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NOTE

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)

During seven meetings (8 November, 22 November, 19 December 2016, 18 January, 15 February, 18-19 July and 5-6 September 2017) the Asylum Working Party examined the proposal for an Asylum Procedure Regulation. Several articles, for which the Presidency had suggested compromise proposals, were also discussed in the framework of the thematic approach.

The document contains compromise proposals suggested by the Presidency in relation to Articles 1-18. Recitals are placed in square brackets, as they will be discussed at a later stage.

Suggested modifications are indicated as follows:

- new text compared to the Commission proposal is in **bold**;
- 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.

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/EU¹**

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,

¹ **HU, IT, NL, PL, SI:** parliamentary reservation. **AT, BE, BG, CZ, EL, ES, FI, FR, HU, IE, IT, LT, NL, PL, PT, SI:** scrutiny reservation. **BE, FR, SE, 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changes are made to Directive 2013/32/EU of the European Parliament and of the Council² and that Directive should be repealed and replaced by a Regulation. References to the repealed Directive should be construed as references to this Regulation.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.

² 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 2016,³ 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 2016⁴ 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)⁵ 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.

³ COM(2016) 197 final.

⁴ EUCO 19.02.2016, SN 1/16.

⁵ 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)⁶ 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.

⁶ 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.⁷

⁷ 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),⁸ 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.

⁸ 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*,⁹ 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.

⁹ * 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) ¹⁰ 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,¹¹ as well as Regulation (EU) No XXX/XXX (EU Asylum Agency Regulation) ¹² and it should, in particular, respect the principles of necessity and proportionality.

¹⁰ OJ L 119, 4.5.2016, p. 1.

¹¹ 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).

¹² 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 Council¹³ 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.

¹³ 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

Scope¹⁴

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.¹⁵

¹⁴ **SE:** scrutiny reservation. **RO:** the wording is similar to the Directive, with one exception: the proposed Regulation operates with two distinct new concepts, namely "*Making an application for international protection*" (art. 25) and "*Lodging of an application for international protection*" (art. 28), which are linked to certain specific legal effects. Thus, clarifications are needed on these concepts as the following situation might arise: given that Romania is not part of the Schengen area, would the provisions of this Regulation apply in case of an application for international protection made at the Romanian border with Bulgaria or with Hungary? **COM:** this Regulation applies to the territory of MS including RO and BG – their position in Schengen is not relevant here.

¹⁵ **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.

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.¹⁶

Article 3

Extension of the scope of application

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

Article 4

Definitions¹⁷

1. For the purposes of this Regulation, the following definitions referred to in Article 2 of Regulation (EU) No XXX/XXX (Qualification Regulation) apply:
- (a) ~~'Geneva Convention'~~;
 - (b) ~~'refugee'~~;
 - (c) ~~beneficiary of subsidiary protection'~~;
 - (d) 'international protection';
 - (e) 'refugee status';

¹⁶ **DE** (supported by **BG**): 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

¹⁷ **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. **CZ**: the duplications with QR in the basic definitions should be addressed and only the "*procedural definitions*" such as e.g. "*applicant*", "*subsequent application*" etc. should be included in APR. **SE**: it is important that the wording is uniform in all legislative acts; the meaning of each term set out in Article 4 (1) should be defined (instead of solely referring to the other legislative acts/regulations). **PRES**: definitions between all CEAS acts were harmonised under MT PRES. Only the procedural definitions such as '*applicant*', '*subsequent application*' are included in APR

(f) 'subsidiary protection status';

(fa) '**withdrawal of international protection**'.

~~(g) 'minor'~~;

~~(h) 'unaccompanied minor'~~.

2. In addition to paragraph 1, the following definitions apply¹⁸:

- (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 status¹⁹;
- (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 [...] **taken**²⁰;

¹⁸ **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.

¹⁹ **EL, SE:** 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.

²⁰ **PL:** not clear if the term “*the applicant*” concerns only a person who makes an application or also his family members. **EL:** there should also be a reference to the lodging of the application. **PRES:** from the moment the application is made, a person is being considered as applicant.

- (c) 'applicant in need of special procedural guarantees' means an applicant whose ability to benefit from the rights and comply with the obligations provided for in this Regulation is limited due to individual circumstances²¹;
- (d) 'final decision' means a decision on whether or not a third-country national or stateless person is granted refugee status or subsidiary protection status by virtue of Regulation (EU) No XXX/XXX (Qualification Regulation), including a decision rejecting the application as inadmissible or a decision rejecting an application as explicitly ~~withdrawn or abandoned~~ **implicitly withdrawn** and which, **according to applicable national law**, can no longer be subject to an appeal procedure in the Member State concerned **and irrespective of whether the applicant has the right to remain in accordance with this Regulation**²²;

²¹ **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.

²² **CZ:** not clear what "*final decision*" means, not clear if it includes extraordinary remedies; change as follows: "*no longer be subject to a regular appeal procedure*" - this definition enables to consider persons who lodged further appeal to higher (highest) court instance as applicants. However the "*further appeal*" is not regulated by asylum acquis so this extensive applicant definition should be avoided. **SE:** scrutiny reservation regarding the term "*final decision*". **COM:** "*final decision*" depends on the way the national system is organised, it includes all instances. **BE:** "*final decision*" is problematic, should revert to the drafting of the current acquis. **PL:** supports those MS (CZ e.g.) who postulate to define a final decision as a decision issued by first appeal body. This definition should be defined in a more precise way. Implementation of this definition in accordance with interpretation provided by the Commission (final decision is a decision which cannot be appealed further) would cause a situation in which an applicant is under procedure until such a decision is made. Such situation could cause an extension of many procedural guarantees. Moreover, such interpretation may cause also problems in PL (different definition of a final decision clause in the Code of Administrative Proceedings).

- (da) **'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 competent authorities, excluding procedures for determining the Member State responsible in accordance with Regulation (EU) No XXX/XXX (Dublin Regulation);
- (db) '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**²³;
- (f) ~~'guardian' means a person or an organisation appointed to assist and represent an unaccompanied minor with a view to safeguarding the best interests of the child and his or her general well being in procedures provided for in this Regulation and exercising legal capacity for the minor where necessary;~~
- (g) ~~'withdrawal of international protection' means the decision by a determining authority to revoke, end or refuse to renew refugee status or subsidiary protection status of a person;~~
- (h) ~~'remain in the Member State' means to remain in the territory, including at the border or in transit zones, of the Member State in which the application for international protection has been made or is being examined;~~

²³ **DE:** scrutiny reservation.

