dublin interview could be carried out by other authorities.

<sup>82</sup> **DE:** clarification needed as to why (1) and (2) have been deleted.



3. Personal interviews shall be conducted by the personnel of the determining authority, which may be assisted **for that purpose** by the personnel of **the determining** authorities of other Member States referred to in Article 5a(41)(a) or experts deployed by the European Union Agency for Asylum referred to in Article 5a(42)(b).<sup>83</sup>
4. **In addition**, ~~Where~~ simultaneous applications for international protection by a disproportionate number of third-country nationals or stateless persons make it difficult in practice for the determining authority to conduct timely personal interviews of each applicant, the determining authority **of the Member State where the application is made and lodged or of the Member State responsible** may be assisted by the personnel of **other** authorities **of that Member State** ~~of other Member States referred to in Article 5(4)(a) and experts deployed by the European Union Agency for Asylum referred to in Article 5(4)(b), to conduct such interviews.~~<sup>84</sup>
- 4a. **A person who conducts the substantive interview of an application shall not wear a military or law enforcement uniform.**<sup>85</sup>

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<sup>83</sup> **DE:** this provision should not only cover personnel of the determining authority but also persons having the necessary skills. **SE:** delete (3) and (4). **NL:** merge (3) and (4).

<sup>84</sup> **FR, PL:** scrutiny reservation; add "*other officials who have been trained in asylum law*". **RO:** clarifications on the following issues: what would be the assistance given by the authorities of other Member States or the one given by experts sent by the European Union Agency for Asylum? **DE:** clarification needed regarding the reasons of the deletion and the way paras (3) and (4) interact.

<sup>85</sup> **FR,** supported by **EL** and **ES:** this should be the case not only for substantive interviews but also for admissibility interviews. **SE:** add "*Personal interviews shall be conducted by the personnel of the determining authority.*" as a first sentence.

5. **In addition to Article 42(3),** ~~t~~The personal interview may be omitted in the following situations where the determining authority<sup>86</sup>:
- (a) is able to take a positive decision with regard to refugee status or ~~a decision declaring~~ **considers that** the application **is** admissible on the basis of evidence available<sup>87</sup>; or
  - (b) is of the opinion that the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond his or her control.<sup>88</sup>

The absence of a personal interview pursuant to point (b) shall not adversely affect the decision of the determining authority. **Nevertheless, in the absence of such an interview,** ~~That~~ **the determining** authority shall give the applicant an effective opportunity to submit further information **in writing**. When in doubt as to the condition of the applicant, the determining authority shall consult a medical professional to establish whether the condition that makes the applicant unfit or unable to be interviewed is of a temporary or enduring nature<sup>89</sup>.

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<sup>86</sup> **PL, SE:** scrutiny reservation on para (5). **SI:** reservation on para (5). **PL:** the list of reasons should be extended - no interview if the person has not mentioned any harm or persecution. **COM:** an interview is needed even if the person does not mention persecution or harm. **SE:** delete "*in the following situations*" and "*the determining authority*". **MT:** point (a) means that the substantive interview may be omitted if the determining authority is able to take a positive decision in relation to the granting of refugee status, while the admissibility interview may be omitted in case the determining authority is able to consider the application admissible. Therefore, instead of referring to the generic term "*personal interview*", we should clearly differentiate between the two to improve clarity.

<sup>87</sup> **ES:** there should also be a reference to subsidiary protection status. **COM:** the reference is only to refugees because of QR: first it is assessed if the applicant qualifies for refugee protection and then if he/she qualifies for subsidiary protection. **IT:** add the following: "*(a) is able to take a positive decision with regard to refugee status or subsidiary protection or a decision...*". **SE:** add "the determining authority" in the beginning.

<sup>88</sup> **SE:** delete "*is of the opinion*" (unnecessary).

<sup>89</sup> **HU:** "*effective opportunity*" needs clarification. **FR:** second part of para (5) - unclear if it is up to the determining authority to check if the applicant is truly unable to participate in the interview; in FR the doctor gives a certificate. **COM:** this is meant to include the French practice. **RO:** replace "*condition*" with "*situation*". **SE:** delete "*nevertheless*"; "*may if necessary*" instead of "*shall*".

- 5a. Applicants shall be present at the personal interview and shall be required to respond in person to the questions asked. By way of derogation, a personal interview may be held by video conference provided that the determining authority provides for the necessary facilities and, where the applicant is assisted by a legal adviser or an interpreter, that legal adviser or interpreter is present with the applicant.<sup>90</sup>
- 5b. An applicant shall be allowed to bring to a personal interview a legal advisor, who assists the applicant. The absence of the legal advisor shall not prevent the determining authority from conducting the interview. Where a legal advisor participates in the personal interview, he or she shall be authorised to intervene at the end of the personal interview.<sup>91</sup>
6. The person conducting the interview shall be competent to take account of the personal and general circumstances surrounding the application, including the applicant's cultural origin, age, gender, sexual orientation, gender identity and **special procedural needs** vulnerability. Personnel interviewing applicants shall also have acquired general knowledge of **problems factors** which could adversely affect the applicant's ability to be interviewed, such as indications that the person may have been tortured in the past.

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<sup>90</sup> **SE:** an obligation to appear for an interview also exists in Art. 7.

<sup>91</sup> **BE:** reservation. **NL:** scrutiny reservation. **IT:** add "*according to a specific mandate*" at the end of the first sentence. **MT:** add "*within the framework set by the person who conducts the interview, and*" after "*intervene*".

7. The personnel interviewing applicants, including experts deployed by the European Union Agency for Asylum, shall have received ~~relevant~~ training in advance which shall include ~~the relevant~~ elements **from those** listed in Article 7(45) of Regulation (EU) No XXX/XXX (EU Asylum Agency Regulation), ~~including as regards international human rights law, Union asylum law, and rules on access to the international protection procedure, including for persons who could require special procedural guarantees~~<sup>92</sup>.

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<sup>92</sup> **RO:** not all items listed in Article 7 (5) of Regulation (EU) no. XXX / XXX (Agency Regulation Asylum EU), are relevant for the training of the personnel interviewing applicants (eg. The preparation of relocation, reception conditions, etc.). Opposition to the imperative requirement that the personnel interviewing applicants shall have received relevant training in advance which shall include the elements listed in Article 7(5) of Regulation (EU) No XXX/XXX (EU Asylum Agency Regulation), including as regards international human rights law, Union asylum law, and rules on access to the international protection procedure, including for persons who could require special procedural guarantees. This requirement could create blockages in the examination process of applications for international protection, in the context that asylum seekers may require proof that the interviewing personnel had previously received appropriate training. MS and the Agency for Asylum of the European Union should ensure in advance that the interviewing personnel of the determining authority or experts sent by EASO to assist during the interviews, have adequate knowledge to fulfil their obligations. In addition, MS should ensure adequate training of personnel concerned including the relevant elements listed in Article 7(5) of Regulation (EU) No XXX/XXX (EU Asylum Agency Regulation), including as regards international human rights law, Union asylum law, and rules on access to the international protection procedure, including for persons who could require special procedural guarantees. Redraft as follows: "*relevant elements of those listed in Article 7*". **FR:** scrutiny reservation, exact modalities to be examined further. **COM:** it is important for the personnel to have the necessary knowledge hence the necessity of training. **EL:** special training for interviewing minors could be necessary. **AT:** scrutiny reservation regarding the organisation of the training.

8. An interpreter who is able to ensure appropriate communication between the applicant and the person conducting the interview shall be provided for the personal interview. The communication shall take place in ~~the language preferred by the applicant unless there is another~~ a language which ~~he or she~~ the applicant understands and in which he or she is able to communicate clearly<sup>93</sup>.
- 8a. Where requested by the applicant **and where possible**, the determining authority shall ensure that the interviewers and interpreters are of the ~~same~~ sex **that** as the applicant **prefers**, ~~provided that this is possible and the determining authority does not~~ **unless it** ~~has~~ reasons to believe **consider** that such a request **does** ~~is based on grounds which are not related to~~ difficulties on the part of the applicant to present the grounds of his or her application ~~in a~~ **comprehensive manner**.
- 8b. **The personal interviews shall be conducted under conditions which ensure appropriate privacy and confidentiality. Where the determining authority considers it necessary for an appropriate examination of the application, it may authorise the presence of family members or third parties at the personal interviews.**
9. The absence of a personal interview, **where it is omitted pursuant to paragraph 5 or where the applicant does not appear for it**, shall not prevent the determining authority from taking a decision on an application for international protection<sup>94</sup>.

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<sup>93</sup> **SI:** reservation, prefers the current wording. **IT**, supported by **CZ** and **RO**: change the second sentence as follows: "*The communication shall take place in the language ~~preferred~~ spoken by the applicant ~~unless there is~~ or in another language which he or she understands and in which he or she is able to communicate clearly.*" **COM:** second part of para (8) is meant to prevent abuse as applicants use this as an excuse, it is up to the MS to see if this is true, relevant.

