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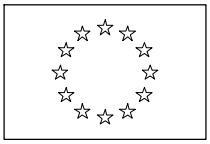

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18.6.2002
COM(2002) 326 final

2000/0238 (CNS)

Amended proposal for a

COUNCIL DIRECTIVE

on minimum standards on procedures in Member States for granting and withdrawing refugee status

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. BACK GROUND

On 20 September 2000 the Commission adopted a draft Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status[1].

The proposal was sent to the Council, the European Parliament and the Economic and Social Committee.

The Economic and Social Committee delivered a favourable opinion on 25 and 26 April 2001 (CES 530/2001).

On 20 September 2001 the European Parliament adopted its Opinion in plenary, approving the Commission proposal subject to amendments and calling on the Commission to amend its proposal accordingly. On the basis of a report presented to the plenary by Mr Watson, chairperson of the Committee on Citizen's Freedoms and Rights, Justice and Home Affairs, the European Parliament has adopted 106 amendments (A5-0291/2001)[2].

In the Council the proposal has been the subject of negotiations in the course of 2001. During the Belgian Presidency, the December 2001 Council adopted Conclusions with regard to the approach taken by the future Directive[3].

The declaration of the Laeken European Council requested the Commission to bring forward a modified proposal.

2. AN OVERVIEW OF THE NEW PROPOSAL

In conformity with the Council Conclusions, this proposal sets out a different structure for asylum procedures in Member States and amends a considerable number of the minimum standards proposed by the Commission.

In addition, it takes over a number of the amendments of the European Parliament, either in the recitals or in the text of the proposal.

The following key changes have been made:

1. Following suggestions from certain Member States and the European Parliament, most if not all guarantees in Chapter II have been modified, i.e. either upgraded in terms of the level of protection accorded to applicants for asylum or qualified, to take into account specific circumstances or exceptions occurring in practice, methods or safe guards against abuse and certain national conditions or particularities;
2. In accordance with the Council Conclusions the classification of procedures of former chapters III and IV has been re-organised. Instead of a separate admissibility procedure, applications considered as inadmissible may be processed in accelerated procedures;

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1 COM (2000) 578 final, OJ C62 E, 27.02.2001, 231

2 OJ C 77E, 28.03.2002, 94

3 (15107/1/REV 1). Press release 14581/01 (Presse 444), 2396th Council Meeting Justice, Home Affairs and Civil Protection, Brussel, 6 and 7 December 2001

3. Following suggestions from some Member States special standards on two new types of accelerated procedures are introduced: a procedure to examine applications lodged at the border or on the entry to the territory and a procedure in which the need to initiate a new procedure for a subsequent application is assessed;
4. New cases of inadmissible applications are introduced, whilst other cases of applications, where there is evidence of misconduct by the applicant or abuse of the procedure, may also be processed in accelerated procedures;
5. Obligations to set a reasonable time limit for taking a decision under the regular procedure, to consider non-compliance with this time limit as a negative decision against which an applicant can lodge an appeal, as well as obligations for appeal bodies to take decisions within a reasonable time limit have been deleted;
6. The obligation to introduce a two level appeal system, in which a court of law is competent at least once to review a decision is replaced, in accordance with general principles of Community law, by the right of every applicant for asylum to have an effective remedy before a court of law against a decision on his application, leaving the institutional arrangements for review or appeal to national discretion.
7. Following an amendment from the European Parliament, it is proposed that the implementation of this particular asylum Directive should be evaluated at regular intervals not exceeding two years.

COMMENTARY ON ARTICLES

Recitals

The recitals have been altered to accord with the changes in the text. In addition, they reflect (parts of) amendments 2, 3, 4, 5, 8, 11, 17, 21 of the European Parliament.

CHAPTER I

Scope and definitions

Article 1

This Article defines the purpose of the Directive.

Article 2

This Article contains definitions of the various concepts and terms used in the provisions of the proposal. Following the changes to the appeals chapter, the definitions of "reviewing body", « appellate court » and « decision » are deleted as redundant. The reference to a determining authority of a "judicial" character as well as the references to the different locations for detention have been deleted as redundant. A definition of "representative" is added to clearly describe the different persons or organisations representing unaccompanied minors in the Member States. It follows the definition in the 1997 Third Pillar Resolution on unaccompanied minors who are nationals of third countries. The term "refugee" is defined in the modified proposal in connection with the proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection (COM (2001) 510 final). A separate definitions of "final decision" is introduced to improve the legal clarity of the text.

Article 3

The reference to the Protocol on asylum for nationals of Member States of the European Union, annexed to the Treaty establishing the European Community, is removed to a recital.

Article 4

In order to emphasise that Member States are free to provide for more favourable standards on procedures, which was asked for by the European Parliament in its amendment number 18, a new Article has been inserted to that purpose.

CHAPTER II

Basic principles and guarantees

Article 5

Former Article 4 has mainly been amended to take account of a number of proposals discussed at expert level in the Council.

(1) This paragraph ensures that Member States do not reject or exclude an application for asylum from examination on the sole ground that it has not been made as soon as possible. Time limits for requesting protection as such are not prohibited, but only insofar as they may be used to circumvent an appropriate examination of an application.

(2) According to the second paragraph Member States may require that applications be made in person, meaning that in such a case a legal adviser or other counsellor can not act on behalf of the person.

(3) Although applications are usually made in person pursuant to §2, some Member States allow for applications to be made on behalf of others. Building upon former Article 4§4, which accepted this practice, this proposal sets forth a number of additional guarantees in this paragraph and the subsequent one. §3 provides rules on the issue of persons who cannot make an application on their own behalf (minors below an age to be determined by national law, cases of unaccompanied minors in which a representative has to file the application).

(4) This paragraph, on the other hand, provides minimum guarantees in case Member States would like to provide by law that an application for asylum can also be made by an applicant on behalf of dependants (spouse, minors etc). In order to prevent any misunderstanding or abuse, the person concerned must explicitly request that an application be made on his/her behalf. This implies that this person can no longer lodge a separate application. If this person lodges a separate application, Member States may reject the application on the basis of the application that was already made.

(5) This paragraph is to ensure that after an application is made in a Member State, the refugee status determination procedure must start without delay, even if formal requirements are to be fulfilled on the basis of national law (e.g. filling in an application form, reporting to a specific location for identification purposes).

(6) This paragraph incorporates two obligations formerly listed in different Articles: the obligation to ensure that all authorities likely to be addressed at the border or on the territory have the instruction to forward applications to the competent authority for examination (former Article 4§3) and the obligation to give training to the personnel of these authorities for that purpose (former Article 14§1(a)).

Article 6

(1) The scope of the Article has been clarified by adding a reference to determining authority. The obligation concerns the right to remain pending the decision taken in first instance. The right to remain pending review or appeal depends on the application of Articles 39 and 40.

(2) The second paragraph refers to a new Article that allows Member States to have a special procedure for subsequent applications (see Articles 33 and 34). A preliminary examination would allow Member States to examine whether or not there is reasonable cause to "open a new asylum procedure". From the moment it is decided not to do so, Member States are free to remove applicants from their territory on the basis of an earlier decision. The issue of suspensive effect of review or appeal is dealt with in Chapter IV.

Article 7

Former Articles 6, 13§1, 14§1(d) are assembled in one Article under the heading of requirements for the examination of applications. The standards reflect key elements of a fair and efficient refugee determination process and are therefore grouped together. Point (b) of Article 7§1 splits the obligation of former Article 14(1)§(d) into an obligation to obtain country of origin information and the one to provide the personnel examining and deciding on applications with this information. The obligation in the second paragraph has undergone little substantive changes.

Article 8

The notion of a fair and efficient procedure should also be reflected in standards on the formal and material requirements for decisions themselves. These standards were previously submerged in the Article on procedural guarantees for applicants. It is now proposed to introduce a separate Article, more or less taking over the wording of former Article 7(d).

Article 9

This Article sets out guarantees for every applicant during the examination of his application for asylum by the determining authority both under the accelerated procedure and the regular procedure. Former Article 7 has undergone a number of changes of substance following discussions in the Council.