- (i) ['subsequent application' means a further application for international protection made in ~~any~~ Member State after a final decision has been taken on a previous application **in any Member State**, including cases where the application has been rejected as explicitly ~~withdrawn~~ or as ~~abandoned following its implicitly withdrawn withdrawal~~ **withdrawn** ~~withdrawal~~]²⁴;
- (j) 'Member State responsible' means the Member State responsible for the examination of an application in accordance with Regulation (EU) No XXX/XXX (Dublin Regulation)²⁵;
- (ja) **'minor'** means a **third-country national or a stateless person below the age of 18 years**;²⁶

²⁴ **CZ, DE, PT:** scrutiny reservation. **EL, ES, IT, RO:** reservation. **DE:** the distinction between "*subsequent*" and "*second*" application (follow-up application filed in a different Member State than the first-time application) is not clear. **CZ:** there should not be a link with a final decision; afraid of the fact that current provision in Article 40 (1) of APD is not included in this definition; it means the possibility to examine this new application in the framework of the previous application; only such application that cannot be attached to previous application shall be considered as subsequent. The aim is to avoid the necessity to decide by separate decision on each application. **ES, FI, FR, NL:** potential difficulties linked to the transfer by the first MS of all relevant information to the MS where the subsequent application is made (translations etc.). **SI:** reservation, link to Dublin, would entail a significant administrative burden and information exchange between MS. **EL, IT:** link with the Dublin (single responsibility principle which these delegations oppose). Replace "*made in any Member State*" with "*made in one Member State*". **RO:** clarification needed regarding the introduction of the term "*made in any Member State*". What is envisaged? **COM:** the aim is to ensure further efficiency of the Dublin system - if a person was granted a decision in one MS, a new application in any other MS should be treated as a subsequent application; the second MS should receive all necessary information via the automated system provided by the Dublin Regulation.

²⁵ **ES:** reservation.

²⁶ **LU:** scrutiny reservation because of link to Article 21.

(jb) ‘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.

Article 5

Responsible Competent authorities²⁷

1. ~~Each~~ Member States shall designate a determining authority **to carry out its tasks as provided for in this Regulation and in Regulation (EU) No XXX/XXX (Qualification Regulation)**. ~~The determining authority shall have the following tasks:~~
 - (a) ~~receiving, registering and examining applications for international protection;~~
 - (b) ~~taking decisions on applications for international protection;~~
 - (c) ~~taking decisions on revoking, ending or refusing to renew the refugee or subsidiary status of a person as referred to in Regulation (EU) No XXX/XXXX (Qualification Regulation).~~
2. ~~Each Member State shall provide the determining authority with appropriate means, including sufficient competent personnel to carry out its tasks in accordance with this Regulation. For that purpose, each Member State shall regularly assess the needs of the determining authority to ensure that it is always in a position to deal with applications for international protection in an effective manner, particularly when receiving a disproportionate number of simultaneous applications.~~

²⁷ **AT, ES, SE:** scrutiny reservation.

3. **Member States may entrust the determining authority or other relevant national** ~~The following authorities shall have, such as the police, immigration authorities, authorities responsible for detention facilities in relation to return, border guards with~~ the task of receiving and registering applications for international protection **in accordance with Article 26** ~~as well as informing applicants as to where and how to lodge an application for international protection:~~

~~(a) border guards;~~

~~(b) police;~~

~~(c) immigration authorities;~~

~~(d) authorities responsible for detention facilities~~

~~Member States may entrust also other authorities with those tasks.~~

3a. Member States may provide that an authority other than the determining authority shall be responsible for the procedure for determining the Member State responsible in accordance with Regulation (EU) XXX/XXX (Dublin Regulation).

4. ~~The determining authority of the Member State responsible may be assisted for the purpose of receiving, registering and examining applications for international protection by:~~

~~(a) the authorities of another Member State who have been entrusted by that Member State with the task of receiving, registering or examining applications for international protection;~~

~~(b) experts deployed by the European Union Agency for Asylum, in accordance with Regulation (EU) No XXX/XXX (EU Asylum Agency Regulation).~~

- 4a. **Member States shall provide the authorities applying this Regulation with appropriate means, including necessary competent personnel to carry out their tasks. For that purpose, each Member State shall regularly assess the needs of those authorities to ensure that they are always in a position to deal with applications for international protection in an effective manner.**²⁸
5. Member States shall ensure that the personnel of **authorities applying this Regulation** ~~the determining authority, or of any other authority responsible for receiving and registering applications for international protection in accordance with paragraph 3,~~ have the appropriate knowledge and **where necessary** are provided with ~~the necessary training and instructions~~ **guidance** to fulfil their obligations when applying this Regulation²⁹.

²⁸ **CZ, DE:** scrutiny reservation, increased administrative burden. **SE:** "may" clause instead in order to respect current national systems. **PL:** this could become difficult in case of massive influx, should add "*as far as possible*". **COM:** it is an obligation for MS to see where assistance is required, where EASO help is needed etc. It is not meant only for situations of extreme pressure, but as help because of very short time limits. **IE, NL:** not clear who will check how MS comply with their obligations under this para; EASO potential role in monitoring is unclear. **COM:** Cf EASO Regulation, the Agency may require MS to send information about the contingency plans. The para says "*regularly*" not "*periodically*".

²⁹ **IE:** scrutiny reservation. **NL:** the para is less detailed than in the Directive because of the EASO Regulation, therefore a reference to EASO Reg. should be included here. **RO:** the training of the personnel involved should be based on actual training needs. If the personnel have the necessary knowledge (gained from previous activities including training) is not absolutely necessary for it to benefit from training; redraft as follows: „*Member States shall ensure that the personnel of the determining authority, or of any other authority responsible for receiving and registering applications for international protection in accordance with paragraph 3, have the appropriate knowledge and the necessary instructions ~~are provided with the necessary training and instructions~~ to fulfil their obligations when applying this Regulation. For this purpose, Member States provide the appropriate training of the personnel of these authorities according to the identified needs.*”

Article 5a

Cooperation

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).**
2. **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).**
3. **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;**
 - (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.**

Article 6

Confidentiality principle³⁰

1. The authorities applying this Regulation shall ~~safeguard the confidentiality of any information they obtain in the course of their work~~ **be bound by the principle of confidentiality as defined in national law in relation to any information they obtain in the course of their work**³¹.
2. Throughout the procedure for international protection and after a final decision on the application has been taken, the authorities shall not³²:
 - (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.

³⁰ **SE:** scrutiny reservation. **CZ:** unclear how this principle will help in verifying the identity of the person as the principle has a much broader scope than embedded in this article.