<sup>94</sup> **SE:** the interview cannot be omitted where the applicant does not appear. There may be justified reasons for not appearing and in any event the applicant's need for protection must be examined. This must also be read together with article 39. Redraft as follows: "*Where the personal interview is omitted pursuant to paragraph 5, it shall not prevent the determining authority from taking a decision on an application for international protection.*" **IE:** "*attend the interview*" instead of "*appear*".

### Report and recording of personal interviews

1. The determining authority or any other authority or experts assisting it ~~or~~ **with** conducting the personal interview shall make a thorough and factual report containing all substantive elements **of the personal interview** or a transcript **of the recording** of ~~every personal~~ **such an** interview<sup>95</sup>.
2. The personal interview ~~shall~~ **may** be recorded using audio or audio-visual means of recording. The applicant shall be informed in advance of such recording<sup>96</sup>. **Where a recording is made, the determining authority shall ensure that the recording or the transcript of the recording is included in the applicant's file.**
3. The applicant shall be given the opportunity to make comments or provide clarification orally or in writing with regard to any incorrect translations or misunderstandings appearing in the report or in the transcript **of the recording**, at the end of the personal interview or within a specified time limit before the determining authority takes a decision. To that end, the applicant shall be informed of the entire content of the report or of the ~~substantive elements of~~ **the transcript of the recording**, with the assistance of an interpreter, where necessary. **Where there is both a report and a transcript of the recording, the applicant shall be requested to make comments on either one of them.** ~~The applicant shall then be requested to confirm that the content of the report or the transcript correctly reflect the personal interview.~~

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<sup>95</sup> **HU:** it allows the authorities to make a „*transcript*” instead of „*thorough and factual report*”, but it can cause problems at courts, because applicants can say that the transcript has not been recorded appropriately, so it could prolong the procedures.

<sup>96</sup> **DE, ES:** scrutiny reservation. **EL, PL:** reservation. **FR:** reservation on paras (2), (3) and (4); strong opposition to the double procedure implying the recording of the interview (para 2) and the comments collection procedure (para 3). **RO:** no support for this provision in this form. It involves costs and can not be justified as long as the applicant for international protection signs the detailed and factual report or transcript confirming the contents of the document that includes the reported issues. What happens if the applicant does not agree with the recording? Insert "*transcript*" after "*report*". **PRES:** then the interview should in any case be recorded. **EL:** a report is needed however. **BE:** superfluous as the recording is already mentioned in point (1).

4. **The applicant shall be requested to confirm that the content of the report or the transcript of the recording correctly reflects the personal interview<sup>97</sup>.** Where an applicant **he or she** refuses to confirm that the content of the report or the transcript correctly reflects the personal interview, the reasons for his or her refusal shall be entered in ~~the applicant's~~ **his or her** file. That refusal shall not prevent the determining authority from taking a decision on the application<sup>98</sup>.

**Where the personal interview is recorded and the recording is admissible as evidence in the appeal procedure, the applicant does not have to be requested to confirm that the content of the report or of the transcript of the recording correctly reflects the interview.**

5. Applicants and, **where applicable**, their legal advisers ~~or other counsellors~~ shall have access to the report or the transcript **of the recording** and ~~or the recording~~ before the determining authority takes a decision<sup>99</sup>. **By way of exception, where there is both a report and a transcript of the recording, access to the recording does not have to be provided in the administrative procedure. Access to the recording shall be provided in the appeal procedure.**
6. ~~Where the application is examined in accordance with the accelerated examination procedure, the determining authority may grant access to the report or the transcript of the recording at the same time as the decision is made.~~<sup>100</sup>

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<sup>97</sup> **LT, PT, SE:** scrutiny reservation. **NL:** negative assessment, increase of administrative burden, possibility of abuse. **RO:** see comments on para (2). **BE:** include the exceptions from APD on the right to correct and confirm (comment valid for paras (3) and (4)).

<sup>98</sup> **NL:** negative assessment.

<sup>99</sup> **DE:** scrutiny reservation. **PL:** scrutiny reservation regarding the access before the decision is taken. **RO:** clarification on the following issues: why is access granted to both applicants and their legal advisers? (costly measure). Given the observation on para (2), the text should be amended so that access to the recording is granted, if applicable (if such a record was made). What should be done in case of a conflict between the report and the recording? **BE:** we should avoid listening to hours of recording during appeals. **EL:** a reference to Art. 14 should be included. **COM:** access before a decision is taken is a deliberate change, currently it is only for appeal.

<sup>100</sup> **DE:** clarification needed as to the reasons of this deletion.

7. The ~~responsible~~ **competent** authorities shall store either the recording or the transcript of **the recording** for ten years from the date of a final decision. The recording **or the transcript of the recording, as relevant**, shall be erased upon expiry of that period or where it is related to a person who has acquired citizenship of any Member State before expiry of that period as soon as the Member State becomes aware that the person concerned has acquired such citizenship<sup>101</sup>.

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<sup>101</sup> **FR, NL, SK:** scrutiny reservation. **SE, SI:** reservation. **RO:** clarification on the following issues: what happens with the report or transcript after 10 years? Regarding the 10 years retention term of personal data – we think it could be interpreted as too high, it should therefore be assessed whether additional guarantees regarding retention of personal data are needed in the Regulation. **PRES:** after 10 years data should be deleted. **FR:** 10 years is too long, the recording should be kept only during the examining of the application + appeals. **SE:** not sure this provision is necessary in a Regulation, it should be up to the MS. **PL:** this requirement should be justified. **NL:** link with Eurodac; 10 years is too short. **LT:** the period should be decided by the MS; the period is too short. **EL:** 5 years instead of 10. **PT:** 10 years is too long, it should be up to MS to establish the storing period. **LV:** should be "*at least 10 years*" or left to MS to decide. **ES:** not clear when the 10 years period starts to apply **FI, RO, SK:** MS should decide on the period. **COM:** the para aims at harmonising the retention period in view of the current data protection provisions; 10 years is necessary considering subsequent applications; can assess if longer is necessary. **HU:** 10 years is too long, determining the time of storing the recording or the transcript should be a national competence, not an EU competence. **SE, LT:** that rules regarding storage, which generally also apply to other areas than the asylum procedure, should be left to national legislation. Alternatively, a general article regarding storage with reference to national legislation could be added to chapter six. Hence, replace this para with the following text "*7. Member States shall provide for legislation on storage of the documentation of the personal interview. The documentation shall be stored for at least ten years from the date of the final decision.*" **IT:** the report (or minutes) of the interview is to be stored for later reference even after ten years. **MT:** the 10 year retention period as regards the recording or transcript, together with the storage of data referred to in Articles 27 and 28 of this Regulation should start anew every time the applicant's file is updated by the competent authorities.



## SECTION III<sup>102</sup>

### PROVISION OF LEGAL ASSISTANCE AND REPRESENTATION

#### *Article 14*

**DELETED**

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<sup>102</sup> **AT, DE, ES, LU:** scrutiny reservation. **BE:** reservation. **RO:** reservation regarding MS' obligation to provide free legal assistance and representation during the administrative phase of the procedure – it involves too much administrative burden and considerable costs.

**DELETED**

*Article 15*

**DELETED**

**DELETED**

**DELETED**

**DELETED**

**Article 15a**

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

- 41.** ~~For the purposes of~~ **In** the appeal procedure, **Member States shall, upon the request of the applicant, ensure that he or she is provided with** the free legal assistance and representation **which** shall, ~~at least,~~ include the preparation of the ~~required~~ procedural documents **required under national law**, the preparation of the appeal and participation in the hearing before a court or tribunal ~~on behalf of the applicant~~<sup>112</sup>.

52. The provision of free legal assistance and representation in the appeal procedure may be excluded **by the Member States** where<sup>113</sup>:

- (a) **upon disclosure of his or her financial situation, the applicant is considered to have sufficient resources;**<sup>114</sup>
- (b) ~~the appeal~~ **it is considered as that the appeal does not have** any tangible prospect of success<sup>115</sup>;
- (c) the appeal or review is at a second level of appeal or higher as provided for under national law, including re-hearings or reviews of appeal.

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<sup>113</sup> **DE, IT:** scrutiny reservation. **HU:** unclear who can exclude the possibility of a legal counsellor. **DE:** it must be ensured in letter (a) that the applicant discloses his/her financial situation. Proposal: "*the applicant, who has to disclose his financial situation, has sufficient resources*". Furthermore letter (b) should focus on sufficient prospects of success. Proposal: "*the appeal is considered as not having any sufficient prospects of success or seems abusive*". **SE:** redraft as follows: "*MS may provide for exceptions from the right to free legal assistance and representation in the appeal procedure:*".

<sup>114</sup> **IE:** what constitutes "*sufficient resources*"? **PRES:** it is difficult to define it as the actual sums might differ in the MS but in any case it is discretionary decision of the competent authorities. **DE:** it must be ensured that the applicant discloses his/her financial situation. Proposal: "*where the applicant, who has to disclose his or her financial situation, is considered to have sufficient resources*". The aim is to make it clearer that applicants, when applying for legal assistance in the administrative procedure, are obliged to cooperate by disclosing their financial situation.