Paragraph 1 has been fine-tuned as follows.

a) The provision on information underlines that information must be given in time to enable the applicant to both exercise his rights and comply with the obligations as referred to in this Directive. The method is not prescribed. As suggested by amendment 23 of the European Parliament, this could be done by means of an information sheet; e.g. a standard document about the procedure in a language an applicant can be reasonably expected to understand. The point of the change is also to underline that the information need not be given all at once, as long as it is given in time to exercise rights and to comply with obligations.

b) It is now clarified that Member States shall at least ensure that when the applicant is called upon to be interviewed before a decision in first instance is taken – be this the interview described in Articles 10 to 12 or any other interview at this stage of the procedure – he shall be provided with the services of an interpreter.

c) Instead of providing an opportunity for the applicant to communicate with (a representative of) the UNHCR or any other organisation working on behalf of the UNHCR, Member States are merely obliged not to deny the applicant such an opportunity.

d) This subparagraph introduces the concept of notification, underlining the need for an official communication to the applicant of his or her decision. It should be part of the set of minimum standards for first stage harmonisation. Two obligations are imposed. Firstly, the applicant for asylum should be notified of the decision in first instance within reasonable time after the decision has actually been taken. Secondly, the decision should be notified in an appropriate manner. Notification should ensure that the decision is delivered in person. This can be done by sending it by mail to the address the applicant has supplied or actually handing over the decision to the applicant himself (e.g. in a reception centre where he or she is awaiting the outcome of the procedure). To allow flexibility in implementing this potentially far-reaching obligation, it is added that if a legal advisor or other counsellor represents the applicant, the decision can be notified to this advisor or counsellor instead. Representing in this respect means that the advisor or counsellor replaces the applicant in certain formal legal acts. If the decision can not be notified as described above, e.g. because the applicant has disappeared, the decision should be notified in another appropriate manner. Depending on national practice, this could be through publication in an official journal, delivery at the last known address of the applicant or to the legal advisor or other counsellor last known to be representing the applicant etc. Disappearing should not prevent the promulgation of the decision.

e) As in the first proposal, the decision itself does not require translation into a language the applicant understands. As applicants in most if not all cases may not read or fully understand the official language of the Member State, they should at least be informed of the purport of the decision in a language they can reasonably be expected to understand. It

has been suggested by Member States that the text should reflect that the legal advisor or other counsellor concerned (with the aid of an interpreter) should in principle rather do this task. However, if an applicant is not represented, it is necessary that Member States themselves ensure an appropriate communication to the applicant by other means in keeping with the principle. Member States can, for instance, attach a (standard) information leaflet to the decision.

Paragraph 2 replaces former Article 8(3). Paragraph 3 provides that most of the guarantees are also applicable during appeal or review. However, it is not necessary to take up in the complete list of guarantees. The obligation under sub (a), to inform the applicant of the (entire) procedure to be followed, has in any case already been complied with in first instance. As for the obligation under sub (e), the national level is considered a more appropriate level to regulate the communication of judgements of appeal bodies to the persons concerned.

Article 10

Articles 10, 11 and 12 contain standards relating to the personal interview, offering both guarantees to applicants where necessary and flexibility to Member States where appropriate. Former Article 8 is split into three different provisions outlining respectively the personal scope of the obligation to conduct an interview, the objective requirements for the setting of the interview and the function of the (result of the) personal interview, i.e. the transcript, in the determination process.

Article 10 concerns those invited to a personal interview before a decision is taken by the determining authority. Article 10 substitutes former Article 8§1 and §5. Depending on the stage and nature of the procedure, this Article refers to the personal interview on the admissibility and/or the substance or to the personal interview on the substance.

The principle that each applicant for asylum should have the opportunity to submit his case in a personal interview is fully maintained in §1. As in all administrative procedures, an exchange of information is important for a decision to be taken on the basis of the relevant facts. Asylum procedures generally differ from other administrative procedures in the sense that applicants for asylum are not always able to provide the administration with clear-cut, written evidence to substantiate a need for international protection. Since in most if not all asylum cases the determining authority must assess the credibility of statements and/or of the applicant on the basis of all available facts, it is imperative for a proper assessment that applicants have, as much as possible, the opportunity to bring these forward in a personal manner, i.e. in an interview.

The possibility of deferring personal interviews is left to national discretion.

It is found that in practice a personal interview is not necessary in a certain number of cases and that this should be regulated in this Directive. The four exceptions to the principle provided for in §2 build upon the cases described in former Article 8§5. This is considered to be an exhaustive list of cases in which Member States are not obliged to offer the applicant the opportunity to be interviewed. In all other cases, Member States must ensure that the applicant has at least the opportunity of an interview. Whether or not the applicant avails himself of this opportunity is not important for the purposes at stake. Hence §4, which provides that the fact that no interview has taken place, does not prevent the determining authority from taking a decision, ensuring that the determination process can be completed in such cases.

To uphold the principle outlined above, a provision is needed in case the relevant facts can not be submitted in the specific setting of a personal interview for reasons beyond the control of the applicant. § 3 therefore provides that in the cases referred to in the second subparagraph of §1, §2 (b), (c) and (d) the applicant must be offered the opportunity, before a decision is

taken by the determining authority, to make comments in lieu of a personal interview, where appropriate through the assistance of a legal adviser or other counsellor and/or, in the case of a minor, a legal guardian.

Article 11

Article 11 merges all provisions on the requirements for the organisation of the personal interview. §1 takes up former Article 8§4 without changing the language. §2 ensures in general terms that personal interviews are conducted in conditions which allow applicants to present the grounds for their applications in a comprehensive manner, including the issue of selecting an interpreter. It replaces former Article 8§7, which merely regulated the specific issue of a gender sensitive approach during the interview. §2(b), last sentence, allows Member States for economical reasons to choose an interpreter of a more common language when it does not harm the interests of the applicant.

Article 12

This Article distinguishes between two different situations relating to the status of the transcript of the personal interview in the procedure. It joins together and fine-tunes § 2 and 6 of former Article 8.

(1) This paragraph introduces the obligation to make a transcript of every personal interview.

(2) As a reflection of the principle of a fair and effective procedure this paragraph lays down the general rule that Member States have to ensure that in all cases applicants have timely access to the transcript of the personal interview on which the decision is or will be based. This enables the applicant to exercise his appeal rights properly and it enables appellate bodies, where appropriate, to verify whether the decision is based on relevant information. It is underlined that the obligation is no longer restricted to the regular procedure.

(3) This provision regulates the specific situation in some Member States where the applicant's approval is requested on the contents of the transcript of the personal interview. Where requested, it must be ensured that the applicant has the opportunity to request or propose corrections because of mistranslation or misconceptions appearing in the transcript. In order to ensure the effectiveness of the decision making process, a complementary provision is proposed in case the applicant refuses to agree with the contents of the transcript of the personal interview. Member States should in such a case be able to take a decision on the application for asylum.

Article 13

Former Article 9 (legal assistance) is split into two Articles.

Article 13 sets out the right to legal assistance during the asylum procedure and Article 14 the rights of legal advisers or other counsellors. Legal assistance is understood to be any form of assistance or representation by a person relating to the examination of the asylum application. It may be given by a legal adviser or other counsellor qualified to do so in accordance with national law.

In Article 13 further conditions are added for the applicant to qualify for free legal assistance after a negative decision.

§1 lays down the general rule on the right to legal assistance and representation. Every applicant must have the opportunity to consult (instead of to contact) in an effective manner a legal adviser or other counsellor on matters relating to their asylum applications at all stages of the procedure, including following a negative decision.

§2 lays down the rules for free assistance after a negative decision. Upon suggestion of some Member States new qualifying factors are added to the availability of legal assistance free of charge after an adverse decision by a determining authority. First, applicants will have to request such assistance. Second, Member States may subsequently provide for an examination of its necessity. Such an examination may include a test of sufficient resources and a legal merits test. Where Member States apply these tests, Community law should not go into detail as to the grounds and the procedure, but rather merely lay down the general approach. It is therefore proposed to merely lay down the standard adopted in Article 47 of the Charter of Fundamental Rights of the European Union. Third, Member States are allowed to restrict legal assistance given free of charge to those legal advisers or other counsellors who are specifically designated by national law to assist and/or represent applicants for asylum. This means that applicants will remain free to choose a legal adviser or other counsellor, but can no longer invoke the right to free legal assistance in such cases.

Article 14

This Article provides three rights of legal advisers or other counsellors: the right to access to the file of the applicant, the right to visit the applicant in closed areas and the right to attend a personal interview. The rights in the first and third paragraph are new.

1) The legal adviser or other counsellor shall enjoy access to the information in the applicant's file to be able to properly represent his client's interests in all situations. However, this rule does not mean that such persons have access at any time or to all information. Member States are allowed to maintain practical arrangements in this respect. As regards the information held in the file of the applicant, Member States will only be obliged to grant access to the information which is liable to be examined by the authorities referred to in Chapter IV.

   Former Article 9§2 has been revised to both better convey the underlying principle and delineate the obligations of Member States towards granting access to legal advisers or other counsellors to applicants for asylum in closed areas. Firstly, it is now proposed that Member States may only control access to applicants for asylum in closed areas where it is necessary for the security of the area or necessary to ensure an efficient examination. The reference to quality of legal assistance is substituted with a reference to security in these areas. In order to ensure efficient examination of asylum applications in closed areas, including compliance with time-limits for decision making laid down in national laws or regulations, Member States can choose to set rules for the timing and the duration of the access to asylum applicants by legal advisers or other counsellors. Secondly, the right is not open to any legal adviser but restricted to the legal advisers or other counsellors who actually assist and/represent the applicants staying in closed areas. Lastly, following amendment 34 of the European Parliament, it is added that the restrictions on the basis of this paragraph should be strictly necessary for the purposes described and should never result in the effective annulment of the right to have access to legal assistance.