³¹ **FR:** in certain cases (criminal proceedings) it might be useful to send information to other authorities; not clear if para (1) allows this. **COM:** para (1) is defined by para (2). **IT:** confidentiality should not be in conflict with security; therefore, this paragraph should read as follows: "*The authorities applying this Regulation shall safeguard the confidentiality of any information they obtain in the course of their work. Where necessary for security reasons, information may be provided to relevant authorities of Member States in compliance with national law.*"

³² **SE:** a reference to national provisions should be introduced.

CHAPTER II

BASIC PRINCIPLES AND GUARANTEES³³

SECTION I

RIGHTS AND OBLIGATIONS OF APPLICANTS

Article 7

Obligations of applicants³⁴

1. ~~The applicant shall make his or her application in the Member State of first entry or, where he or she is legally present in a Member State, he or she shall make the application in that Member State as provided for in Article 4(1) of Regulation (EU) No XXX/XXX (Dublin Regulation).~~ **A third country national or stateless person who intends to make an application for international protection shall make and lodge that application in the Member State of first entry. Where a third country national or stateless person who intends to make an application for international protection is legally present in a Member State on the basis of a residence permit or visa, he or she shall make and lodge that application in the Member State that issued the residence permit or visa.**³⁵

³³ **PL:** Chapter II would not prevent secondary movements.

³⁴ **BE, DE, FI, FR, SE:** scrutiny reservation. **ES:** reservation; the rights should be listed first and then the obligations. **BG:** reservation, link with Article 4 of the Dublin Regulation, concerning the applicant's obligation to make an application in the MS of first entry, or in case of legal stay – in the MS of residence. This approach places the frontline MS in a position of inequality. **DE:** any breaches of the obligations laid down in Article 7 constitute the grounds for sanctions also in other pieces of legislation (Dublin Regulation, RCD). The obligations and sanctions should respect the principle of proportionality. Sanctions following breaches by the applicant should be imposed only if he/she has been informed of such obligations and the possible consequences of any breaches beforehand.

³⁵ **PRES:** the changes in this paragraph have been made with a view to align the text with the Dublin Regulation proposal.

2. The applicant shall cooperate with the ~~responsible~~ **competent** authorities³⁶ ~~for them to establish his or her identity as well as to register, enable the lodging of and examine the application by~~ **in matters covered by this Regulation, in particular, by:**
- (a) providing **his or her name, date of birth, gender, nationality** ~~the data referred to in points (a) and (b) of the second paragraph of Article 27(1);~~
 - (aa) where available, providing the type and number of his or her identity or travel document and the third country that issued the document;**
 - (ab) where applicable, providing his or her place of residence or address and a telephone number where he or she may be reached, including any changes thereto;**
 - (b) providing ~~fingerprints and facial image~~ **biometric data** as referred to in Regulation (EU) No XXX/XXX (Eurodac Regulation).³⁷
 - (c) lodging his or her application in accordance with Article 28 ~~within the set time limit and submitting all elements at his or her disposal needed to substantiate his or her application~~³⁸;

³⁶ **BE**, supported by **LU**: this obligation to cooperate should apply to all parts of the asylum procedure; therefore insert "*in all matters covered by this Regulation*" after "*responsible authorities*". **COM**: para (2) refers to all authorities mentioned in Art. 5. **LU**: further obligations for the applicant should be added, e.g. the obligation to be submitted to a medical examination, to a linguistic test, etc.

³⁷ OJ L [...], [...], p. [...].

³⁸ **EL**: reservation on the deadlines according to Art. 28(3). **SE**: redraft letter (c) as follows: "*(c)submitting all elements at his or her disposal needed to substantiate his or her application and, if applicable, lodging his or her application in accordance with Article 28 within the set time-limit and;*".

(d) ~~hand over~~ **providing any** documents in his or her possession **or any information** relevant to the examination of the application **for the procedures in accordance with this Regulation;**

(da) **appearing for a personal interview as referred to in Articles 10 and 11.**

3. ~~Where an applicant refuses to cooperate by not providing the details necessary for the examination of the application and by not providing his or her fingerprints and facial image and the responsible authorities have properly informed that person of his or her obligations and has ensured that that person has had an effective opportunity to comply with those obligations, his or her application shall be rejected as abandoned in accordance with the procedure referred to in Article 39.~~³⁹
4. ~~The applicant shall inform the determining authority of the Member State in which he or she is required to be present of his or her place of residence or address, or a telephone number where he or she may be reached by the determining authority or other responsible authorities. He or she shall notify that determining authority of any changes. The applicant shall accept any communication at the most recent place of residence or address which he or she has indicated accordingly to the competent authorities in particular when he or she lodges an application in accordance with Article 28.~~⁴⁰

³⁹ **PRES:** this paragraph was deleted as it is covered by Article 39.

⁴⁰ **CZ** (supported by **SK**): add the following before the last sentence: "*The change of place of residence may be subject to previous approval by the determining authority*". **DE:** para (4) second sentence: clarification needed whether that public notification pursuant to the national law of the MS remains admissible. **ES:** difficult to oblige someone to do that; the consequences in case of failure to meet this obligation need to be clarified. **HU:** the obligation of notification of any changes makes sense only if the place of residence/address have not been appointed by the authority. **SK:** add the following sentence: "*The change of place of residence may be subject to previous approval by the determining authority*".

5. [The applicant shall remain on the territory of the Member State where he or she is required to be present, **or where he or she is present pending the implementation of a transfer decision** in accordance with Regulation (EU) No XXX/XXX (Dublin Regulation).⁴¹]
6. The applicant shall comply with obligations to report regularly to the competent authorities or to appear before them in person without delay or at a specified time or to remain in a designated area on its territory in accordance with Directive XXX/XXX/EU (Reception Conditions Directive), as imposed by the Member State in which he or she is ~~required to be present in accordance with Regulation (EU) No XXX/XXX (Dublin Regulation)~~⁴².
7. Where it is necessary for the ~~examination~~ **processing** of an application, the applicant may be required by the ~~responsible~~ **competent** authorities to be searched or have his or her items searched **in accordance with national law**. Without prejudice to any search carried out for security reasons, a search of the applicant's person ~~under this Regulation~~ shall be carried out by a person of the same sex with full respect for the principles of human dignity and of physical and psychological integrity.⁴³

⁴¹ **ES:** clarify the consequences in case of failure to meet this obligation. **CZ:** replace "*the implementation of a transfer decision*" with "*procedure*"; broader meaning and includes the procedure before the transfer decision is issued as well as the procedure after transfer decision until the transfer to responsible MS is done. **IT:** the added part seems redundant, when a transfer decision is pending, the applicant is required to be present.