<sup>115</sup> **HU:** the expression "*the application is considered as not having any tangible prospect of success*" is not clear and not objective. **PRES:** as the provision refers to appeal procedure, it leaves a margin of manoeuvre for the courts.

- 3.** Where a decision not to grant free legal assistance and representation **in the appeal procedure** is taken by an authority which is not a court or tribunal **because** ~~on ground that~~ the appeal is considered as **not** having ~~no~~ **any** tangible prospect of success, the applicant shall have the right to an effective remedy before a court or tribunal against that decision, ~~and for that purpose he or she shall be entitled to request free legal assistance and representation~~<sup>116</sup>.

## Article 16

### Scope of legal assistance and representation<sup>117</sup>

1. A legal adviser ~~or other counsellor admitted or permitted as such under national law~~, who assists or represents an applicant ~~under the terms of national law~~, shall be granted access to the information in the applicant's file upon the basis of which a decision is or shall be ~~made~~ **taken**<sup>118</sup>.

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<sup>116</sup> **IT:** scrutiny reservation. **CZ, PL:** this sub-para should be removed, undue burden, almost impossible in practice. **AT:** this will lead to a prolongation of the procedure, delete this sub-para. **EL:** the sub-para mentions "courts" and "tribunals", not clear if other judicial bodies can intervene; for clarification add "*for the purposes of EU law*" after "court or tribunal". **COM:** this sub-para corresponds to Art 20 (3) of APD. **HU:** unclear who can exclude the possibility of a legal counsellor; the expression "*the appeal is considered as not having any tangible prospect of success*" is not clear and not objective. **IT:** "*not having any tangible prospects of success*" with "*manifestly unfounded*".

<sup>117</sup> **CZ, LV:** reservation. **HR, IE, PT, SI, SK:** scrutiny reservation.

<sup>118</sup> **SI:** if it can be an organisation, it should be specified in the text. **DE:** keep "*under the terms of national law*"; it clarifies that the respective national law is/should be the authoritative reference when it comes to the right to represent an applicant. **BE:** is the use of anonymous sources is covered by para (1) or by para (2)?



2. **By way of exception from paragraph 1,** ~~the determining competent authorities~~ may deny access to the information **or to the sources** in the applicant's file where the disclosure of information or sources would jeopardise national security, the security of the organisations or persons providing the information or the security of the persons to whom the information relates or where the investigative interests relating to the examination of applications for international protection by the competent authorities of the Member States or the international relations of the Member States would be compromised.<sup>119</sup> ~~In these such cases, the determining authority shall~~<sup>120</sup> **make** access to such information or sources **shall be made** available to the courts or tribunals in the appeal procedure. ~~;~~ ~~and~~

**The competent authorities shall ensure that the necessary procedures are in place for that** the applicant's right of defence **is to be** respected. **They may,** ~~As regards point (b), the determining authority shall,~~ in particular, grant access to information or sources to a legal adviser ~~or other counsellor~~ who has **first** undergone a security check ~~in accordance with national law,~~ insofar as the information is relevant for examining the application or for taking a decision to withdraw international protection<sup>121</sup>.

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<sup>119</sup> **DE:** the need for secrecy or the right to secrecy concerning information of authorities or sources must be regulated by national law. **SE:** redraft the beginning of the first sentence as follows: "*By way of exception from paragraph 1, MS may, under the terms of national law, ...*".

<sup>120</sup> **CZ:** problematic if confidential information is used. **LU:** scrutiny reservation on (2); currently Art 23 APD leave it up to the MS how to implement it. **SE:** reservation on (2); replace "*determining authority*" with "*Member States*", add "*under the terms of national law*" in the first line after "*may*" - detailed rules on publicity and confidentiality are determined by the Member States since they are essential for the administrative systems and not only the asylum systems. The wording of Art. 23(1) in APD could therefore be kept. **NL:** same reasoning as FR regarding "*shall*", prefer "*may*". **COM:** the determining authority is the holder of the file and it should decide on the access. **DE:** reservation on (2), same reasoning as FR and NL; at national level a court decides this, prefers current APD. **BE:** add "*to the info or to the sources*". **HU:** delete last part of para (2).

<sup>121</sup> **HU:** delete the last sub-para of (2) (b). **IT:** for the last sup-para of (2) - not clear if the legal advisor has to be authorised before access or it is an ad hoc security check for every person; replace "*legal advisor*" with "*legal representative*" and delete the rest until the end. **COM:** the counsellor/legal advisor has to undergo a security check, which could be on an ad hoc basis or a general authorisation. **EL:** unclear what is meant by security check and under which procedure it shall be performed. **SE:** scrutiny reservation; no system of security check for the legal advisor in Sweden; this should be left to national law.

3. The legal adviser ~~or other counsellor~~ who assists or represents an applicant shall have access to closed areas, such as detention facilities and transit zones, ~~for the purpose of consulting that applicant,~~ in accordance with Directive XXX/XXX/EU (Reception Conditions Directive)<sup>122</sup>.
4. ~~An applicant shall be allowed to bring to a personal interview a legal adviser or other counsellor admitted or permitted as such under national law. The legal adviser or other counsellor shall be authorised to intervene during the personal interview.~~
5. ~~The determining authority may require the presence of the applicant at the personal interview, even if he or she is represented under the terms of national law by a legal adviser or counsellor, and may require the applicant to respond in person to the questions asked.~~
6. ~~Without prejudice to Article 22(5), the absence of a legal adviser or other counsellor shall not prevent the determining authority from conducting a personal interview with the applicant.~~

#### *Article 17*

#### **Conditions for ~~the provision of free~~ legal assistance and representation<sup>123</sup>**

1. **Member States may allow non-governmental organisations accredited under national law to provide legal assistance free of charge in the administrative procedure or ~~Free~~ legal assistance and representation in the appeal procedure ~~shall be provided by legal advisers or other counsellors permitted under national law to assist or represent the applicants, or non-governmental organisations accredited under national law to provide advisory services or representation~~<sup>124</sup>.**

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<sup>122</sup> **HU:** delete "*other counsellor*". **IT:** replace "*advisor*" with "*representative*".

<sup>123</sup> **BE, CZ, ES, LV:** reservation. **FR, IE, PT, SI:** scrutiny reservation. **IT** (supported by **ES**): this article is redundant, so it should be deleted; the reference to national law is included as an amendment in Art. 15. Alternatively, it could become a recital. **PL:** against such a broad legal representation at the expense of the state. **COM:** Art 15 does not cover Art 17, so it should not be deleted.

<sup>124</sup> **DE:** scrutiny reservation concerning the admission of NGOs. This should remain a question for the MS to decide.

2. Member States shall lay down specific procedural rules concerning the modalities for filing and processing requests for the provision of **legal assistance free of charge and of** free legal assistance and representation in relation to applications for international protection or they shall apply the existing rules for domestic claims of a similar nature, provided that those rules do not render access **to legal assistance free of charge and** to free legal assistance and representation impossible or excessively difficult.
- 2a. **Member States shall lay down specific rules concerning the exclusion of the provision of legal assistance free of charge and of free legal assistance and representation in accordance with Article 15(3) and Article 15a(2), respectively.**<sup>125</sup>
3. Member States may also impose monetary limits or time limits on the provision of **legal assistance free of charge and of** free legal assistance and representation, provided that such limits do not arbitrarily restrict access **to legal assistance free of charge and** to free legal assistance and representation. As regards fees and other costs, the treatment of applicants shall not be less favourable than the treatment generally given to their nationals in matters pertaining to legal assistance<sup>126</sup>.
4. Member States may request total or partial reimbursement of any costs made if and when the applicant's financial situation considerably improves or where the decision to make such costs was taken on the basis of false information supplied by the applicant<sup>127</sup>. **For that purpose, applicants shall be required to immediately inform the competent authorities of any significant change in their financial situation.**<sup>128</sup>

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<sup>125</sup> **CZ:** reservation; the language is more appropriate for a Directive. National courts or quasi-judicial bodies should have the power to decide when the legal assistance should not be granted. **SE:** clarify further.

<sup>126</sup> **DE:** in the first sentence introduce "*or make the provision of free legal assistance and representation subject to a small contribution by the applicant*" after "*provision of free legal assistance and representation*" and "*or contributions*" after "*limits*".

<sup>127</sup> **DE:** clarification needed; the state should be aware that the situation has changed so that reimbursement can be requested, hence a provision should be introduced requesting the applicant to inform the state that his/her situation has changed. **IT:** new added text is irrelevant because deprived of any sanction.

<sup>128</sup> **SE:** second sentence should also be a "may" provision.