2) Contrary to former Article 9§3, this provision extends the presence of a legal adviser or counsellor at personal interviews to interviews under the accelerated procedure. In addition, there are some amendments in the language.

Article 15

This Article introduces the necessary *additional* procedural guarantees for unaccompanied minors following the December 1998 Vienna Action Plan and the Scoreboard.

§1 specifies the procedural guarantees to be provided to all unaccompanied minors, irrespective of the nature of the procedure used to process their application. A change of

definition has occurred (i.e. the introduction of the notion of representative), whilst a cross-reference to Article 10 (3) is necessary (the possibility of not inviting a minor for a personal interview on the application for asylum). The idea of the original proposal, that the representative assisting an unaccompanied minor, could, where appropriate, discuss with the unaccompanied minor the need to continue the procedure where other options appear to be available, is fully maintained.

§2 focuses on the conditions for examining and deciding on an application made by an unaccompanied minor. Former Articles 10(2), 14 (1)c) and (d) are joined together. As a minimum standard the personal interview must be conducted by a person who has the necessary knowledge of the special needs of minors (sub a). This also applies for the official who takes the decision on the application (sub b).

§3 lays down two procedural standards in case a Member State uses medical examinations to determine the age of unaccompanied minors. Subparagraph (a) has been pruned back to its essentials: the obligation to inform the unaccompanied minor of the possibility of such a medical examination. Whilst an unaccompanied minor can refuse to undergo a medical examination, this refusal should not prevent the determining authority from taking a decision on his application. To ensure a fair assessment it is therefore proposed to add by way of a guarantee that a rejection of the application can not be based solely on the refusal of the minor. This guarantee is similar to the one relating to a refusal to approve with the transcript of the interview in Article 12§2. It goes without saying that the methods used for medical examinations to determine the age of unaccompanied minors should be safe and respect human dignity. The former Article 10(3)(a) is deleted.

Article 16

This Article lays down the investigative standards common to the examination of all applications for asylum. Former Article 25 has seen mainly drafting changes. However, it has been moved from the chapter on substantive determination procedures, regular procedures section to the chapter on basic principles and guarantees as the examination under the accelerated procedure must, in accordance with the Council Conclusions, entail a substantive examination in light of the Geneva Convention. The standards are therefore also fully applicable under the accelerated procedure.

Article 17

Article 17 sets a minimum framework for assessing the legitimacy of cases of detention but takes a different angle than former Article 11. Instead of exhaustively enumerating legitimate grounds for detention, it is proposed to limit the scope of Community law related to first stage harmonisation to laying down guarantees as regards the exceptions to the principle that an applicant should not solely be detained because he is an applicant for asylum. The guarantees listed in §1 are twofold: a description in general terms of the aim of detention in an asylum procedure and procedural guarantees. As to the aim, Member States should base individual grounds for detention on either the need for an efficient examination of an asylum application or the prevention of absconding by the applicant. The procedural guarantees, on the other hand, are that the detention is in accordance with a procedure laid down by national law or regulation that each decision to detain a specific applicant is either objectively necessary for an efficient examination or, in the case of a risk of absconding, based solely on an assessment of the personal conduct of the applicant. Moreover, initial and subsequent judicial reviews of the detention order should take place. The courts in question should have the necessary competence to review detention orders pursuant to this provision.

Following practice in some Member States, §2 introduces the option for Member States to detain applicants at the beginning of the procedure in order to take a quick decision. The time limit of two weeks serves as a basic guarantee against abuse.

It is underlined that the scope of this Article is limited to the stage of the examination of an application for asylum by the determining authority. It follows from the wording of §1 that national policies on detention for other reasons (national security, penal proceedings etc) remain untouched. Moreover, Member States are free to provide for detention on other stages of the procedure, such as detention to safeguard the possibility of expulsion or detention of an applicant for asylum whose application is rejected.

Article 18

In order to strengthen the mechanism for determining the Member State responsible for examining an application for asylum in the EU, it is proposed that Member States may detain an applicant awaiting his or her transfer to another Member State. This provision should not be incorporated in Article 17 since the temporal scope is different from the cases described in that Article, for the transfer to another Member State will take place *after* the application is rejected as inadmissible. The proposal for a Council Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national (COM (2001) 447 final) stipulates that transfer shall take place within six months. In cases where an applicant is detained, the transfer should be expedited. It is therefore proposed to limit detention in this situation to one month.

Article 19

Articles 19 and 20 represent a significant addition to the minimum standards in the original proposal. They are the result of extensive discussions at expert level on the principles laid down in former Article 16. It is considered imperative for reasons of efficiency to lay down clear and precise standards on what to do when procedures are interrupted or broken off, either as a result of an explicit withdrawal (Article 19) or for other reasons (Article 20). Whilst the standards exhaustively describe procedural options Member States have, they also spell out the guarantees necessary to ensure an appropriate examination of applications in these cases.

This Article is about *explicit* withdrawal of the application, therefore withdrawal by the applicant himself either in writing or orally, done in person or by his legal adviser or other counsellor. Discussions at expert level showed the need of Member States for flexibility in these cases. Therefore the Directive offers a choice to Member States whether to discontinue the examination or to reject the application if the applicants wants to withdraw his application. It is assumed that a rejection on the merits of the case (i.e. a rejection because the applicant has no well founded fear for persecution according to the Geneva Convention) is only possible if the determining authority has enough information to do so (in most case presumably only after the personal interview). If the examination is discontinued after withdrawal without a decision, a notice in the file will serve as a proof of the withdrawal (§2). This is important in case the applicant shows up afterwards and lodges another application or wishes to re-open his earlier application. This Article does not specify what happens in such cases. Member States will have to examine the application in accordance with the other standards. For this, Article 38 (right to an effective remedy) provides a possible mechanism.

Article 20

This Article deals with the situation in which an applicant for asylum does not explicitly withdraw his application but appears to have no interest in a decision on this application. Admittedly, the behaviour of an applicant can justify the conclusion that he *implicitly* wants to withdraw or abandon his application and this should be acknowledged in the Directive.

§1 provides for the grounds for such an assumption of withdrawal or abandonment of an application. In general it concerns cases of non-compliance (with obligations or time limits, etc.) or lack of co-operation, including the cases where a person has disappeared (without authorisation). Like in Article 19§1, Member States are free either to take a decision to discontinue the examination of the application or to reject it.

§2 is about what should happen if the applicant re-appears. Regardless of the national arrangements in place to deal with such cases, the basic guarantee shall have to be that the person concerned can not be removed to his country of origin before it is established that he has no well founded fear for persecution. Though this idea underlies the whole Directive, it is of a specific interest here when an individual case is not re-opened. If a case is re-opened, Member States may decide to take up the examination at the stage in which the application was discontinued previously or choose to start from the beginning. If the application has been rejected instead of discontinued, and the rejection has become final, Member States may apply the specific procedure for subsequent applications described in Articles 33 and 34.

Article 21

Minor drafting changes have been made in the first sentence and the last subparagraph. The original wording of Article 17 (c) has been changed into 'to present its views' to avoid the impression, that Member States are obliged to involve the UNHCR in appeal proceedings in the same way as the applicant and the determining authority are involved in such procedures.

Article 22

In a recital it is acknowledged that Council Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data applies to transmissions of data under the terms of this Directive and that this should also apply to transmissions of data to UNHCR. Former Articles 15§1 and §4 have therefore been deleted. The use of data by UNHCR itself is not subject to national law but is governed by strict norms on confidentiality by the United Nations General Assembly.

CHAPTER III

Procedures at first instance

Article 23

Article 23, indicating the choice of procedures Member States have, is a new provision. It takes into account the Council Conclusions which underscored that the Directive should contain an accelerated procedure for inadmissible and manifestly unfounded applications (former chapters III and IV section 2) and a regular procedure (former chapter IV section 1), as well as subsequent consultations on special rules for repeat applications and applications examined at external borders. As a result of the focus on the accelerated procedures, the regular procedures remain the responsibility of the Member States subject to the provisions in chapter II (basic principles and guarantees) and chapter IV (appeal procedures).

Article 24

This Article, which consists of elements from former Articles 23 and 29, is simplified and considerably modified as a result of the Council Conclusions. §1 – 3 follow the language of the Conclusions.

It is inserted in § 2 that an extension is only valid after notice is served on the applicant or his legal adviser or other counsellor, thereby taking over the wording of former Article 24§3, last sentence, and taking into account the changes made to former Article 7 of the role of legal assistance towards informing the applicant. This standard serves the legitimate purpose of legal certainty.