⁴² **ES:** clarify this provision, in particular the consequences in case of failure to comply with the obligations. **RO:** using "*or*" may be interpreted as meaning that the applicant should comply with only one of these requirements, making it difficult for the determining authority to fulfil their duties. The solution may be listing them. **SE:** scrutiny reservation; provision to clarify. **COM:** "*or*" is meant to be "*and*" in this context.

⁴³ **BE:** clarify "*Where it is necessary for the examination of an application*". **CZ:** this paragraph should be looked at in relation to Art. 13(2)(d); add "*in particular*" after "*Where it is necessary*" (the current text is too narrow. Similar text is missing in the new Dublin proposal). **SE:** scrutiny reservation.

Article 8

General guarantees for applicants⁴⁴

1. ~~During the administrative procedure referred to in Chapter III applicants shall enjoy the guarantees set out in paragraphs 2 to 8 of this Article.~~
2. The determining authority **or, where applicable, other competent authorities** shall inform **the** applicants, in a language which **he or she** ~~they~~ understands or **is** ~~are~~ reasonably ~~meant~~ **supposed** to understand, of the following⁴⁵:
 - (a) the right to lodge an ~~individual~~ application;⁴⁶
 - (b) the **time-limits and stages of the** procedure ~~to be followed~~;
 - (c) **his or her** ~~their~~ rights and obligations during the procedure, **including the possible consequences of not complying with the obligations** ~~including the obligation to remain in the territory of the Member State in which they are required to be present in accordance with Regulation (EU) No XXX/XXX (Dublin Regulation)~~;

⁴⁴ **ES, FR, LV, PT, SE, SI:** scrutiny reservation. **IT:** reservation. **FI:** add "*information*" in the title.

⁴⁵ **BE, DE, ES, FI, FR, LV, NL:** scrutiny reservation . **BE:** reference should be made to "MS" instead of "*determining authorities*". **DE,** supported by **BE, ES, FI, FR, NL:** the obligation to provide information should be extended to additional authorities (Article 5(3)) if possible, so that the purpose of providing information can be achieved. **NL:** NGOs would not be covered by this provision. **RO:** in the English version of the APD the term "*supposed*" is used, while in the draft Regulation the term "*meant*" is used. The two terms were translated the same in Romanian, but could they have a different meaning? We ask for clarifications on the reason that led to the replacement of the term "supposed" with "meant". **PRES:** it is only an EN correction, the meaning is the same. However, the provision was changed to provide more coherence with other CEAS files.

⁴⁶ **PT:** not clear enough. **FI:** this separate stage does not exist at national level. Therefore, flexibility is needed. **SE:** delete (a).

- (d) ~~the possible consequences of not complying with their obligations and not cooperating with the authorities~~ **the procedure for submitting elements to substantiate his or her application for international protection;**
- (e) ~~the timeframe of the procedure~~ **the right to legal assistance and representation, including the possibility to request free legal assistance and representation;**
- (f) ~~the means at their disposal for fulfilling the obligation to submit the elements as referred to in Article 4 of Regulation (EU) No XXX/XXX (Qualification Regulation);~~
- (g) the consequences of an explicit or implicit withdrawal of the application;
- (h) the outcome of the decision of the determining authority, the reasons for that decision, as well as the consequence of a decision refusing to grant international protection and the manner in which to challenge such a decision⁴⁷.

The information referred to in the first paragraph shall be given in good time to enable the applicants to exercise the rights guaranteed in this Regulation and for them to adequately comply with the obligations set out in Article 7.⁴⁸

⁴⁷ **CZ:** delete letter (h). **IT:** modify letter (h) as follows: "*(h) the outcome of the decision of the determining authority, the reasons for ~~that decision, as well as the consequence of a decision according a status different from refugee status and for a decision refusing to grant international protection, their consequences~~ and the manner in which to challenge ~~such a decision~~ the two latter decisions.*" **PL:** reservation, it will generate costs. **RO:** what should the information on the reasons for the decision contain? could it refer to the full translation of the decision? what kind of information should be translated? **SI:** it is not necessary to give the grounds for decision. **COM:** it is important to inform the applicant; it is not new (see Art. 20(1)(f) APD). **IE:** how detailed does it have to be?

⁴⁸ **IT:** replace "good" with "reasonable". **SI:** specify "in good time". **SE:** no support for the possibility in Art. 31 to lodge an application on behalf of a spouse or partner, therefore, also the reference here should be deleted. Due to the possible consequences of non-compliance with obligations, it is important that the applicant is duly informed; suggestion that the applicant should have to confirm that the information has been received and this should be added to the file. Hence, add the following at the end of the last sub-para: "*The applicant shall confirm that he or she has received the information. Such confirmation shall be documented in the applicant's file.*"

3. The ~~determining~~ **competent** authorities shall provide applicants with the services of an interpreter for submitting their case to the ~~determining authority as well as to courts or tribunals~~ whenever appropriate communication cannot be ensured without such services. The interpretation services shall be paid for from public funds.⁴⁹
4. The ~~determining~~ **competent** authorities shall provide applicants with the opportunity to communicate with United Nations High Commissioner for Refugees or with any other organisation providing legal advice or other counselling to applicants in accordance with national law.⁵⁰

⁴⁹ **AT:** delete para (3). **BE:** reference should be made to "*Member States*" instead of "*determining authorities*". **CZ:** reservation. **DE:** reservation; the right to the free services of an interpreter for the administrative procedure must be clearly defined and limited to the process of registering an application and the interview; the wording "*whenever appropriate communication cannot be ensured without such services*" is too imprecise and open to interpretation. It is not appropriate to have the asylum authority decide on interpreting services in court proceedings. It is up to the courts to take such a decision. Furthermore, this would be the wrong place to insert such a provision, because according to paragraph 1 this Article sets out the guarantees during the administrative procedure. **ES:** clarify whether the determining authority should pay or just provide the service. **FR:** the costs for interpretation should not be met by the competent authorities. **NL:** leave open who will provide the service. **PL:** too vague; to replicate Art. 12(1)(b). **SI:** provision too wide. **COM:** it is not the intention to say that the determining authority is responsible to provide interpretation service.

⁵⁰ **IT:** might be an excessive workload for some MS. **RO:** what would be the practical implementation of this obligation at the level of the determining authority? It is the applicant choice which entity wants to communicate with (UNHCR or any other any other organisation)? **PRES:** the principle is from APD and should already be applied. **SI:** "*any other organisation*": should this organisation have a link with the UNHCR? **COM:** it depends on what the national law provides.