*Article 18*

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

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

## CHAPTER II

### BASIC PRINCIPLES AND GUARANTEES

#### SECTION IV

##### SPECIAL GUARANTEES

*Article 1920 [former Article 19]*

##### **Applicants in need of special procedural guarantees<sup>129</sup>**

1. ~~The determining authority shall systematically assess whether an individual applicant is in need of special procedural guarantees. That assessment may be integrated into existing national procedures or into the assessment referred to in Article 21 of Directive XXX/XXX/EU (Reception Conditions Directive),<sup>2</sup> and need not take the form of an administrative procedure.~~

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

2. Where applicants have been identified as applicants **being** in need of special procedural guarantees, they shall be provided with **the necessary adequate<sup>130</sup> support allowing that allows** them to benefit from the rights and comply with the obligations under this Regulation ~~throughout the duration of the procedure for international protection.<sup>131</sup>~~

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<sup>129</sup> **CZ:** reservation. **BE, IT, SI:** scrutiny reservation. **NL:** too detailed if the aim is to spot only the first signs; this already happens in practice; lack of clarity as to who does what; not everybody is qualified to spot such signs (comments also valid for Art. 20).

<sup>130</sup> **DE:** not clear what the consequences are if the support is not provided.

<sup>131</sup> **BE, NL:** reservation; the new proposed text is too detailed, the determining authority should be able to make a decision according to the individual case. **BE:** add "*to the extent possible*". **PL:** delete the new added text in the end because it has no added value. **EL:** more clarity needed; "*sufficient time*" entails an extension of short deadlines.

3. Where, **in exceptional cases**, that adequate **the necessary** support cannot be provided within the framework of the accelerated examination procedure referred to in Article 40 or the border procedure referred to in Article 41, ~~in particular where the determining authority considers that the applicant is in need of special procedural guarantees as a result of torture, rape or other serious forms of psychological, physical, sexual violence or gender based violence,~~ the determining authority shall not apply or shall cease to apply those procedures to the applicant.<sup>132</sup>
4. ~~The Commission may specify the details and specific measures for assessing and addressing the special procedural needs of applicants, including of unaccompanied minors, by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58.~~

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<sup>132</sup> **AT:** redraft as follows: *"Where that adequate support cannot be provided within the framework of the accelerated examination procedure referred to in Article 40 or the border procedure referred to in Article 41, in cases where the determining authority considers that the applicant is in need of special procedural guarantees, it shall not apply or cease to apply those procedures to the applicant."* As an alternative the whole enumeration could stay, but after "violence" it should be added "notably victims of trafficking of human beings". **CZ:** this para could lead to abuses. **DE:** scrutiny reservation on para (3); it is not clear what happens to the procedures already concluded. **IT:** not clear which procedures are referred to in the last line.

~~General principles for the a~~Assessment of special procedural needs<sup>133</sup>

- 1. The competent authorities<sup>134</sup> shall assess whether an applicant is in need of special procedural guarantees. That assessment may be integrated into existing national procedures and need not take the form of an administrative procedure.

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<sup>133</sup> **BE, CZ, HU, SI:** reservation. **DE, SE:** scrutiny reservation. **AT:** for legal clarity this article should be deleted, as proposed RCD regulates same issues with similar wording in Art. 21 where it is most fitting. Otherwise the Legal Service should assess whether the same issues should be regulated by a Regulation and a Directive simultaneously. **NL:** too detailed, no added value compared to 19, delete it. **SI:** no added value, not much difference between 20 and 23, a single article on medical examination should be enough. **COM:** Art 20 is based on the way Articles 5 is drafted; those authorities should only take note that they spotted certain vulnerabilities and indicate this; they don't need to assess them. **FI:** current drafting leaves room for incorrect interpretation; the idea was to raise awareness for all authorities working with applicants which should keep an open ear and take measures if necessary; the text should be shorter and more clear, details should be given in the preamble instead.

<sup>134</sup> **CZ, RO, SK:** scrutiny reservation on para (1). **ES:** reservation on para (1). **CZ, RO:** replace with "*determining authority*" because the assessment of the need of special procedural guarantees and the identification of the relevant support should lie with the authority which responsible for handling the asylum claims.

1. **The assessment referred to in paragraph -1 shall be initiated as early as possible after an application is made by ~~The process of identifying~~ assessing whether an applicant presents first indications that he or she may require applicants with special procedural needs guarantees, shall be initiated by authorities responsible for receiving and registering applications as ~~early as possible after an application~~ soon as an application is made and shall be continued by the determining authority once the application is lodged.** <sup>135</sup> **The identification shall be based on visible signs or the applicant's statements or behaviour or, where applicable, statements of the parents or representative of the applicant. The competent authorities shall include information on any such first indications in the applicant's file when registering the application and they shall inform the determining authority.** <sup>136</sup>
- 2. ~~For that purpose, [those authorities] shall verify whether the applicant presents first indications of vulnerability based on physical signs or the applicant's statements or behaviour. When registering the application, [those authorities] shall include that information in the applicant's file together with a description of those first indications.~~

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<sup>135</sup> **DE, SK:** scrutiny reservation. **CZ:** identification should be linked to lodging. **SK:** "as soon as possible" instead of "as soon as the application is made". **HU:** 20 (1) should be read in conjunction with 20 (5); it should be stated clearly that at any given moment during the procedure special needs should be identified. **BE:** police should not register and look for vulnerabilities (also valid for para (2)); align the wording with RCD. **NL:** too detailed; replace "authorities responsible for receiving and registering applications" by "competent authority" to maintain coherence with previous para. **IT:** replace "where applicable" with "in the case of a minor". **SK:** delete "after an application is made".

<sup>136</sup> **DE:** scrutiny reservation; further clarification needed (e.g. if the information may also be included in electronic files or in a data system, that the lack of assessments must not lead to any substantive conclusions as to the asylum proceedings).



2. ~~The personnel of the authorities responsible for receiving and registering applications shall, when registering the application, indicate whether or not an applicant presents first indications of vulnerability which may require special procedural guarantees and may be inferred from physical signs or from the applicant's statements or behaviour.~~

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

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

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

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

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

The assessment referred to in paragraph -1 shall be continued and completed by the determining authority after the application is lodged, taking into account any information ~~included~~ in the applicant's file as referred to in paragraph -21. The assessment shall be reviewed in case of any changes in the applicant's circumstances.<sup>137</sup>

- 3a. Before completing the assessment in accordance with paragraph 3, the determining authority may, subject to his or her prior consent, refer the applicant to the appropriate medical practitioner or psychologist for medical and psychological advice on the applicant's need for special procedural guarantees. The result of that assessment may be taken into account by the determining authority when deciding on the type of special procedural guarantees which may be provided to the applicant.<sup>138</sup>

Where applicable, this assessment may be integrated with the medical examination referred to in Article 23 and Article 24.<sup>139</sup>

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- <sup>137</sup> **BE, SE:** the term "*completed*" is no adequate as it implies that a decision should be taken. **DE:** scrutiny reservation in relation to the term "*completed*" (contradiction with para (4)); add "*at the latest*" before "*by the determining authority*" to clarify that all other competent authorities can make the necessary assessments and take the necessary measures. Applicants should be informed of the reason for the assessment. If they know the reasons why an assessment is made they can provide useful information. **SK:** redraft for more clarity as follows: "*The full assessment of whether the applicant has special reception needs shall be carried out by the determining authority (alternatively authority responsible for reception) after the application is lodged.*"
- <sup>138</sup> **NL, SE, RO:** reservation. **DE:** scrutiny reservation; delete "*Before completing the assessment in accordance with paragraph 3*" because it is superfluous; clarify why the terms „*the appropriate*“ and „*or psychologist*“ were inserted; delete "*medical*" in the last sentence if "*psychologist*" is kept. **SE:** in the first sentence add "*where necessary*" after "*may*".
- <sup>139</sup> **ES, SE:** scrutiny reservation on para (3). **DE:** reservation on para (3). **CZ, FR:** it is not clear what is the difference between 20 (3) and 23; the medical examinations should be streamlined. **COM:** 20 (3) refers to the first indications and the need to address them. The other articles on medical examination concern the substance. Because we speak of first indications it is important to do this when the application is made. **DE:** you need special training to spot the first signs, it is not possible for the registering authorities to do that; victims of trafficking should be included. **COM:** training of authorities can be supported by EASO. **SE:** para (3) is unclear. **ES:** doubts about the medical examination.

4. The ~~responsible~~ **competent** authorities shall address the need for special procedural guarantees ~~as set out in this Article~~ even where ~~that~~**ose** needs becomes apparent at a later stage of the procedure, without having to restart the procedure for international protection.<sup>140</sup>
- 4a. **The personnel of the competent authorities assessing the need for special procedural guarantees shall receive appropriate training to enable them to detect signs that an applicant may need special procedural guarantees and to address those needs when identified.**<sup>141</sup>
- 4b. **The Commission may, in accordance with Article 12 of Regulation XXX/XXX [EUAA Regulation], request the European Union Agency for Asylum to develop operational standards on measures for assessing and addressing the special procedural needs of applicants.**<sup>142</sup>

#### *Article 21*

#### **Guarantees for minors<sup>143</sup>**

1. The best interests of the child shall be a primary consideration for **the competent authorities** ~~Member States~~ when applying this Regulation.