§ 3 deals with the consequence of non-compliance with the time limits. Moreover, in line with the Council Conclusions it is added that where an applicant is at the origin of non-compliance

with the time limit, he/she cannot invoke its consequence. The use of this provision must be reserved to cases of abuse.

§4 introduces a special mechanism for a particular group of cases that could not but *should* nevertheless have been decided under the accelerated procedure. It is recognised that time limits bear the risk, that certain applicants are tempted to stall the examination of their case, e.g. by withholding relevant information on purpose, in order to have their case examined under the regular procedure, whereas the facts of their case merit an accelerated procedure. Member States should in some of these cases have the opportunity to consider a decision on the application as a decision taken under the accelerated procedure, even though it is not taken within the time limits. To that end, it should be ascertained that the applicant has a) withheld crucial information and b) done so *without reasonable cause and in bad faith*. A similar provision was provided for in Article 37 of the original proposal, though technically different for it was placed under the appeals chapter. It is underlined that this paragraph is *not* applicable if the applicant could not have provided the relevant information earlier, for instance because he only received relevant documentation after four months. In such a case, extension of the time limit would be more appropriate

§5 makes clear that every rejection of an application on the proposed *Dublin II Regulation* is considered a decision taken under the accelerated procedure, regardless of the time frame within which the decision was taken.

Article 25

Article 25 lists the cases in which Member States may reject an asylum application as inadmissible. Under category (a), inadmissibility relating to the mechanism created by the Dublin Convention and soon to be communitarised, a reference is added to Norway and Iceland in view of the adoption of the*Council Decision concerning the conclusion of an agreement between the European Community and the Republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining a application for asylum lodged in a Member State or Iceland or Norway* (Council Decision of 15 March 2001 (2001/258/EC) . Moreover, the wording is changed ("has acknowledged responsibility" instead of "is responsible") in the spirit of amendment 56 of the European Parliament.

Moreover, following consultations with Member States, the categories in former Article 18 are supplemented by two categories proposed in the Commission working document on the relationship between safeguarding internal security and complying with international protection obligations and instruments (COM (2001) 743 final). It concerns two sets of cases, namely (*a*) where an international criminal court has indicted the individual who has claimed asylum and (*b*) where an extradition request from a country other than the country of origin of the applicant, is pending. Further discussions on these new grounds may be necessary.

Article 26

Former Article 20 has been slightly amended. It is laid down that the level of protection in the first country of asylum must be in accordance with the standards laid down in international law.

Article 27

Former Article 21 remains unchanged, with the exception of the last subparagraph in §3. In conformity with amendment 58 of the European Parliament it is added that Member States shall provide reasons for each change in the designation of a country as a safe third country. A similar amendment has been made to former Article 30 (now 30) on the designation of safe countries of origin.

Article 28

Former Article 22 has seen some minor modifications. First, the reference to 'a previous stay' in subparagraph a) is deleted as redundant. Second, the word 'admitted' is added to take account of the situation where a person has never been in the third country before, but solely has a connection or close links to the country. Third, former Article 23(5) is moved to this Article, whilst "may" is changed in "shall", following amendment 63 of the European Parliament. Despite these modifications, it is expected that further discussions are necessary.

Article 29

The former Article on manifestly unfounded applications is split into two separate Articles: one on the rejection of manifestly unfounded cases (Article 29) and another on the rejection of other cases on substantive grounds under the accelerated procedure (Article 32). The notion of 'manifestly unfounded' supposes that an applicant has not established a prima facie case for refugee status; it is linked to the lack of a legal foundation for the claim, which the applicant is pleading. The three situations described in paragraph (a) to (c) are examples of this notion, but the cases in Article 32 are not..

Given the new approach of Articles 29 and 32, it is no longer necessary to retain the exception in former Article 28§2(a) (internal flight alternative). The change in approach towards the exception in former Article 28§2(b), referring to exclusion from refugee status, flows from the Commission working document on the relationship between safeguarding internal security and complying with international protection obligations and instruments (COM (2001) 743 final).

Articles 30 and 31

Articles 30 and 31 (former Articles 30 and 31) jointly lay down the proposed common approach towards safe countries of origin. The approach remains unchanged, though the text has been slightly reworded.

Article 32

Article 32 makes clear that an application can only be rejected on the substance under the accelerated procedure if it first has been established that the applicant has no well founded fear for persecution in terms of the Geneva Convention. This approach stems from the Council Conclusions. Certain behaviour of the applicant may justify a rejection under the accelerated procedure, if the case is unfounded. However, this behaviour in itself cannot result in a rejection, for notwithstanding his behaviour the applicant might still be a refugee.

At the same time, discussions in the Council on the nature of the accelerated procedure have been such that all guarantees laid down in Chapter II of the proposal now also apply in the accelerated procedure. Given the different approach to the notion of a manifestly unfounded

application and this major change in the provisions of Chapter II, it is considered justified to increase the list with five new grounds.

Articles 33 and 34

The Council Conclusions provide for 'the possibility whereby applications for asylum submitted after an earlier application has been rejected by a member State are processed in a special context, in order to ensure that such applications are processed swiftly' (II.1.10). The proposed Articles 33 and 34 leave it to the Member States to decide whether or not to have a special procedure in case of subsequent applications, consisting of a preliminary examination on whether certain conditions are met (an examination comparable to admissibility). If the conditions are fulfilled, Member States must proceed to further examine the application in conformity with the standards of this Directive as set out in Chapter II (in some Member States also referred as 'to open a new procedure'). Where Member States do provide for this procedure, the standards laid down in these Articles must be met. The basic idea is that Members States can derogate from requirements for the examination of a first application (see Chapter II) during the preliminary examination, allowing a more expeditious decision making process, including removal (see Article 40§3), provided certain conditions are met. Inspiration for this procedure is drawn from German practice. It is underlined that Member States are not obliged to adopt these rules and may continue to examine subsequent applications from former applicants like any other application. Some Member States may perhaps prefer to do so and reject subsequent applications from former applicants as unfounded under the accelerated procedure, where the necessary conditions of Article 30 §2(d) are met.

Article 35

The Council Conclusions indicated that 'the question whether the Directive should apply to applications for asylum made at the border of a Member State remains open' (II.1.6). On the basis of subsequent consultations with Member States, a special approach to applications made at border post is proposed. The starting point for this approach is the primacy of national law and the possibility to preserve national specific features of such procedures and administrative arrangements.

However, as this approach allows Member States to "fall below" common procedural standards, it is necessary to introduce a so-called standstill clause. Thus, Member States who at the moment of adoption already have in place legislation relating to border procedures can derogate from the minimum standards of Chapter II, except from the standards explicitly referred to in this Article, but others cannot. This exceptional regime strikes a (delicate) balance between the needs of those Member States for maintaining a special procedure at border posts and the protection of the basic guarantees that all applicants for asylum should be offered throughout the EU, regardless of the nature of the applicable practical arrangements in Member States.

Articles 36 and 37

Former Article 26, which deals with the issue of withdrawal or annulment of refugee status within the meaning of point (1)(d) of the first paragraph of Article 63 of the EC Treaty, is only changed to cover the situation where a court or another body and not the determining authority decides on withdrawal or annulment.

The terminology of 'withdrawal or annulment' is meant to cover 'cessation' of refugee status as well.

CHAPTER IV

Appeals procedures

Article 38

The Council Conclusions have been the main orientation for a complete restructuring of the appeals chapter. Member States did not accept the starting point of the original proposal that Community law on asylum procedures should provide for a three-tiers system, meaning an appeal to a reviewing body of a nature to be defined by the Member States and, for all applicants in Member States, access to further appeal before a court of law. Thus, former Articles 38 to 40 have become redundant. Moreover, the appeals chapter is streamlined and stripped to its bare essentials. Thus, provisions on time limits for decision making by the reviewing bodies and the consequences of non-compliance in former Article 35, the optional procedure of automatic review in former Article 36, the references to expeditious procedures for cases at border posts in former Articles 34(5) and 39(4) are deleted.

The modified proposal restricts itself to developing the principle of a right to an effective remedy before a court of law instead of the original 'institutional' approach. It defines the principle in Article 34§1 and further elaborates it in the remaining paragraphs of Article 34 and the other Articles of this chapter. The notion of an effective remedy before a court of law is inspired by Article 47 of the Charter of Fundamental Rights of the European Union, which in turn is based on Article 13 of the ECHR. Article 13 refers to "an effective remedy before a national authority". Article 47 of the Charter refers to an independent and impartial tribunal. This should be understood as a reference to a court of law. In Community law the protection is more extensive than under the ECHR since it guarantees the right to an effective remedy before a court of law. The Court of Justice enshrined this principle in its caselaw (Case 222/84- Johnston v Chief Constable of the RUC and Case 222/86 Unectef/v Heylens). According to the Court, the principle also applies to the Member States when they are implementing Community law. The elements 'independent and impartial' are formal requirements for an effective remedy and can be considered to be included in the notion of 'court'. The caselaw of the Court of Justice distinguishes other requirements for a remedy to be effective, such as the power to confirm or nullify a decision.