5. The determining authority shall ensure that applicants and, where applicable, their **representatives** ~~guardians~~, legal advisers or other counsellors have access to the information referred to in Article 33(2)(**eb**) **and (c)** required for the examination of applications and to the information provided by the experts referred to in Article 33(3), where the determining authority ~~has taken~~ **takes** that information into consideration for the purpose of taking a decision on their application⁵¹.
6. ~~The determining authority shall give applicants notice within a reasonable time of the decision taken on their application. Where a guardian, legal adviser or other counsellor is legally representing the applicant, the determining authority may give notice of the decision to him or her instead of to the applicant~~⁵².

⁵¹ **AT, FR:** scrutiny reservation. **SE:** reservation; in order for the applicant to fully present his or her case, SE thinks that access to the information in 8.5 should be given before a decision is taken. Hence replace "*has taken*" with "*will take*". **HU:** delete "*other counsellor*" as it could refer to anybody - a civil or even a human trafficker. Only the presence of a legal counsellor is acceptable. **IE, PL:** unclear how to guarantee data protection during the proceedings. **PRES:** no personal data should be exchanged according to Art. 33 (2) (b) and (c). **SI:** provision to be deleted.

⁵² **PRES:** provision was moved to article 35, where it is more appropriate and relevant.

Article 9

**Right to remain pending during the administrative procedure
examination of the application⁵³**

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 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].⁵⁴**
- 1a. **Where the applicant is in a Member State other than the one where he or she is required to be present in accordance with Article 4(2a) of Regulation (EU) No XXX/XXX [Dublin Regulation], Article 20 of Regulation (EU) No XXX/XXX [Dublin Regulation] shall apply. In such cases, the applicant shall not be considered as illegally staying in the territory of Member States within the meaning of Directive 2008/115/EC and shall not be removed from the territory of a Member State to a third country until a decision on the application is taken in accordance with the administrative procedure.**
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).~~

⁵³ **BG, EL, ES, IT, PT:** scrutiny reservation. **FR:** reservation. **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.

⁵⁴ **PL:** scrutiny reservation. **DE:** 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 member state is being identified. **HU:** clarify that it refers to only the first administrative procedure.

3. The ~~responsible~~ **competent** authorities of Member States may **make an exception from** ~~revoke~~ the applicant's right to remain on their territory during **the** administrative procedure where⁵⁵:
- (a) a person makes a subsequent application ~~in accordance with Article 42 and in~~ accordance with the conditions laid down in Article 43;⁵⁶
 - (b) a person is surrendered or extradited, as appropriate, to another Member State pursuant to obligations in accordance with a European arrest warrant⁵⁷ or to a third country ~~or to international criminal courts or tribunals;~~⁵⁸

⁵⁵ **BG:** scrutiny reservation, further clarification necessary to know if the decision will be appealed, and whether the appeal should suspend the execution; this delegation considers the decision should be subject to immediate enforcement. **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). **FR, IT:** add "*may refuse or revoke*". **IT:** should be a "shall" clause; "*competent authorities*" instead of "*determining authorities*"; add "*refuse or*" before "*revoke*". **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*". **PT:** scrutiny reservation on "*revoke*". **RO:** 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.

⁵⁶ **IT:** this must be better coordinated with Art. 19 (2) (c) of RCD. **NL:** include public order. **SE:** clarify this provision; can the decision be appealed? **EL:** reservation, leads to a possible refusal of the right to an effective remedy after a subsequent application is considered inadmissible, delete it.

⁵⁷ 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).

⁵⁸ **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.

(ba) a person is extradited, as appropriate, to another Member State or a third country for the purpose of judicial proceedings before an international criminal court or tribunal or for the execution of sentences adopted by such court or tribunal.

4. A Member State may extradite an applicant to a third country pursuant to paragraphs 3(b) or **3(ba)** only where the determining authority **or a national court or tribunal 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 State⁵⁹. **In the case of an extradition to a third country pursuant to paragraph 3(ba), the determining authority or a national court or tribunal may take into account elements in the decision of the international criminal court or tribunal which may be relevant for an assessment of the risk of direct or indirect refoulement.**

⁵⁹ **PT:** scrutiny reservation. **BG:** the provisions of para (4) must be clarified, in view of the various judicial and administrative bodies, which participate in the processing of applications. **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*". **RO:** the provision should not establish the obligation for the determining authority to rule on the extradition. The wording should refer to the competent authorities to rule on the extradition request, which in the case of Romania are the courts. **BE, FR, IE:** "*competent authority*" instead of "*determining authority*".

SECTION II

PERSONAL INTERVIEWS

Article 10

Admissibility interview⁶⁰

⁶⁰ **EL, ES, DE, SE:** scrutiny reservation. **PL:** the obligation to have this interview makes it impossible to accomplish the obligations provided for in Art. 34 (1), the admissibility interview should be optional. **SE:** it can be burdensome, unclear if it has to be carried out in all cases and if there is the deadline; also unclear if the applicant can be legally represented. **CZ:** the relation between Articles 10 and 11 is not clear; if the substantive interview is carried out, there is no need for the admissibility interview. **FR, IT:** reservation (same as for the mandatory admissibility interview under Dublin); unclear if two different authorities are needed for the two interviews; the interviews will create an administrative workload for the determining authorities. **EL:** it doesn't make sense to have the two interviews; not clear if the admissibility should be checked only when there are reasons of Art 36 (1) or always. **FI:** in case of repeated applications, Art. 10 should not apply, this exception should be stated clearly; unclear who conducts the admissibility interview. **BE:** scrutiny reservation (link with Dublin Reg.). **ES:** unclear if the admissibility and substantive interview could take place at the same time, unclear who will conduct the admissibility interview. **DE:** it must be clear that a special admissibility interview and an explicit decision on the admissibility of an asylum application are necessary only if the MS intends to reject the application as inadmissible. **COM:** it should be carried out in one month; applicants should be given the opportunity to explain why the grounds relating to safe CoO and first country of asylum do not apply to them; 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 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 admissibility under Dublin could be carried out by other authorities.