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<sup>140</sup> **IT:** "*without having to restart the procedure for international protection*" is superfluous. **COM:** the sentence is not superfluous, it answers DE question (what happens with procedures concluded without spotting vulnerabilities?); no suspensive effects because it is not an assessment on substance. **NL:** add this para and add content to (-1).

<sup>141</sup> **NL:** scrutiny reservation. **SK:** reservation. **IE:** a reference could be made to the assistance of the EU Agency for Asylum in providing training modules. **BE:** restrict the staff that should be trained to the staff in charge of identifying special procedural needs. **DE:** unclear what training measures are envisaged here.

<sup>142</sup> **DE, IE:** scrutiny reservation. **BE, CY, NL, SK:** reservation. **BE:** the implications of the implementing acts are unclear; EASO should develop common practical and concrete guidelines. **IT:** EASO work on special procedural needs could be used instead of implementing acts. **SE:** not convinced by the need of implementing acts in this regard.

<sup>143</sup> **BE, CZ, ES, LU:** reservation. **NL:** scrutiny reservation. **LU:** increase of administrative burden, not drawing a distinction between minors is problematic.

2. The determining authority shall provide a minor **with** the opportunity of a personal interview **where such an interview is specifically requested by the minor or by the adult responsible or representative on behalf of the minor. In the absence of such a request,** including where an application is made on his or her own behalf in accordance with Article 31(6) and Article 32(1), ~~unless this is manifestly not in the best interests of the child,<sup>144</sup>. In that case,~~ the determining authority **may organise a personal interview where this is in the best interests of the child, taking into account the age and maturity of the minor** ~~shall give reasons for the decision not to provide a minor with the opportunity of a personal interview.~~

Any such personal interview shall be conducted by a person who has the ~~necessary~~ **appropriate** knowledge of the rights and special needs of minors. ~~and if~~ **This** shall be conducted in a child-sensitive ~~and context-appropriate~~ manner **that takes into consideration the age, maturity and best interests of the minor child.**<sup>145</sup>

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<sup>144</sup> **NL, SI:** include a specific age limit; for minors below that age an interview should only be considered if the parents or guardian indicate that the child has individual reasons for applying for international protection or if determining authorities have serious reasons to think it necessary. In all other situations an interview would be unnecessarily (emotionally) burdening for minors and would in addition be very costly and time consuming for MS. **IT:** a minor shouldn't be interviewed unless there is a conflict between him/her and their parents or guardian.

<sup>145</sup> **DE, SE:** scrutiny reservation on para (2). **BE, FR, IE, IT:** reservation on para (2). **CZ:** unclear what "*opportunity*" means. **FR:** age and best interest of a minor must be taken into account, an individual interview for an 8 years old might not be a good idea. **IT:** not in line with the Convention on the rights of the child; problematic with regards to the maturity of the child. **LV:** should be flexible and act in the best interest of the child (age, etc.). **DE:** "*may*" instead of "*shall*", delete "*unless this is manifestly not in the best interests of the child*"; guarantees should focus on unaccompanied minors, the other cases should go under family asylum. **COM:** for the interview it is necessary to take into consideration the age, maturity, etc. and it needs to be compatible with national legislation. **LU:** not clear who decides on the interest of the child. **PL:** the interview creates additional stress for the minor, the evidence they give is not reliable and there is additional administrative burden.

3. The **personnel of the determining authority** ~~decision on the application of a minor shall be prepared by personnel of the determining authority who have the necessary~~ **shall receive appropriate training** ~~knowledge of~~ **on** the rights and special needs of minors.<sup>146</sup>

*Article 22*

**DELETED**

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<sup>146</sup> **EL:** we take note of the explanations provided by the COM at the last meeting of the WP, but we insist that there should be a more appropriate wording reflecting the obligation of adequate training and expertise. The present wording seems to imply an obligation of specialized category of personnel (which was actually a "*may provision*" in the APD). **IT:** reservation, it seems to suggest that special personnel should be in charge of the drafting of the decision. **COM:** 21 (3) is taken from RCD where it concerned unaccompanied minors and APR extends this; special needs knowledge will be needed among the staff. **EL:** "*may*" provision in RCD. **COM:** 21 (3) extends an obligation, does not create a new one.

**DELETED**

**DELETED**

**DELETED**



**DELETED**

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**DELETED**

## SECTION V

### MEDICAL EXAMINATIONS AND AGE ASSESSMENT

#### Article 23

#### Medical examination<sup>168</sup>

1. Where the determining authority deems it relevant for the ~~assessment~~ **examination** of an application for international protection in accordance with Regulation (EU) No XXX/XXX (Qualification Regulation), ~~and it shall~~ **it may**, subject to the applicant's consent, ~~it shall~~ arrange for a medical examination of the applicant concerning signs and symptoms that might indicate past persecution or serious harm.<sup>169</sup>
2. The medical examination shall be carried out by qualified medical professionals. Member States may designate the medical professionals who may carry out such medical examinations. Those medical examinations **organised by the determining authority** shall be **free of charge** ~~paid for from public funds~~.<sup>170</sup>
3. When no medical examination is carried out in accordance with paragraph 1, the determining authority shall inform applicants that they may, on their own initiative and at their own cost, arrange for a medical examination concerning signs and symptoms that might indicate past persecution or serious harm.<sup>171</sup>

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<sup>168</sup> **CZ:** scrutiny reservation on the article, medical checks should be in one provision. **FR:** reservation linked to reservation on Art 20.

<sup>169</sup> **SE:** scrutiny reservation. **FR, IT, RO, SK:** "*full respect*" as in 24 (3) should appear also in 23. **BE:** replace "*might*" with "*most probably*".

<sup>170</sup> **DE:** clarify "*qualified*".

<sup>171</sup> **DE:** can applicants request a medical examination?

4. The results of the medical examination ~~shall be submitted to the determining authority as soon as possible and~~ shall be assessed by the determining authority along with the other elements of the application.<sup>172</sup>
5. An applicant's refusal to undergo a medical examination shall not prevent the determining authority from taking a decision on the application for international protection.<sup>173</sup>

*Article 24*

**DELETED**

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<sup>172</sup> NL: scrutiny reservation.

<sup>173</sup> NL: reservation.

**DELETED**

**DELETED**

**DELETED**



**CHAPTER III**  
**ADMINISTRATIVE PROCEDURE**

**SECTION I**

**ACCESS TO THE PROCEDURE<sup>186</sup>**

*Article 25*

**DELETED**

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<sup>186</sup> **DE:** what are the legal consequences if MS fail to meet the deadlines in this Section?

**DELETED**

*Article 26*

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

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

*Article 27*

**DELETED**

**DELETED**

**DELETED**

*Article 28*

**DELETED**

**DELETED**



**DELETED**

**Documents for the applicant**<sup>205</sup>

1. The **competent** authorities of the Member State where an application for international protection is made shall upon registration, **in accordance with national law**, provide the applicant with a document ~~certifying, in particular,~~ **indicating** that an application has been made ~~and stating that the applicant may remain on the territory of that Member State for the purposes of lodging his or her application as provided for in this Regulation.~~<sup>206</sup>

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<sup>205</sup> **CZ, DE, ES, IE, IT, LV, PT, SE, SK:** scrutiny reservation. **LV:** doubts as regards the necessity to establish two different documents for asylum seekers during the procedure; additional financial and administrative burden will be created with no tangible added value, especially as it is not clear at the moment what the format and content of those documents will be. The system of two different documents might be kept if it is defined as an option for those MS who opt for separating stages of registering an application and lodging an application. According to such reasoning, if there was just one stage, only one document would be needed. **PL:** add a provision, which would enable to cover the minors by the document issued to the applicant, if he wishes to do so. **NL:** it should be explicitly stated that this is necessary only when the three phases do not coincide or when the applicant remains within the reach of the competent authorities. **SK:** do accompanied minors under 15 need their own document? too much information to be included in such a document.

<sup>206</sup> **AT:** delete para (1); alternatively add "*if necessary*" or "*if no document is issued according to para (2)*". **CZ:** "*after*" instead of "*when*"; add "*where necessary*" in the end; the document should not be issued upon registration and no document should be issued for a person in detention. **HU:** such a document could be misused; unclear what kind of document should be issued. **IT:** replace "*may*" with "*is allowed*". **BE:** state clearly that such a document should be valid only until lodging.