Given the choice made by the Council not to oblige Member States to have a two level appeal system in asylum cases and the above mentioned caselaw, it appears that where there is only one appeal, e.g. in some countries in manifestly unfounded or inadmissible applications, it must be before a court. In this sense, the Council Conclusions, which included the possibility of an appeal before 'a quasi-judicial body', can not be followed by the Commission.

The principle of an effective remedy before a court does not preclude Member States from having an administrative body responsible for review preceding an appeal to a court. This means that an effective remedy might entail either an appeal before a court or a review by an administrative body followed by an appeal before a court. However, there is no need to express this in the text itself.

§2 provides that regardless of whether the decision is taken under the regular or the accelerated procedure, the effective remedy should always include the possibility of an examination by the court on both facts and points of law.

§3 assures that where authorities in Member States refuse to re-open the case after its discontinuation appeal is possible. Likewise, appeal to a court should be possible against decisions regarding time limits and their extension pursuant to Article 24. The first paragraph entails a right to an appeal against a refusal to further examine a subsequent application in conformity with Chapter II as referred to in the Articles 33 and 34.

Articles 39 and 40

Following the invitation in the Council Conclusions to develop sufficient differentiation between the regular and the accelerated procedure, it is proposed to have separate Articles on review and appeal against decisions taken under these procedures.

The major distinction between the accelerated and the regular appeals procedure is on the right to remain at the territory, at port or airport transit zones or at the border of the Member State concerned to await the outcome of review or appeal (afterwards referred to as: suspensive effect). If a decision is taken under the regular procedure it is *presumed* that a review or appeal against the decision will have automatic suspensive effect (Article 39§1 but Member States may derogate from it only by virtue of laws or regulations in force on the date of adoption of this Directive). While the same presumption applies for accelerated procedures, no standstill clause is proposed and the provisions merely require Member States to lay down in national law in which cases there is no suspensive effect (Article 40§1). .

The other distinction relates to the cases in which an exception can be made to the rule that, where there is no (automatic) suspensive effect, a ruling of a court on a request to nevertheless give suspensive effect in a particular individual case, must be awaited before expulsion can take place. This follows from the fact that different decisions are taken in the procedure. The decisions relating to the exceptions in Article 40§3 are always taken under accelerated procedures.

Article 41

This Article regroups and amends former Article 34 §1 to 4 requiring Member States to lay down in advance, for reasons of legal certainty, rules on time limits and the competencies of the national courts or administrative bodies responsible for respectively appeal and review in accordance with new Article 38. A second paragraph has been added following discussions on the issue of withdrawal or abandonment during appeal proceedings.

CHAPTER V

General and final provisions

Article 42

Former Article 41 on implementing the Directive without discrimination is amended to take into account the wording of Article 21 of the Charter of Fundamental Rights of the European Union, solemnly proclaimed after the adoption of the original proposal.

Article 43

Former Article 42 on penalties remains unchanged.

Article 44

Former Article 43 on the report of the Commission on the application of the Directive remains unchanged, except for some minor editorial changes and the reporting interval. Following amendments 8 and 101 of the European Parliament it is proposed to regularly report every two years on the application of the Directive. The Commission supports this amendment, provided it is not a precedent for all asylum Community legislation. It is believed that this Directive is of a particular importance to the common European asylum system since the rules on procedures precede and condition the exercise of rights under other asylum Community legislation, such as the proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection (COM (2001) 510 final).

Articles 45

A rule is added on the communication to the Commission of the text of the provisions of national law which Member States adopt in the field covered by this Directive and the deadline for transposal is modified.

Articles 46 and 47

Former Articles 45 and 46 remain unchanged.

Annex I

Annex I is modified first of all as a result of amendments of the European Parliament (numbers 102, 108, 110). Secondly, the Council proposed some changes. The original Annex did not take into account the situation in which a country has ratified the Geneva Convention but has not yet put appropriate rules in place. If such a country nonetheless consistently observes in practice the standards laid down in the Geneva Convention with respect to the rights of persons in need of international protection within the meaning of this Convention as evinced by the UNHCR, the country should be able to be qualified as a safe third country.

As to part II of Annex I, a text has been added to lay down explicitly in the Directive that, for those Member States which assess on a case by case basis the safety of a third country and not by designation on a list, there is no need to motivate the individual decision in the general and public manner outlined this part of the Annex. A similar provision is added to part II of Annex II.

Annex II

The changes (replacing '*generally* observes' by '*consistently* observes' and '*institutions*' by '*structures*') are the result of amendment 111 of the European Parliament.

2000/0238 (CNS)

Amended proposal for a

COUNCIL DIRECTIVE

On minimum standards on procedures in Member States for granting and withdrawing refugee status

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular point (1)(d) of the first paragraph of Article 63 thereof,

Having regard to the proposal from the Commission[4],

Having regard to the opinion of the European Parliament[5],

Having regard to the opinion of the Economic and Social Committee[6],

Whereas:

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

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

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

(4) Minimum standards on procedures in Member States for granting or withdrawing refugee status are therefore a first measure on asylum procedures without prejudice to any other measures to be taken for the purpose of implementing Article 63(1)(d) of the Treaty or the objective of a common asylum procedure agreed on in the Tampere Conclusions.

(5) The main aim of this Directive is to introduce a minimum framework in the European Community on procedures for the determination of refugee status, ensuring that no Member State expels or returns an applicant for asylum in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of

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4 OJ C […], […], p. […].
5 OJ C […], […], p. […].
6 OJ C […], […], p. […].

his race, religion, nationality, membership of a particular social group or political opinion.

(6) To secure this aim, the Council Conclusions on procedures in Member States for granting and withdrawing refugee status of 7 December 2001 (as revised 18 December 2001) underline the need for provisions ensuring that applicants for asylum receive substantial guarantees with regard to the decision-making process and that decisions are of optimum quality, without jeopardising the objective of efficiency of procedures. Such provisions should also define the minimum standards for a regular procedure, make it possible to adopt or retain accelerated procedures, and allow for sufficient differentiation between these types of procedures.

(7) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union as general principles of Community law. In particular this Directive seeks to ensure full respect for human dignity, the right to asylum of applicants for asylum and their dependants, and the protection in the event of removal, expulsion or extradition, promoting the application of Articles 1, 18 and 19 of the Charter.

(8) This Directive should be implemented without prejudice to Member States' existing international obligations under human rights instruments.

(9) This Directive should be without prejudice to the Protocol on asylum for nationals of Member States of the European Union as annexed to the Treaty establishing the European Community.

(10) Asylum procedures should not be so long and drawn out that persons in need of international protection have to go through a long period of uncertainty before their cases are decided, whilst persons who have no need of protection but wish to remain on the territory of the Member States see an application for asylum as a means of prolonging their stay by several years. At the same time, asylum procedures should contain the necessary safeguards to ensure that those in need of protection are correctly identified.

(11) The minimum standards laid down in this Directive should therefore enable Member States to operate a quick and simple system that swiftly and correctly processes applications for asylum in accordance with the international obligations and constitutions of the Member States.

(12) A quick and simple system for procedures in Member States could, provided that the necessary safeguards are in place, consist of a single appeal against the decision to a court.

(13) The necessary safeguards should require that, in the interests of a correct recognition of those persons in need of protection as refugees within the meaning of Article 1(A) of the Geneva Convention, every applicant is to have an effective access to procedures, the opportunity to co-operate and properly communicate with the competent authorities so as to present the relevant facts of his case and sufficient procedural guarantees to pursue his case at and throughout all stages of the procedure.

(14) On the other hand, in the interests of a system of swift recognition of those applicants in need of protection as refugees within the meaning of Article 1(A) of the Geneva Convention, provision should be made for Member States to operate accelerated procedures for processing in accordance with clear, pre-established criteria a number of different categories of applications, including applications for which it is not necessary to consider the substance, those that appear to be manifestly unfounded,

subsequent applications containing no fresh evidence or arguments, and applications of persons whose right to entry to the territory of the Member States is subject to an examination.

(15) It is essential that accelerated procedures contain the necessary safeguards to ensure that earlier doubts on the part of the status determining authority can be set aside so that those who are in need of protection can still be correctly identified. They should therefore contain, in principle, the same minimum procedural guarantees and requirements regarding the decision making process as regular procedures, provided that this is necessary for the purposes of the particular procedure. Thus, the standards regarding procedures to consider subsequent applications containing no fresh evidence or arguments, and procedures through which a decision is taken on the right of entry of an applicant for asylum are proportionate to the specific purpose of such procedures.