1. Before a decision is taken by the determining authority on the inadmissibility of an application for international protection **in accordance with Article 36 (2)**, the applicant shall be given the opportunity of an **admissibility** interview ~~on the admissibility of his or her application~~⁶¹.
 2. In ~~the admissibility~~ **such** interview, the applicant shall be given an opportunity to ~~provide adequate reasons~~ **submit all elements explaining** as to why the inadmissibility grounds provided for in Article 36(2) would not be applicable to his or her particular circumstances⁶².
- 2a. The admissibility interview may be conducted at the same time as the interview conducted to facilitate the determination of the Member State responsible for examining an application for international protection as referred to in Article 7 of Regulation (EU) No XXX/XXX (Dublin Regulation).**
- 2b. Where the admissibility interview is conducted in the Member State responsible, that interview may be conducted at the same time as the substantive interview referred to in Article 11.**

⁶¹ **DE:** scrutiny reservation; not clear if the authorities mentioned in Art. 5 (1) carry out this interview and what is the link to Dublin. **BG:** if it is mandatory for the MS, it should be mandatory for the applicant. The provision is ambiguous. The question is whether the administrative authority is obliged to initiate an interview before deciding on the admissibility of the application. Article 12 (5) outlines several possibilities where the interview could be omitted. The interview should not be mandatory, as this would create additional administrative burden. **COM:** it is linked to Article 36 and to Dublin (see COM explanation in the previous footnote); if the applicant doesn't cooperate it is considered implicit withdrawal. **CZ:** change para (1) as follows: "*Before a decision is taken by the determining authority decides on the admissibility of an application for international protection, the applicant shall be given the opportunity of an interview on the admissibility of his or her application unless the application is admissible on the basis of evidence available.*" (see also the proposed change in Art 12 (5) (a)).

⁶² **FR:** reservation. **SE:** delete "*admissibility grounds provided for in Article 36(1) would not be applicable to his or her particular circumstances*" and replace with "*application is admissible*". **EL:** the wording is different compared to Art. 11 (2).

Article 11

Substantive interview⁶³

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 **the merits of** his or her application⁶⁴.
2. In the substantive interview, the applicant shall be given an ~~adequate~~ opportunity to present the elements needed to substantiate his or her application in accordance with Regulation (EU) No XXX/XXX (Qualification Regulation), and he or she shall 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 statements⁶⁵.
3. ~~A person who conducts the substantive interview of an application shall not wear a military or law enforcement uniform.~~⁶⁶

⁶³ **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.

⁶⁴ **DE:** unclear if other authorities can be involved

⁶⁵ **BE:** same suggestion as for Art. 10 (2) (to use "*opportunity to submit all elements*"). Unclear if there is a deadline; it is also unclear if the person still has the opportunity to substantiate after the interview. **COM:** there is no deadline; if after the interview the person wishes to submit other elements, he/she can do so; in EN "or" means "and/or"; the lodging of the application will trigger the interview.

⁶⁶ **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 interviews⁶⁷

1. ~~The applicant shall be given an opportunity of a personal interview on his or her application in accordance with the conditions established in this Regulation.~~
2. ~~The personal interviews shall be conducted under conditions which ensure appropriate confidentiality and which allow applicants to present the grounds for their applications in a comprehensive manner.~~

⁶⁷ **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:** unclear why the possibility existing in the current acquis (Art. 15 (1) of the APD) of having other family members present was deleted. **LV:** 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. **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.

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).
4. Where simultaneous applications for international protection by a disproportionate number of third-country nationals or stateless persons make it difficult in practice for the determining authority to conduct timely personal interviews of each applicant, the determining authority 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.⁶⁸
- 4a. **A person who conducts the substantive interview of an application shall not wear a military or law enforcement uniform.**⁶⁹
5. **In addition to Article 42(3),** ~~t~~The personal interview may be omitted in the following situations where the determining authority⁷⁰:
- (a) is able to take a positive decision with regard to refugee status or a decision ~~declaring to~~ **consider that** the application admissible on the basis of evidence available⁷¹; or

⁶⁸ **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?

⁶⁹ **FR:** this should be the case not only for substantive interviews but also for admissibility interviews

⁷⁰ **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:** para (5) could be moved to Art. 11. **BG:** it is not clear whether "*personal interview*" refers to admissibility or examination on the merit. **SE:** delete "*in the following situations*".

⁷¹ **SE:** security reasons should be included. **ES, IE:** 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...*"

- (b) is of the opinion that the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond his or her control⁷².

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 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 nature⁷³.

- 5a. Without prejudice to paragraph 5, applicants shall be present at the personal interview and shall be required to respond in person to the questions asked.**
- 5b. An applicant shall be allowed to bring to a personal interview a legal advisor or other counselor who assists or represents the applicant. The absence of the legal advisor or other counselor shall not prevent the determining authority from conducting the interview. Where a legal advisor or other counselor participates in the personal interview, he or she shall be authorised to intervene at least at the end of the personal interview.**

⁷² **SE:** needs clarification.

⁷³ **SE:** maybe this para should be moved to Art. 11. **HU:** "*effective opportunity*" needs clarification. **CZ:** the only situation where an interview should not be conducted concerns health problems. **COM:** there is no time limit for applicants to submit further info. **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.

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 past⁷⁴.
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 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~~⁷⁵.

⁷⁴ **SE:** scrutiny reservation, disability could be included (before vulnerability) since it is a factor that may affect an applicant's ability during an interview. Replace "*problems*" with "*preconditions*".

⁷⁵ **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. **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 or in~~ another language which he or she understands and in which he or she is able to communicate clearly⁷⁶.
- 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.**
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 protection⁷⁷.

⁷⁶ **PL:** scrutiny reservation. **SE:** drafting suggestion for the second part of the para: "*gender requested by the applicant*". **SI:** reservation, prefers the current wording. **IT** (supported by **CZ**): 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.

⁷⁷ **SE:** add "*in accordance with this article*" after "*personal interview*"; the para would benefit from a clarification in line with Art. 14 (3) APD that it is only under the circumstances in this article that an interview can be omitted and this paragraph would be applicable.

Article 13

Report and recording of personal interviews⁷⁸

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 a personal interview** or a transcript **of the recording** of ~~every personal~~ **such an** interview⁷⁹.
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 recording⁸⁰.
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. ~~The applicant shall then be requested to confirm that the content of the report or the transcript correctly reflect the personal interview.~~

⁷⁸ **ES:** scrutiny reservation.

⁷⁹ **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. **LV:** the term "*transcript*" is used inconsistently throughout the article. **RO:** this provision is inconsistent with Art. 12 (3)

⁸⁰ **CZ, DE, ES, HR, IE, SE, SI:** scrutiny reservation. **CY, EL, NL, 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** (supported by **NL** during the meeting): 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? **PRES:** then the interview should in any case be recorded. **EL:** a report is needed however.

4. **The applicant shall be requested to confirm that the content of the report or the transcript of the recording correctly reflects the personal interview⁸¹.** Where an applicant refuses to ~~do so 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 application⁸².

⁸¹ **LT, PT, SE:** scrutiny reservation. **NL:** negative assessment, increase of administrative burden, possibility of abuse.

⁸² **NL:** negative assessment.

5. Applicants, **where applicable**, and 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 decision⁸³.
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.~~

⁸³ **PL:** scrutiny reservation regarding the access before the decision is taken. **NL:** reservation. **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.

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 citizenship⁸⁴.