2. The **competent** authorities of the Member State where the application is lodged shall, within ~~three~~ **seven** working days ~~of from~~ the lodging of the application, ~~provide the applicant with~~ **issue a document for each applicant. That document shall not be considered to be an identity document. It shall include the following details, which shall be updated as necessary in his or her own name:**<sup>207</sup>
- (a) **the name, date and place of birth, sex, nationality**, stating the identity of the applicant by including at least the data referred to in Article 267(1)(a) and (b), verified and updated where necessary, as well as a facial image of the applicant, **and** signature, current place of residence and the date of lodging of the application;<sup>208</sup>
  - (b) stating the issuing authority, date and place of issue and period of validity of the document;
  - (c) certifying the status of the individual as an applicant;
  - (d) stating that the applicant has the right to remain on the territory of that Member State and indicating whether the applicant is free to move within all or part of the territory of that Member State;
  - (e) stating that the document is not a valid travel document and indicating that the applicant is not allowed to travel without authorisation to the territory of other Member States until the procedure for the determination of the Member State responsible for the examination of the application in accordance with Regulation (EU) No XXX/XXX (Dublin Regulation) has taken place;

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<sup>207</sup> **HU:** no relevant information is mentioned (e.g. address, other information, date of lodging of the application); unclear why two different documents are needed. **RO:** add "*and/or decision authorities*". **SE:** no deadline, "*as soon as possible*" instead. **SK:** add one more point in this paragraph which would enable MS to set out additional information which the document shall contain. MS should not be obliged to issue a separate document for an accompanied minor. In such a case, the accompanied minor would be registered in the parent's (adult responsible for him) document as an applicant.

<sup>208</sup> **PL:** reservation, too many details to be included in the document. **SE:** add "*if applicable the applicant's case number*". **SK:** no need to issue such a document when the applicant is in prison either.

(f) ~~stating whether the applicant has permission to take up gainful employment.~~

2a. **The documents referred to in paragraphs 1 and 2 do not have to be issued when and for as long as the applicant is in detention and during the examination of an application for international protection made at the border.**<sup>209</sup>

3. ~~Where, following a procedure of determination~~ **transfer** in accordance with **Article 20(1)(a)** of Regulation (EU) No XXX/XXX (Dublin Regulation), ~~another Member State is designated as responsible for the examination of the application,~~ the authorities of ~~that~~ **the** Member State **responsible** shall ~~provide the applicant with~~ **issue** a document referred to in paragraph 2 within ~~three~~ **seven** working days from ~~the transfer of the~~ **when** the applicant ~~to that~~ **reports to** the competent authorities of the Member State responsible.<sup>210</sup>

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<sup>209</sup> **IT:** scrutiny reservation. **MT:** add "*or is serving a custodial sentence*" after "*detention*".

**RO:** clarify if it includes administrative detention.

<sup>210</sup> **CZ:** scrutiny reservation. **EL:** unclear what the starting point is for the deadline - the transfer date or the date of the lodging of the application to that MS? In these Dublin cases the document should also be issued after lodging the application in the responsible MS. **FR:** further clarification necessary for better coherence with Art. 20 (1) of the Dublin Regulation (it should be clearly stated that only applicants are concerned by Art. 29 (3) APR, the other categories mentioned by Art. 20 (1) Dublin are excluded). Moreover, a difference should be made between Art. 10 (1) (a) and (b) of Dublin. Hence, delete para (3) or redraft as follows: "*à condition que le demandeur reste à la disposition des autorités compétentes pour délivrer un tel document, faute de quoi la demande sera considérée implicitement retirée*" (comment received in FR). **DE:** what happens if the deadline is exceeded? **PRES:** in any case as this is an obligation of the authority, the document needs to be issued in three days. **NL:** if the applicant has received a final negative decision in the responsible MS and he has no intention to make a new application, a document is not needed.

4. The document referred to in paragraph 2 shall be valid for a period of up to ~~six~~ **twelve** months or until the applicant is transferred to another Member State in accordance with Regulation (EU) XXX/XXX [Dublin Regulation]. Where the document is issued by the Member State responsible the validity ~~which shall be renewed accordingly to ensure that the validity of that document so as to~~ covers the period during which the applicant has a right to remain on the ~~its~~ territory of the Member State responsible.<sup>211</sup>

The period of validity ~~indicated on~~ **of** the document does not constitute a right to remain where that right was terminated or suspended in accordance with this Regulation.

5. The Commission may specify the form and content of the documents to be given to the applicants at registration and ~~the~~ lodging by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58 (2).<sup>212</sup>

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<sup>211</sup> **AT**, supported by **BE, IE, NL**: redraft as follows: "*The document referred to in paragraph 2 shall be valid for a period of six months which shall be renewed accordingly to ensure that the validity of that document covers the period during which as long as the applicant has a right to remain on the territory of the Member State responsible*". - this duration coincides with the duration of procedures until applicant obtains a legal status to stay or has to leave. Delete "*indicated on the document*" in the second sub-para. **DE**: could this period exceed the maximum validity period of six months? If yes, it should be ensured that – in view of the narrowly defined purpose of the document – the maximum period of validity indicated on the document does not exceed the six-month maximum also in these cases. If the transfer period should not exceed six months, the text could be amended as follows: "*... for a period not exceeding six months or, in the case of a transfer in accordance with the Dublin Regulation, only until the applicant is transferred to the responsible Member State.*"

<sup>212</sup> **AT**: delete this para; details should be regulated at national level or via EUAA according to the principle of subsidiarity. **ES, PL, SI, SK**: reservation on the idea to use implementing acts to determine the form and the content of the document. **HU, ES, HR, NL, SK**: this should be regulated at national level. **BE**: not convinced of the added value of implementing acts.

**Access to the procedure in detention facilities and at border crossing points<sup>213</sup>**

1. ~~Where there are indications that third-country nationals or stateless persons held in detention facilities or present at border crossing points, including transit zones, at external borders, may need international protection, the responsible authorities shall inform them of the possibility to apply for international protection, in particular, where:~~
  - ~~(a) it is likely that the person is an unaccompanied minor;~~
  - ~~(b) there are obvious indications that the person suffers from mental or other disorders that render him or her unable to ascertain a need for international protection;~~
  - ~~(c) the person has arrived from a specific country of origin and it is likely that he or she is in need of international protection due to a well-known situation in that third country.~~
2. **Where an applicant makes an application in detention facilities or at border crossing points, including transit zones, at external borders,** ~~the~~ **responsible competent** authorities shall make ~~the necessary~~ arrangements for interpretation services ~~to be available to~~ **the extent necessary** to facilitate access to the procedure for international protection.<sup>214</sup>

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<sup>213</sup> **CZ, IT, SI:** reservation. **DE:** add a definition of the term "*border*" or clarify each time if reference is made to internal or external EU borders.

<sup>214</sup> **CZ:** clarify "*necessary arrangements*", add "*and translation*" after "*interpretation*". **BE:** use a wording similar to Art. 8 (3).

3. Organisations and persons **accredited under national law to providing** advice and counselling shall have ~~effective~~ access to ~~third-country nationals~~ **applicants** held in detention facilities or present at border crossing points, including transit zones, at external borders. **Such access may be subject to a prior agreement with the competent authorities.**<sup>215</sup>

Member States may impose limits to such access ~~where~~, by virtue of national law, **where** they are necessary for the security, public order or administrative management of a border crossing point, **including transit zones**, or of a detention facility, provided that access is not severely restricted or rendered impossible.<sup>216</sup>

*Article 31*

**DELETED**

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<sup>215</sup> **AT:** add a new first sub-para as follows: "*Member States may impose limits to the access of organisations and persons providing advice and counselling to third-country nationals held in detention facilities or present at border crossing points, including transit zones and at external borders where , they are necessary for the security, public order or administrative management of a border crossing point or of a detention facility.*" Delete "effective" and redraft the end of the current first sub-para as follows: "...including transit zones, and at external borders only in exceptional cases." (alternative: "*in concrete cases of need*").

<sup>216</sup> **DE**, supported by **HU**: clarify why the possibility, allowed by the APD, for MS to make access dependent on an agreement with the organizations in question has been dropped; in the second sub-para add "*including transit zones*" after "*border crossing point*". **AT:** delete "*provided that access is not severely restricted or rendered impossible*".

**DELETED**



**DELETED**

**DELETED**

**DELETED**

*Article 32*

**Applications of unaccompanied minors<sup>219</sup>**

1. An unaccompanied minor shall **have the right to** lodge<sup>220</sup> an application in his or her own name if he or she has the legal capacity to act in procedures according to the national law of the Member State concerned, or **through** his or her ~~guardian representative as referred to in Article 22~~ shall lodge it on his or her behalf.

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

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<sup>219</sup> **DE, IE, SE, SK:** scrutiny reservation. **BE:** delete "legal capacity to act in procedures".

<sup>220</sup> **SK,** supported by **CZ:** add "*make and*" before "*lodge*".

2. ~~In the case of an unaccompanied minor, the application shall be lodged not later than ten working days period for the lodging the application provided for in Article 28(1) shall only start to run from the moment a guardian~~ **the designated representative** of the unaccompanied minor is appointed and has met with him or her<sup>221</sup>.