(16) As minimum procedural guarantees for all applicants for asylum in all procedures should be considered, inter alia, access to the procedure, right to stay pending a decision by the determining authority, access to the services of an interpreter for submitting their case if interviewed by the authorities, the opportunity to communicate with the United Nations High Commissioner for Refugees (UNHCR) or, with any organisation working on its behalf, the right to appropriate notification of a decision, motivation of that decision in fact and in law, the opportunity to consult a legal adviser or other counsellor, and the right to be informed of their legal position at decisive moments in the course of the procedure, in a language they can reasonably be supposed to understand. .

(17) In addition, specific procedural guarantees for persons with special needs, such as unaccompanied minors, should be laid down.

(18) Minimum requirements regarding the decision-making process in all procedures should be that decisions are taken on the basis of the facts by authorities competent in the field of asylum and refugee matters.

(19) Decisions taken on an application for asylum should be subject to an appeal consisting of an examination on both facts and points of law by a court of law. . The applicant should be entitled not to be expelled until a court has ruled on the right to remain pending the outcome of this appeal, except in a limited number of cases laid down in this Directive, including for reasons of national security or public order.

(20) Directive 95/46/EC of the European Parliament and the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data[7] shall apply to personal data treated in application of this directive. Directive 95/46/EC shall also apply to the transmission of data from Member States to the UNHCR in the exercise of its mandate under the Geneva Convention. This transmission is subject to the level of personal data protection in the UNHCR being considered as adequate.

(21) It is in the very nature of minimum standards that Member States have the power to introduce or maintain more favourable provisions for persons who ask for international protection from a Member State, where such a request is understood to be on the grounds that the person concerned is a refugee within the meaning of Article 1(A) of the Geneva Convention.

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7 OJ L 281, 23.11.1995, p.31

(22) In this spirit, Member States should be encouraged to apply the provisions of this Directive to procedures for deciding on applications for kinds of protection other than that emanating from the Geneva Convention for persons who are found not to be refugees, taking into account in particular Council Directive …/… [*Proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection*].

(23) Member States should provide for penalties in the event of infringement of the national provisions adopted pursuant to this Directive.

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

(25) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of the proposed action, namely to establish minimum standards on procedures in Member States for granting and withdrawing refugee status cannot be sufficiently attained by the Member States. They can therefore, by reason of the scale and effects of the action, be better achieved by the Community. This Directive confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

General provisions

Article 1

Purpose

The purpose of this Directive is to establish minimum standards on procedures in Member States for granting and withdrawing refugee status.

Article 2

Definitions

For the purposes of this Directive:

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

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

(c) "Applicant" or "applicant for asylum" means a person who has made an application for asylum in respect of which a final decision has not yet been taken.

(d) A final decision is a decision in respect of which all possible remedies under this Directive have been exhausted;

(e) "Determining authority" means any quasi-judicial or administrative body in a Member State responsible for examining applications for asylum and competent to take decisions at first instance in such cases

(f) "Refugee" means a person who fulfils the requirements of Article 1(A) of the Geneva Convention as set out in Council Directive …/ … [*Proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection*] ;

(g) "Refugee Status" means the status granted by a Member State to a person who is a refugee and is admitted as such to the territory of that Member State;

(h) "Unaccompanied minor" means a person below the age of eighteen who arrives on the territory of the Member States unaccompanied by an adult responsible for him whether by law or by custom, and for as long as he is not effectively taken into the care of such a person, or a minor who is left unaccompanied after he has entered the territory of the Member States;

(i) «Representative » means a person or organisation representing an unaccompanied minor as legal guardian, a national organisation which is responsible for his/her care and well-being, or any other appropriate representation appointed to ensure his/her best interests;

(j) "Detention" means the confinement of an applicant for asylum by a Member State within a restricted area, where his freedom of movement is substantially curtailed;

(k) "Withdrawal of refugee status" means the decision by a competent authority to withdraw the refugee status of a person on the basis of Article 1(C) of the Geneva Convention or Article 33(2) of the Geneva Convention;

(l) "Annulment of refugee status" means the decision by a competent authority to cancel the refugee status of a person on the grounds that circumstances have come to light that indicate that this person should never have been recognised as a refugee in the first place.

(m) "Remain on the territory of the Member State" means to remain at the border, the airport or port transit zones or on the territory of the Member State in which the application for asylum has been made or is being examined.

Article 3

Scope

1) This Directive shall apply to all applications for asylum made at the border, at port and airport transit zones or on the territory of Member States.

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

3) Member States may decide to apply the provisions of this Directive to procedures for deciding on applications for kinds of protection other than that emanating from the Geneva Convention for persons who are found not to be refugees.

Article 4

More favourable provisions

Member States may introduce or maintain more favourable standards on procedures for granting and withdrawing refugee status, in so far as those standards are compatible with this Directive.

CHAPTER II

Basic principles and guarantees

Article 5

Access to the procedure

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

2) Member States may require that applications for asylum be made in person.

3) Member States shall ensure that each adult person has the right to make a separate application for asylum on his own behalf.

   However, Member States may determine, by law

   (a) the cases in which a minor cannot make an application on his own behalf and in which his application is to be made by another person on his behalf;

   (b) the cases in which the application of an unaccompanied minor has to be lodged by a representative as provided for in Article 15(1).

4) Member States may provide by law that an application may be made by an applicant on behalf of his dependants, including minors. In these cases Member States shall ensure that dependant adults and dependant minors not covered by point (a) of paragraph 3 consent to the making of the application on their behalf, failing which the dependants shall have an opportunity to make an application on their own behalf.

   Where a dependant files an application on his own behalf after he/she has consented to the making of an application on his/her behalf, the subsequent application may be rejected on the basis the application made on his/her behalf.

5) Member States shall ensure that the procedures as provided for in this Directive shall start as soon as possible.

6) Member States shall ensure that:

   a) all relevant authorities likely to be addressed by the applicant at the border or on the territory of the Member State have instructions for dealing with applications for asylum, including the instruction to forward the applications and all relevant information to the competent authority for examination;

   b) the personnel of those authorities have received the necessary training to recognise an application for asylum and to proceed further in accordance with those instructions.

Article 6

Right to stay pending the examination of the application

1) Applicants for asylum shall be allowed to remain on the territory of the Member State until such time as the determining authority has made a decision.

2) Member States can only make an exception where, in accordance with Articles 33 and 34, a subsequent application will not be further examined.

Article 7

Requirements for the examination of applications

1) Member States shall ensure that decisions by the determining authority on applications for asylum are taken after an appropriate examination. To that end, Member States shall ensure that

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

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

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

2) Members States shall ensure that the authorities referred to in Chapter IV are given access to the general information referred to in § 1(b), necessary for the fulfilment of their task.

Article 8

Requirements for a decision by the determining authority

1) Member States shall ensure that decisions on applications for asylum are given in writing.

2) They shall also ensure that if an application is rejected, the reasons in fact and in law are stated in the decision and information on how to challenge a negative decision is given in writing.

Article 9

Guarantees for applicants for asylum

1) With respect to the procedures provided for in Chapter III of this Directive, Member States shall ensure that all applicants for asylum enjoy the following guarantees:

   a) They must be informed of the procedure to be followed and of their rights and obligations during the procedure, in a language which they may reasonably be

supposed to understand. The information must be given in time to enable them to exercise the rights guaranteed in this Directive and to comply with the obligations described in Articles 16 and 20 (1);

b) They must receive the services of an interpreter for submitting their case to the competent authorities whenever reasonable. Member States shall consider it reasonable to give these services if the determining authority calls upon the applicant to be interviewed before a decision is taken on the application. In this case and in other cases where the competent authorities call upon the interpreter, the services shall be paid for out of public funds;

c) They must not be denied the opportunity to communicate with the UNHCR or with any other organisation working on behalf of the UNHCR on the territory of the Member State pursuant to an agreement with such Member State;

d) They must be notified in reasonable time and in an appropriate manner of the decision by the determining authority on their application for asylum. If a legal adviser or other counsellor is legally representing the applicant, Member States may choose to notify the decision to him instead of to the applicant for asylum;

e) They must be informed of the decision by the determining authority in a language that they may reasonably be supposed to understand when they are not assisted or represented by a legal adviser or other counsellor. The information provided shall include information on how to challenge a negative decision.

2) Each adult among the dependants referred to in Article 5(4) shall be informed in private of the possibility to provide information to the competent authorities on the application for asylum before a decision is taken by the determining authority.

With respect to the procedures provided for in Chapter IV, Member States shall ensure that all applicants for asylum shall also enjoy the guarantees listed in paragraph 1(b), (c) and (d).

Article 10

Persons invited to a personal interview

1) Before a decision is taken by the determining authority, the applicant for asylum shall be given the opportunity of a personal interview on his/her application for asylum with a person competent to conduct such an interview under national law.

Member States may, however, provide that minors below a certain age need not be interviewed.