⁸⁴ **FR, NL:** 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. **BE:** 10 years is too long. **NL:** link with Eurodac; 10 years is too short. **BG:** the period should be decided by the MS. **LT:** 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:** 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:** 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.*"

SECTION III

PROVISION OF LEGAL ASSISTANCE AND REPRESENTATION⁸⁵

Article 14

Right to legal assistance and representation⁸⁶

1. **An Applicants** shall have the right, **at his or her own costs**, to consult, **be assisted or represented by** a legal adviser or other counsellor, admitted or permitted as such under national law, on matters relating to ~~their~~ **his or her** applications, at all stages of the procedure.

⁸⁵ **AT, BG, DE, ES, LU:** scrutiny reservation. **BE:** reservation.

⁸⁶ **IE, IT, PT, RO:** scrutiny reservation. **BG, CY, CZ, EL, FR, LV, SI:** reservation. **SI:** the relation between (1) and (2) is not clear. **LV:** no support for the proposal that makes it mandatory for the Member States to ensure free legal assistance and representation at all stages of the asylum procedure due to huge financial and administrative impact and burden that will be created on the MS; would prefer to return to the existing system provided for in the APD, where MS are obliged to ensure free legal aid only in the appeal stage. This system is balanced and realistic, at the same time safeguarding the rights of the applicants in the procedure. **PT:** can't accept the drafting (legal advisor, counsellor etc.), in PT the legal assistance is given by NGOs (not lawyers, but legal experts). **EL:** free legal assistance at the administrative stage of the procedure is costly and it would require a lot of time for implementation. **BE** (supported by **IT**): it should be clarified from when this legal representation should be provided. **IT:** not clear what happens with the stages of the procedure completed without legal assistance **COM:** para (1) has a general nature, an applicant can seek his/her own assistance; para (2) has a more specific nature, it concerns the free legal assistance. It applies to the administrative phase and the appeal phase. NGOs are not excluded (see Art. 17). The type of experts that can provide advice at administrative stage depends on the national law; what "other counsellor" means depends on what is recognised by the national law (reply to PT and PL). General remark - what is now done by NGOs should be done more systematically. **CY:** no support for the extension of this right to the administrative procedure. This will add to the administrative and financial burden of the MS. Recommendation: as the APD foresees, applicants should be entitled to receive free legal and procedural information during the administrative procedure, and they should receive free legal assistance only at the stage of the first level of appeal.

2. Without prejudice to **paragraph 1** ~~the applicant's right to choose his or her own legal adviser or other counsellor at his or her own cost~~, an applicant may request free legal assistance and representation **in the administrative procedure and in the appeal** ~~at all stages of the procedure in accordance with Articles 15 to 17. The applicant shall be informed of his or her right to request free legal assistance and representation at all stages of the procedure~~⁸⁷.

⁸⁷ **DE:** scrutiny reservation. **CY, ES, FR, HR:** reservation. **HR:** free legal assistance should be only before courts, otherwise it is too costly. **CZ:** cannot agree, that doesn't exist for the citizens; if it does, it is done by the NGOs. **PL:** opposed on the substance; free legal assistance during the administrative stage of the procedure will not limit the number of appeals. At national level, free legal assistance is given by NGOs, not financed from public funds; it would be too costly. **PRES:** according to Article 17 (1) legal assistance can be provided by legal advisers or other counsellors admitted or permitted under national law to assist or represent the applicants, including non-governmental organisations accredited under national law to provide advisory services or representation. **DE:** administrative burden + significant costs. The provision is superfluous. The obligation to provide information on the possibility of free legal assistance already results from Article 8 (2) (c). If a provision specifically mentioning this obligation is considered necessary the right place would be Article 8 (2). **CY:** difficult and costly. **FR:** makes sense only for appeal. **ES:** the applicant should be informed at a precise moment. **AT:** not ok with free legal assistance during all the stages of the procedure, not clear how Art. 14 and 15 articulate. **IT:** add the following sentence at the end of para (2): "*Free legal assistance in the appeal procedure is subject to national legislation.*"

Provision of free legal assistance and representation⁸⁸

1. ~~Member States shall, at the request of the applicant, provide free legal assistance and representation in the administrative procedure provided for in Chapter III and in the appeal procedure provided for in Chapter V.~~
2. ~~For the purposes of~~ **In the administrative procedure, Member States shall, upon the request of the applicant and following the lodging of the application, ensure that he or she is provided with the free legal assistance and representation, which shall, at least, include**⁸⁹:
 - (a) ~~the provision of information on the procedure in the light of the applicant's individual circumstances;~~

⁸⁸ **DE, ES, IE, NL, PT, RO, SI:** scrutiny reservation. **CZ, CY, IT, LV:** reservation. **SE:** it would be easier to structure the article in two parts: rights and derogations; MS should determine the derogation in general and the determining authorities should do that in individual cases. **CY:** opposition to extend this right to the administrative procedure. This will add to the administrative and financial burden of the MSs. Recommendation: as the APD foresees, applicants should be entitled to receive free legal and procedural information during the administrative procedure, and they should receive free legal assistance only at the stage of the first level of appeal. **HU:** it is necessary to clarify whether MS have to provide free legal assistance in any case or if they can make restrictions, as they can currently, according to the Directive (second option is preferable because in many cases free legal assistance is not available to citizens either, due to practical reasons. Drafting of the Directive is preferable.

⁸⁹ **HR:** scrutiny reservation. **FR:** delete "*and representation*". **HU:** can't support legal assistance at every stage of the procedure. **AT:** replace "*For the purposes of the administrative procedure, the free legal assistance and representation shall, at least, include:*" with "*In the administrative procedure provided for in Chapter III, Member States shall ensure that, on request, applicants are provided with legal and procedural information free of charge. This shall include:*"

- (b) assistance in the preparation of the ~~application and~~ personal interview, ~~including and~~ participation in the personal interview **where requested by the applicant** as necessary⁹⁰;
- (c) ~~explanation of the reasons for and consequences of a decision refusing to grant international protection as well as information as to how to challenge that decision.~~
3. The provision of free legal assistance and representation in the administrative procedure may be excluded ~~where~~⁹¹:
- (a) **where, upon disclosure of his or her financial situation, the applicant is considered to have sufficient resources**⁹²;
- (b) ~~the application is considered as not having any tangible prospect of success in the cases referred to in Article 40(1)(a) and (b)~~⁹³;

⁹⁰ **CZ, SE:** clarification needed regarding the "*assistance in the preparation of the application*", delete it (CZ). **PL:** this could be problematic at the border for ex. **FI:** the possibility to have assistance during the interview does not exist at national level, it would require a modification of the national legislation - should be deleted. **COM:** this is meant to substantiate the application after lodging and to offer assistance with one's own procedure not information in a general sense; **AT:** delete (b).