**2a.** ~~Where his or her guardian~~ **due to his or her negligence, the representative** does not lodge an application on behalf of the unaccompanied minor **within this time-limit, another representative shall be appointed.** ~~within those ten working days, the determining authority shall lodge an application on behalf of the unaccompanied minor if, on the basis of an individual assessment of his or her personal situation, it is of the opinion that the minor may need international protection.~~

**2b. Where the representative of an unaccompanied minor lodges the application on behalf of the minor, the minor shall be present for the lodging of the application.**

3. ~~The bodies referred to in Article 10 of Directive 2008/115/EC shall have the right lodge an application for international protection on behalf of an unaccompanied minor if, on the basis of an individual assessment of his or her personal situation, those bodies are of the opinion that the minor may need international protection.~~

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<sup>221</sup> LU, SK: scrutiny reservation. IT, supported by CZ, HR: if the act of meeting a minor is referred to, there will be two (dies a quo) starting dates - which is the effective date? Delete "*and has met with him or her*". PL, supported by CZ: the time limit for representative to meet with the unaccompanied minor should be clearly defined (e.g. 5 days). The time limit for lodging an application shall start to run from the next day after the time limit to meet expired. If the application is not lodged, it should be considered as implicitly withdrawn. SK: the last part of the sentence will be hard to apply in practice. How will we know that the representative has met with unaccompanied minor? For various reasons, the meeting with the UAM can take place several days later from the moment the representative is designated. DE, SE: delete "*designated*".

## SECTION II

### EXAMINATION PROCEDURE

#### *Article 33*

#### **Examination of applications**

1. ~~Member States~~ **The determining authority** shall examine **and take decisions on** applications for international protection in accordance with the basic principles and guarantees set out in Chapter II.
2. ~~The determining authority shall take decisions on applications for international protection after an appropriate examination as to the admissibility or merits of an application.~~<sup>222</sup> The determining authority shall examine applications objectively, impartially and on an individual basis. For the purpose of examining ~~the~~ **an** application, ~~it~~ **the determining authority** shall take the following into account:
  - (a) the relevant statements and documentation presented by the applicant ~~including information on whether the applicant has been or may be subject to persecution or serious harm in accordance with Article 4(1) and (2) of Regulation No. XXX/XXX [Qualification Regulation];~~

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<sup>222</sup> **DE:** clarify the reasons for the deletion.

- (b) ~~all~~ relevant, ~~accurate~~ **precise** and up-to-date information relating to the situation prevailing in the country of origin of the applicant<sup>223</sup> at the time of taking a decision on the application, including laws and regulations of the country of origin and the manner in which they are applied, ~~as well as any other relevant information obtained from the European Union Agency for Asylum, from the United Nations High Commissioner for Refugees and relevant international human rights organisations, or from other sources;~~ obtained from relevant **and available national, Union and international sources, and where available** (e) the common analysis **on the situation in specific** of the countries of origin ~~information~~ **and the guidance notes** referred to in Article 10 of Regulation (EU) No XXX/XXX ([EU Asylum Agency Regulation]);
- (ca) **relevant, precise and up-to-date information relating to the situation prevailing in the third country being considered as a first country of asylum or a safe third country at the time of taking a decision on the application;**<sup>224</sup>
- (d) the individual position and personal circumstances of the applicant, ~~including factors~~ such as background, gender, age, sexual orientation and gender identity so as to assess whether, on the basis of the applicant's personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious harm;<sup>225</sup>
- (e) whether the activities that the applicant was engaged in since leaving the country of origin were carried out by the applicant for the sole or main purpose of creating the necessary conditions for applying for international protection, so as to assess whether those activities would expose the applicant to persecution or serious harm if returned to that country **as referred to in Article 5 of Regulation No XXX/XXX [Qualification Regulation];**

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<sup>223</sup> **AT, DE, SE:** add "*or in the third country*".

<sup>224</sup> **HR:** reservation. **AT, RO, SE:** delete this point. **CZ:** clarify that the competent authority shall take into account the information according to this para. only in cases where the concepts of third safe countries would apply. **DE:** how does this relate to point (b)?

<sup>225</sup> **SK:** "sex" instead of "gender".

- (f) whether the applicant could reasonably be expected to avail himself or herself of the protection of another country where he or she could assert citizenship;<sup>226</sup>
- (fa) **whether the applicant could benefit from the internal protection alternative as referred to in Article 8 of Regulation No XXX/XXX [Qualification Regulation].**
3. The personnel examining applications and taking decisions shall have sufficient knowledge of the relevant standards applicable in the field of asylum and refugee law **and shall have received adequate training including, where necessary, from the European Union Agency for Asylum.** They shall have the possibility to seek advice, whenever necessary, from experts on particular issues, such as medical, cultural, religious and child-related or gender issues. ~~Where necessary, t~~They may submit queries to the European Union Agency for Asylum in accordance with Article 9(2)(b) of Regulation (EU) No XXX/XXX (EU Asylum Agency Regulation).<sup>227</sup>
4. ~~Documents relevant for the examination of applications by the determining authority shall be translated, where necessary, for such examination.~~ **The determining authority shall assess which of the documents presented by the applicant are relevant for the examination of his or her application. Where necessary, the translation of those documents shall be ensured by the competent authorities. The applicant may ensure the translation, at his or her own cost, of documents, which are not identified by the determining authority as being relevant. In case of subsequent applications, the applicant shall be responsible for the translation of documents.**<sup>228</sup>

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<sup>226</sup> **DE:** scrutiny reservation; according to which provision is this aspect significant for decisions? **BE:** "*another country*" refers to a MS or to a third country? **NL:** mention also safe third countries.

<sup>227</sup> **NL:** scrutiny reservation; delete "*including from*" add "*such as modules developed by*" after "*training*". **SE,** supported by **BE, HR:** add "*if available*" after "*advice*" because this should happen where there is such expertise available. However, it should be clarified that this does not pose an obligation for the Member States to ensure that there is such expertise available. **HU:** "*may*" provision. **RO, SE:** delete "*including from the European Union Agency for Asylum*" (staff may receive training from EUAA but it should not be mandatory).

<sup>228</sup> **CZ:** scrutiny reservation. **AT:** delete para (4). **BE:** only the necessary passaged of the text should be translated.

5. An examination of an application for international protection may be prioritised in accordance with the basic principles and guarantees of Chapter II, in particular, where:<sup>229</sup>
- (a) the application is likely to be well-founded;
  - (b) the applicant has special reception needs within the meaning of Article 20 of Directive XXX/XXX/EU (Reception Conditions Directive), or is in need of special procedural guarantees, in particular where he or she is an unaccompanied minor.

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<sup>229</sup> **AT, CZ, PL:** delete para (5). **BE, IT, RO:** unclear how this articulates with the accelerated procedure. **SE:** "*may*" provision, give points (a) and (b) as examples.



*Article 34*

**DELETED**

**DELETED**

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## SECTION III

### DECISIONS ON APPLICATIONS

#### Article 35

##### Decisions by the determining authority

1. A decision on an application for international protection shall be given in writing and it shall be notified to the applicant **in accordance with national law** without undue delay ~~in a language he or she understands or is reasonably meant to understand.~~<sup>244</sup>
2. Where an application is rejected as inadmissible, as unfounded with regard to refugee status or subsidiary protection status, ~~as explicitly withdrawn~~ or as ~~abandoned~~ **implicitly withdrawn**, the reasons in fact and in law shall be stated in the decision.<sup>245</sup>

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<sup>244</sup> **NL:** scrutiny reservation. **CY:** reservation. **BE, DE:** prefer the drafting of APD. **MT:** whereas the decision shall be given in writing, it is only the result of the decision that needs to be notified to the applicant in a language he or she understands or is reasonably meant to understand. Confirmation needed if the said notification can also be given orally.

<sup>245</sup> **CY:** reservation. **SK,** supported by **CZ, HR:** in case of Article 38 and 39 when the application is explicitly or implicitly withdrawn and therefore it is not examined, it is more appropriate to discontinue the asylum procedure rather than reject application. This should be reflected also in this text. The paragraph would then read as follows (new text underlined): "*Where an application is rejected as inadmissible, or as unfounded with regard to refugee status or subsidiary protection status, or the examination procedure is discontinued where the application is implicitly or ~~as explicitly withdrawn or as abandoned~~, the reasons in fact and in law shall be stated in the decision. Information on how to challenge a decision refusing to grant international protection shall be given in writing, unless otherwise already provided to the applicant.*"

- 2a. **The applicant shall be informed of the result of the decision and he or she shall be given information on how to challenge a decision refusing to grant international protection shall be given in writing in a language that he or she understands or is reasonably supposed to understand when he or she is not assisted by a legal adviser, unless otherwise already provided to the applicant. Where the applicant is assisted by a legal adviser the information could be provided without being translated in a language which he or she understands or is reasonably supposed to understand.**<sup>246</sup>
3. In cases of applications on behalf of spouses, partners, minors or accompanied minors or dependent adults without legal capacity **under national law**, and whenever the application is based on the same grounds, the determining authority may, **following an individual assessment for each applicant**, take a single decision, covering all applicants, unless to do so would lead to the disclosure of particular circumstances of an applicant which could jeopardise his or her interests, in particular in cases involving gender, sexual orientation, gender identity or age-based persecution. In such cases, a separate decision shall be issued to the person concerned.<sup>247</sup>

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<sup>246</sup> **CY, HR, SK:** reservation. **AT:** clarify that this information can be included in the decision. **MT:** add a new para (2b) as follows: "*Where the determining authority is not able to provide in writing the information referred to in paragraph 2a in view of the particular language that an applicant understands or is reasonably supposed to understand, the information may be provided only through oral translation subject to the applicant's confirmation through oral translation that this information has been understood.*"

<sup>247</sup> **SE:** add "*In all cases an individual assessment must be done for each applicant.*" because it's important to further clarify that an individual assessment must always be done.