2) The personal interview may be omitted where, on the basis of an individual assessment :

a) the determining authority is able to take a positive decision on the basis of evidence available;

b) the competent authority is of the opinion that the applicant is unfit or unable to be interviewed due to lasting circumstances beyond his control. When in doubt, Member States may require a medical or psychological certificate;

c) the competent authority cannot provide an interpreter in accordance with point (b) of Article 11(2) within a reasonable time;

d) the competent authority is not able to conduct the interview, because the applicant has, without good reasons, not complied with invitations to appear.

3) In the cases referred to in second subparagraph of paragraph 1 and in points (b), (c) and (d), of paragraph 2, the applicant must be offered the opportunity, before a decision is taken by the determining authority, to make comments in lieu of a personal interview, where appropriate with the assistance of a legal adviser or other counsellor and/or, in the case of a minor, a representative.

   If the applicant can not have an interview because the competent authority is not able to provide an interpreter in accordance with point (b) of Article 11(2) within a reasonable time, Member States shall provide, free of charge, assistance by a legal adviser or other counsellor and/or, in the case of an unaccompanied minor, a representative, and shall provide them with an opportunity, before a decision is taken by the determining authority, to make comments on behalf of the applicant in lieu of a personal interview.

4) The fact that no personal interview has taken place on a ground referred to in paragraph 2 and that no comments were received pursuant to paragraph 3, shall not prevent the determining authority from taking a decision on an application for asylum.

   The absence of a personal interview on the grounds referred to in paragraph 2 or 3 shall not in itself adversely affect the decision of the determining authority.

Article 11

Requirements for a personal interview

1) A personal interview shall normally take place without the presence of family members.

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

   a) when appointing the person who conducts the interview and the interpreter, use their best endeavours to take account of the personal or general circumstances surrounding the application, including the applicant's cultural origin or vulnerability, insofar as it is possible to do so in advance and the competent authority is aware of such circumstances;

   b) select an interpreter who is able to ensure appropriate communication between the applicant and the person who conducts the interview. The communication need not necessarily take place in the language preferred by the applicant for asylum if there is another language which he may reasonably be supposed to understand.

Article 12

Status of the transcript of a personal interview in the procedure

1) Member States shall ensure that a transcript is made of every personal interview.

2) Member States shall ensure that applicants have timely access to the transcript of the personal interview on which the decision is or will be based.

3) Member States may request the applicant's approval on the contents of the transcript of the personal interview.

   In such cases, Member States shall ensure that the applicant has the opportunity to request or propose corrections of mistranslations or misconceptions appearing in the transcript.

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

Article 13

Right to legal assistance and representation

(1) Member States shall allow applicants for asylum the opportunity to consult in an effective manner a legal adviser or other counsellor on matters relating to their asylum applications at all stages of the procedure, including following a negative decision.

(2) In the event of a negative decision by a determining authority, Member States shall ensure that legal assistance, on request, be granted free of charge, subject to the provisions of this paragraph.

Member States may

(a) choose to only make available legal assistance free of charge to those who lack sufficient resources and insofar as such assistance is necessary to ensure their effective access to justice.

(b) restrict legal assistance given free of charge to legal advisers or other counsellors specifically designated by national law to assist and/or represent applicants for asylum.

Article 14

Rights of legal adviser or counsellor

1) Member States shall ensure that a legal adviser or other counsellor who assists or represents an applicant for asylum under the terms of national law shall enjoy access to such information in the applicant's file as is liable to be examined by the authorities referred to in Chapter IV.

Member States shall ensure that the legal adviser or other counsellor who assists or represents an applicant for asylum has access to closed areas for the purpose of visiting that applicant. Member States may only limit the possibility to visit applicants in closed areas where such limitation is, by virtue of national law or regulation, objectively necessary for the security of the area or to ensure an efficient examination of the application, provided that access by the legal adviser or other counsellor is not thereby severely limited or rendered impossible.

2) Member States shall ensure that the legal adviser or other counsellor who assists or represents an applicant for asylum is informed in due time of the time and place of the applicant's personal interview as provided for in Articles 10, 11 and 12 and is allowed to attend it.

Member States shall provide rules on the presence of legal advisers or other counsellors at all other interviews in the procedure, without prejudice to this Article or to Article 15(1)(b).

Article 15

Guarantees for unaccompanied minors

1) With respect to all procedures provided for in this Directive and without prejudice to the provisions of Articles 10 and 12, Member States shall ensure that all unaccompanied minors enjoy the following guarantees:

   a) To be granted, as soon as possible, a representative who shall represent and/or assist them with respect to the examination of the application;

   b) The representative must be given the opportunity to help prepare them for the personal interview. Member States shall allow the representative to be present at this interview and to ask questions or make comments.

2) Member States shall ensure that:

   a) If an unaccompanied minor has a personal interview on his application for asylum as referred to in Articles 10, 11and 12, this interview is conducted by an person who has the necessary knowledge of the special needs of minors;

   b) An official trained with regard to the special needs of minors takes the decision on the application of an unaccompanied minor.

3) Member States that use medical examinations to determine the age of unaccompanied minors shall ensure that:

   a) Unaccompanied minors are informed prior to the examination of their application for asylum, and in a language which they may reasonably be supposed to understand, about the possibility of age determination by a medical examination.

   b) The decision to reject an application for asylum from an unaccompanied minor who refused to undergo this medical examination shall not be based solely on this refusal.

Article 16

Establishing the facts in the procedure

1) Member States shall take appropriate measures to enable the applicant for asylum to fulfil his/her obligation of co-operation to assist the competent authorities in establishing the facts of his case.

   An applicant shall be considered to have fulfilled this obligation if he/she has presented all the facts of his/her case relevant for the examination as completely as possible and supported these with all available evidence in time for the determining authority to take a decision.

2) An applicant for asylum shall be considered to have presented all the relevant facts of his/her case if he/she has provided statements on his age, background, identity, nationality, travel routes, identity and travel documents and the reasons for his fear for persecution.

   After the applicant has made an effort to support his/her statements concerning the relevant facts by any available evidence and has given a satisfactory explanation for any lack of evidence, the determining authority must, evaluating the evidence, assess the well-foundedness of the fear for persecution.

3) Member States shall ensure that the determining authority, despite a possible lack of evidence for some of the applicant's statements, gives the applicant the benefit of the doubt if the following conditions are met :

   a) the applicant has made a genuine effort to substantiate his claim;

   b) all available evidence has been obtained and, where possible, checked;

   c) the examiner is satisfied that the applicant's statements are coherent and plausible and do not run counter to generally known facts relevant to his/her case.

Article 17

Detention pending a decision by the determining authority

1) Without prejudice to Article 18, Member States shall not hold an applicant for asylum in detention for the sole reason that his application for asylum needs to be examined before a decision is taken by the determining authority.

   However, Member States may only hold an applicant for asylum in detention during the examination of the application where such detention is, in accordance with a procedure laid down by national law or regulation, objectively necessary for an efficient examination of the application or where, on the basis of the personal conduct of the applicant, there is a strong likelihood of his absconding.

2) Member States may also hold an applicant for asylum in detention during the examination of his application if there are grounds for believing that the restriction on his freedom of movement is necessary for a quick decision to be made. Detention for this reason shall not exceed two weeks.

3) Member States shall provide for the possibility of an initial judicial review and subsequent regular judicial reviews of the order for detention of applicants for asylum detained pursuant to paragraph 1.

   Member States shall ensure that the court called upon to review the order of detention is competent to review whether detention is in accordance with the provisions of this Article.

Article 18

Detention after agreement to take charge under Council Regulation…/…

1) Member States may hold the applicant in detention to prevent him from absconding or effecting an unauthorised stay, from the moment at which another Member State has agreed to take charge of him or to take him back in accordance with Council Regulation …/…[*establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national*] until the moment the applicant is transferred to the other Member State. Detention for this reason shall not exceed one month.

2) Member States shall ensure that the authority called upon to review the order is competent to examine the legality of the detention in accordance with the provisions of this Article.

Article 19

Procedure in case of withdrawal of the application

1) When an applicant for asylum explicitly withdraws his application for asylum, Member States shall ensure that the determining authority takes a decision either to discontinue the examination or, provided the information to do so is available, to reject the application on some other ground in accordance with this Directive.

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

Article 20

Procedure in case of implicit withdrawal or abandonment of the application

1) When there is reasonable cause to consider that an applicant for asylum has implicitly withdrawn or abandoned his application for asylum, Member States shall ensure that the determining authority takes a decision either to discontinue the examination or, provided the information to do so is available, to reject the application on some other ground in accordance with this Directive.

   Member States may assume that the applicant has implicitly withdrawn or abandoned his application for asylum when it is ascertained that:

   a) He/she has not within a reasonable time complied with reporting duties or other obligations to communicate, has failed to respond to requests for information essential to his/her application under the terms of Article 16 or has not appeared for an personal interview as provided for in Articles 10, 11 and 12;

   b) He/she has absconded or left without authorisation the place where he/she lived or was held, without contacting the competent authority within a reasonable time.