⁹¹ **DE, HR:** scrutiny reservation. **SE:** reservation; add "*by the MS*" after "*excluded*" to clearly state that this is to be determined at national level not by the determining authority. **NL:** an additional exclusion should be added - if there is a high chance of getting a refugee/subsidiary protection status. **FR:** delete "*and representation*". **HU:** unclear who can exclude the possibility of a legal counsellor. **COM:** there is an element of discretion regarding the exclusion (same for (5)). **AT:** modify as follows: "*The provision of free legal and procedural information free of charge assistance and representation in the administrative procedure may be excluded where:*"

⁹² **EL:** "*sufficient resources*" needs to be clarified and also the means by which this should be monitored. **DE:** it must be ensured that the applicant discloses his/her financial situation. Proposal: "*the applicant, who has to disclose his financial situation, has sufficient resources*". **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.

⁹³ **SE:** add "*clearly*" before "*not having*" (the scope could be narrowed down to applications that clearly have no tangible prospect of success). **CZ:** how does 15 (3) (b) articulate with 15 (2) (b)? **SI:** 15 (3) (b) and 15 (2) (b) are not aligned. **IT:** modify letter (b) as follows: "*(b) the application is considered as not having any tangible prospect of success manifestly unfounded*;"

- (c) **where** the application is a subsequent application⁹⁴.
4. ~~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~~⁹⁵.
5. The provision of free legal assistance and representation in the appeal procedure may be excluded ~~where~~⁹⁶:
- (a) **where, upon disclosure of his or her financial situation, the applicant is considered to have sufficient resources;**⁹⁷

⁹⁴ **PL:** difficult to know when an application is a subsequent one. **SE:** add "*which has not lead to the initiation of a new procedure*" in the end; if a subsequent application has led to the initiation of a new procedure the applicant should have the same right to free legal assistance and representation as other applicants. Add a new point and a last sub-para as follows: "*(d) the application is likely to be regarded as well-founded. If the provision of free legal assistance and representation has been excluded in accordance with (d) the applicant shall have the right to free legal assistance and representation before an application is rejected.*" It should be possible to make an exception from the right where the application is likely to be considered well-founded. Having to provide assistance to applicants that are likely to receive a positive decision would lead to a significant financial burden and would prolong the procedure without the applicants benefitting correspondingly. If during the process, circumstances arise that may change the likelihood of a positive decision, the applicant should have the right to assistance.

⁹⁵ **HU:** no support for legal assistance at every stage of the procedure.

⁹⁶ **HU:** unclear who can exclude the possibility of a legal counsellor. **DE:** scrutiny reservation; 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:** same suggestions as for para (3) (including for point (b)).

⁹⁷ **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.

- (b) ~~the appeal~~ **where it** is considered as **that the appeal does** not having any tangible prospect of success⁹⁸;
- (c) **where** 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.

5a. 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 on **the** 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~~⁹⁹.

Article 1615 [former Article 16]

Scope of legal assistance and representation¹⁰⁰

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**¹⁰¹.

⁹⁸ **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.

⁹⁹ **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. **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.

¹⁰⁰ **CZ:** reservation. **HR, IE, PT, SI:** scrutiny reservation.

¹⁰¹ **SI:** if it can be an organisation, it should be specified in the text. **RO:** clarification on replacing „*shall enjoy access*” with „*shall be granted access (...)*” **PRES:** “*shall be granted*” is more appropriate because the access needs to be requested.

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.

In ~~those~~ **such** cases, the ~~determining~~ **competent** authorities shall¹⁰² make access to such information or sources available to the courts or tribunals in the appeal procedure. ~~;~~ ~~and~~ **The competent authorities shall also ensure the necessary procedures are in place for** that the applicant's right of defence **is to be respected and 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, insofar as the information is relevant for examining the application or for taking a decision to withdraw international protection¹⁰³.

¹⁰² **CZ:** problematic if confidential information is used. **FR, 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). **RO:** clarification on the following issues: replacing the obligation to „*establish in national law procedures guaranteeing that the applicant's rights of defence are respected*” with the obligation to „*ensure that the applicant's right of defence is respected*” (It is a wide obligation that can create difficulties in practice, in justifying the compliance with the right to a defence, as long as there are procedures guaranteeing this right, whose application must be followed). How does the determining authority fulfil its obligation to ensure that the applicant's right of defence is respected? Given that the determining authority ensures the courts access to such information or sources in the appeal procedure, such an obligation to grant access to the counsellor or other legal adviser during the examination of the application or in taking a decision withdrawing international protection, does not justify. The current wording in APD should be maintained as it gives the possibility, and not the obligation, for Member States to conduct themselves this way.

¹⁰³ **HU:** delete the last sub-para of (2) (b). **IT:** for the last sup-para of (2) - not clear if the legal adviser has to be authorised before access or it is an ad hoc security check for every person. **COM:** the counsellor/legal adviser has to undergo a security check, which could be on an ad hoc basis or a general authorisation

3. The legal adviser or other counsellor **admitted or permitted as such under national law** 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)¹⁰⁴.
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 representation¹⁰⁵

1. **Member States shall ensure that** ~~Free~~ legal assistance and representation ~~shall be is~~ provided by legal advisers or other counsellors **admitted or permitted** under national law to assist or represent the applicants, **including** ~~or~~ non-governmental organisations accredited under national law to provide advisory services or representation¹⁰⁶.

¹⁰⁴ **HU:** delete "*other counsellor*".

¹⁰⁵ **BE, CZ, ES, LV:** reservation. **FR, IE, PT, RO, 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. **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.

¹⁰⁶ **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 free legal assistance and representation in relation to applications for international protection or they shall apply the existing rules for domestic claims of a similar nature, provided that those rules do not render access to free legal assistance and representation impossible or excessively difficult.
- 2a. Member States shall lay down specific rules concerning the exclusion of the provision of free legal assistance and representation in accordance with Article 16(3) and (5).**
3. Member States may also impose monetary limits or time limits on the provision of free legal assistance and representation, provided that such limits do not arbitrarily restrict access to free legal assistance and representation. As regards fees and other costs, the treatment of applicants shall not be less favourable than the treatment generally given to their nationals in matters pertaining to legal assistance¹⁰⁷.
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 applicant¹⁰⁸. **For that purpose, applicants shall be required to immediately inform the competent authorities of any significant change in their financial situation.**

¹⁰⁷ **BE:** the second sentence is problematic.

¹⁰⁸ **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.

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.~~

[...]