*Article 36*

**DELETED**



**DELETED**

**DELETED**

**Decision on the merits of an application**

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

**(a) another Member State is responsible in accordance with Regulation (EU) No XXX/XXX (Dublin Regulation), including when another Member State has granted international protection to the applicant;<sup>252</sup> or**

**(b) an application is rejected as inadmissible in accordance with Article 36(1a).<sup>253</sup>**

1. When examining an application on the merits, the determining authority shall take a decision on whether the applicant qualifies as a refugee and, if not, it shall determine whether the applicant is eligible for subsidiary protection in accordance with Regulation (EU) No XXX/XXX (Qualification Regulation).
2. The determining authority shall reject an application as unfounded where it has established that the applicant does not qualify for international protection pursuant to Regulation (EU) No XXX/XXX (Qualification Regulation).

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<sup>252</sup> **CZ:** scrutiny reservation.

<sup>253</sup> **SK:** reservation on para (-1). **CZ:** add a new point (c) drafted as follows: "(c) an application is explicitly or implicitly withdrawn". **SE:** delete para (-1).

3. The determining authority shall declare an unfounded application to be manifestly unfounded in the cases referred to in Article 40(1)(a), (b), (c), (d) and (e)<sup>254</sup> **including where a decision is not taken within the time-limits referred to in Article 34 (1a). This shall not apply in the cases referred to in Article 40 (4).**

Article 38

**Explicit withdrawal of applications<sup>255</sup>**

1. An applicant may, of his or her own motion and at any time during the procedure, withdraw his or her application. <sup>256</sup> **The applicant shall confirm the withdrawal in writing after he or she has been informed of the meaning and consequences of a withdrawal in a language he or she understands or is reasonably supposed to understand. In such a case, the determining authority shall terminate the examination of the application, shall enter a note to that effect in the applicant's file and shall inform the applicant that his or her application has been withdrawn.**

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<sup>254</sup> **DE, FR, IE, SE:** scrutiny reservation on para (3). **BE:** reservation on para (3). **SE,** supported by **DE:** rules regarding manifestly unfounded claims to be clarified since they are now a bit complicated. It must always be the merits of the claim and not the procedure used that should determine if an application is declared manifestly unfounded or not. Thus, also a case that is processed in an accelerated procedure may not be found manifestly unfounded and vice versa. Especially when it comes to the suspensive effect it must only be determined by the merits of the claim and not the procedure used. **SK:** add also reference to points (f) and (g). **PL:** clarification needed on the relation between this provision and Art. 7 (4) of the Return Directive. The directive invokes the notion of "application for a legal stay". Does this notion also cover the application for international protection?

<sup>255</sup> **SK:** in case of Article 38 and 39 when the application is explicitly or implicitly withdrawn and therefore it is not examined, it is more appropriate to discontinue the asylum procedure rather than reject application.

<sup>256</sup> **SE,** supported by **EL, FI, IE:** add a new subpara as follows: "*The applicant shall confirm the withdrawal in writing after he or she has been informed of the meaning and consequences of a withdrawal in a language he or she understands or is reasonably meant to understand.*"

2. Where an application is explicitly withdrawn by the applicant **at a stage when the determining authority already found that the applicant does not qualify for international protection pursuant to Regulation (EU) No XXX/XXX (Qualification Regulation)**, the determining authority shall take a decision to reject the application as explicitly withdrawn<sup>257</sup> or as unfounded ~~where the determining authority has, at the stage that the application is explicitly withdrawn, already found that the applicant does not qualify for international protection pursuant to Regulation (EU) No XXX/XXX (Qualification Regulation).~~<sup>258</sup>

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<sup>257</sup> **EL:** is a decision by the determining authority necessary or could the application just be archived? **CZ, HR:** replace "reject" with "discontinue". **SE:** "dismiss or reject".

<sup>258</sup> **IE,** supported by **SK:** reservation on para (2); a “decision” taken by the determining authority to reject the application suggests that there needs to be provision for an effective remedy against the decision. It should be clearly stated in the text that in a scenario where the applicant voluntarily chooses to explicitly withdraw their application there should be no right of appeal.

*Article 39*

**DELETED**

**DELETED**

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## SECTION IV

### SPECIAL PROCEDURES

*Article 40*

**DELETED**

**DELETED**

**DELETED**

**DELETED**

Article 41

**Border procedure**<sup>282</sup>

1. **Without prejudice to Article 20 (3),** ~~the~~ determining authority may, in accordance with the basic principles and guarantees provided for in Chapter II, **examine and** take a decision on an application at the **external** border or in transit zones of the Member State on:<sup>283</sup>
  - (a) the admissibility of an application made at such locations pursuant to Article 36(1)<sup>284</sup>;  
or
  - (b) the merits of an application **made at such locations** in the cases subject to the accelerated examination procedure referred to in Article 40
2. A decision referred to in paragraph 1 shall be taken as soon as possible without prejudice to an adequate and complete examination of the application, and not longer than four weeks from when the application is lodged.<sup>285</sup>

**2a. The competent authorities may carry out the procedure for determining the Member State responsible for examining the application as laid down in Regulation (EU) No XXX/XXX (Dublin Regulation) at the external border or in transit zones of the Member State.**

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<sup>282</sup> **CZ, EL:** scrutiny reservation. **EL:** the term "*border*" needs to be clarified; *borders and transit zones are to be determined by MS?*

<sup>283</sup> **NL:** there could be cases in which the Dublin procedure is applicable to an applicant who has not yet entered the Schengen area. We think in such cases it should be possible to carry out the Dublin procedure at the border. Furthermore, a rejection of an asylum application in a border procedure has to be followed by a refusal to enter the country. A rejected asylum application is not such a refusal in itself, which is not efficient. Therefore redraft as follows: add "*or (2)*" in point (a) and add a second sub-para along the following lines: "*Such a decision shall, pursuant to article 8, paragraph 3, under d, of [the Reception Conditions Directive] be considered as a refusal to enter the territory.*"

<sup>284</sup> **CZ:** the reference should be "36 (2)" to reflect current renumbering.

<sup>285</sup> **NL,** supported by **PL:** sometimes the responsibility for not concluding the procedure within 4 weeks belongs to the applicant (e.g. in cases of ID fraud, new document submitted very late etc); in such cases it should be possible to extend the period by another four weeks.

3. Where a ~~final~~ decision **in the administrative procedure** is not taken within four weeks referred to in paragraph 2, the applicant shall no longer be kept at the border or transit zones and shall be granted entry to the territory of the Member State for his or her application to be processed in accordance with the other provisions of this Regulation.<sup>286</sup>
4. In the event of arrivals involving a disproportionate number of third-country nationals or stateless persons lodging applications for international protection at the border or in a transit zone, making it difficult in practice to apply the provisions of paragraph 1 at such locations, the border procedure may also be applied at locations in proximity to the border or transit zone.<sup>287</sup>
5. The border procedure may be applied to unaccompanied minors, in accordance with Articles 8 to 11 of Directive (EU) No XXX/XXX (Reception Conditions Directive) only where:<sup>288</sup>
  - (a) the applicant comes from a third country **that may be** considered to be a safe country of origin in accordance with the conditions set out in Article 47;
  - (b) **there are reasonable grounds to consider** the applicant ~~may for serious reasons be considered to be as~~ a danger to the national security or public order of the Member State, or the applicant has been forcibly expelled for serious reasons of ~~public~~ **national** security or public order under national law;
  - (c) there are reasonable grounds to consider that a third country is a safe third country for the applicant in accordance with the conditions of Article 45;

**(ca) the applicant withheld documents relevant with respect to his or her identity or nationality or it is likely that he or she has destroyed or disposed of an identity or travel document that would have helped to establish his or her identity or nationality;**

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<sup>286</sup> **SK:** reservation; four weeks is not enough especially if reference is made to a final decision.

<sup>287</sup> **NL:** add "*closed*" before "*locations*".

<sup>288</sup> **EL:** reservation on para (5), prioritising the examination of application from UAM is a good approach but it is doubtful that their best interest can be safeguarded in the accelerated or border procedure.

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

Points **(ca) and** (d) shall only be applied where there are serious grounds for considering that the applicant is attempting to conceal relevant elements which would likely lead to a decision refusing to grant international protection and provided that the applicant has been given an effective opportunity to provide substantiated justifications for his actions. <sup>289</sup>

*Article 42*

**DELETED**

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<sup>289</sup> **EL:** reservation on point (d); this provision has a clearly punitive character; is this acceptable for UAM who are in a vulnerable position and have diminished responsibility?  
**NL:** delete "*with respect to his or her identity*" as this should also concern documents needed to substantiate the application.



**DELETED**

**DELETED**

**DELETED**

*Article 43*

**DELETED**