2) Member States shall ensure that the applicant who reports once again to the competent authority after a decision to discontinue as referred to in paragraph 1 is taken, is entitled to request that his/her case be re-opened.

   Member States shall ensure that this person will not be removed contrary to the principle of non-refoulement.

   Member States may allow the determining authority to take up the examination at the stage in which the application was discontinued.

Article 21

The role of UNHCR

1) Member States shall allow the UNHCR :

   a) to have access to applicants for asylum, including those in detention and in airport or port transit zones;

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

c) to present its views, in the exercise of its supervisory responsibilities under Article 35 of the Geneva Convention, to any competent authorities regarding individual applications for asylum at any stage of the procedure.

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

Article 22

Data protection

1) Member States shall not disclose the information regarding individual applications for asylum to the authorities of the country of origin of the applicant for asylum.

2) Member States shall take appropriate measures to ensure that no information required for the purpose of examining the case of an individual applicant shall be obtained from the authorities of his country of origin in a manner that would result in the disclosure to those authorities of the fact of his having applied for asylum.

CHAPTER III

Procedures at first instance

Section I

Article 23

Purpose of accelerated procedures

1) Member States may adopt or retain an accelerated procedure for the purpose of

   (a) processing applications for asylum considered to be inadmissible under Section II;

   (b) processing applications for asylum considered to be manifestly unfounded under Section III;

   (c) processing unfounded applications under Section IV;

   (d) processing subsequent applications for asylum within the framework of the provisions set out in Section V;

   (e) taking a decision on the entry of applicants for asylum into the territory of a Member State in accordance with Section VI.

2) Member States shall consider as regular procedures all other procedures under which applications for asylum are processed.

Article 24

Time limits for an accelerated procedure

1) Member States shall ensure that the determining authority takes a decision in the accelerated procedure within three months after the application of the person concerned has been made.

2) The time limit referred to in paragraph 1 may be extended for three months for legitimate reasons.

   An extension of the time limit in a particular case shall not be valid unless notice is served on the applicant or on the legal adviser or other counsellor who assists or represents him.

3) Non-compliance with the time limits in paragraphs 1 and 2- shall result in the application for asylum being processed under the regular procedure, unless Member States determine that an applicant who is at the origin of non-compliance referred to in paragraphs 1 and 2, cannot invoke this consequence of non-compliance, in particular in case of a failure on his part to submit the information he is reasonably expected to provide under the terms of Article 16 or to appear for an personal interview as provided for in Articles 10, 11 and 12.

4) Member States may determine that a decision is deemed to have been taken under the accelerated procedure in cases where it can be established after the expiry of the time limits referred to in paragraphs 1 and 2 that the applicant has, without reasonable cause and in bad faith, withheld information which, had it been known at that stage of the procedure, would have resulted in a decision in the accelerated procedure.

5) This Article shall not apply once one Member State calls upon another Member State to take charge of an applicant in accordance with Council Regulation …/ … [*establishing*

the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national].

Section II

Article 25

Cases of inadmissible applications

Member States may reject a particular application for asylum as inadmissible if:

a) another Member State, or Norway or Iceland, has acknowledged responsibility for examining the application, according to the criteria and mechanisms for determining which Member State is responsible for considering an application for asylum submitted by a national of a third country or stateless person in one of the Member States;

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

c) a country which is not a Member State is considered as a safe third country for the applicant, pursuant to Articles 27 and 28;

d) a country other than the country of origin of the applicant has made an extradition request and that country is either another Member State or a third country which can be considered a safe third country in accordance with the principles set out in Annex I, provided that extradition to this country is legal;

e) an indictment by an International Criminal Court has been made.

Article 26

Application of the concept of first country of asylum

A country can be considered to be a first country of asylum for an applicant for asylum if he/she has been admitted to that country as a refugee or for other reasons justifying the granting of protection, and can still avail himself of protection in that country that is in accordance with the relevant standards laid down in international law.

Article 27

Designation of countries as safe third countries

1) Member States may consider that a third country is a safe third country for the purpose of examining applications for asylum only in accordance with the principles set out in Annex I.

2) Member States may retain or introduce legislation that allows for the designation by law or regulation of safe third countries. Such laws or regulations shall be compatible with Article 28.

3) Member States which, at the date of entry into force of this Directive, have in force laws or regulations designating countries as safe third countries and which wish to retain these laws or regulations, shall notify them to the Commission within six months of the adoption of this Directive and shall notify as soon as possible any subsequent relevant amendments.

Member States shall notify to the Commission as soon as possible any introduction of laws or regulations designating countries as safe third countries after the adoption of this Directive, as well as any subsequent relevant amendments.

Member States shall give specific grounds for the designation of countries as safe third countries and for any subsequent exclusion or addition of such a country.

Article 28

Application of the safe third country concept

1) A country that is a safe third country in accordance with the principles set out in Annex I can only be considered as a safe third country for a particular applicant for asylum if, notwithstanding any list:
   a) the applicant has either a connection or close links with the country or has had an opportunity to avail himself/herself of the protection of the authorities of that country;
   b) there are grounds for considering that this particular applicant will be admitted or re-admitted to this country and
   c) there are no grounds for considering that the country is not a safe third country in his/her particular circumstances.
2) When implementing a decision based on this Article, Member States shall provide the applicant with a document in the language of the third country informing the authorities of that country that the application has not been examined in substance.

Section III

Article 29

Cases of manifestly unfounded applications

Member States may reject an application for asylum as manifestly unfounded if the determining authority has established that:

a) the applicant in submitting his application and presenting the facts, has only raised issues that are obviously not relevant to the Geneva Convention;
b) the applicant is from a safe country of origin within the meaning of Articles 30 and 31 of this Directive;
c) the applicant is prima facie excluded from refugee status by virtue of Council Directive …/ …. [*Proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection*]

Article 30

Designation of countries as safe countries of origin

1) Member States may consider a country to be a safe country of origin for the purpose of examining applications for asylum only in accordance with the principles set out in Annex II.

2) Member States may retain or introduce legislation that allows for the designation by law or regulations of safe countries of origin. Such laws or regulations shall be compatible with Article 31.

3) Member States which, at the date of entry into force of this Directive, have in force laws or regulations designating countries as safe countries of origin and which wish to retain these laws or regulations, shall notify them to the Commission within six months of the adoption of this Directive and shall notify as soon as possible any subsequent relevant amendments.

   Member States shall notify to the Commission as soon as possible any introduction of laws or regulations designating countries as safe countries of origin after the adoption of this Directive, as well as any subsequent relevant amendments.

   Member States shall give specific grounds for the designation of countries as safe countries of origin and for any subsequent exclusion or addition of a country as a safe country of origin.

Article 31

Application of the safe country of origin concept

A country that is a safe country of origin in accordance with the principles set out in Annex II can only be considered as a safe country of origin for a particular applicant for asylum if he has the nationality of that country or, if he is a stateless person, it is his country of former habitual residence, and if there are no grounds for considering the country not to be a safe country of origin in his particular circumstances.

Section IV

Article 32

Other cases under the accelerated procedure

Member States may process an application for asylum under the accelerated procedure where ~~if the determining authority has established that the applicant has no well founded fear of being persecuted b virtue of Council Directive …/… …. *[Proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection]* and~~:

a) the applicant has without good reason, misled the authorities with respect to his identity and/or nationality, by presenting false information or by withholding relevant information that could have had a negative impact on the decision;

b) the applicant has not produced information to establish with a reasonable degree of certainty his/her identity or nationality, and there are serious reasons for considering that he/she has, in bad faith, destroyed or disposed of an identity or travel document that would have helped establish his/her identity or nationality;

c) the applicant has made deliberately false or misleading representations of a substantial nature in relation to the evidence produced in support of his/her application for asylum;

d) the applicant has submitted a subsequent application raising no relevant new facts with respect to his/her particular circumstances or to the situation in his country of origin;

e) the applicant has failed without reasonable cause to make his application earlier, having had ample opportunity to do so, and is making an application merely in order to delay or frustrate the enforcement of an earlier or imminent decision which would result in his/her removal;

f) the applicant failed to comply with obligations referred to in Articles 16 and 20(1) of this Directive;

g) the applicant entered the territory of the Member State unlawfully or prolonged his/her stay unlawfully and, without good reason, has not presented himself/herself to the authorities as soon as possible given the circumstances of his/her entry;

h) the applicant is a danger to the security of the Member State or constitutes a danger to the community of that Member State, having been convicted by a final judgement of a particularly serious crime.

The application can only be rejected if the determining authority has established that the applicant has no well-founded fear of being persecuted by virtue of Council Directive …/… …. [*Proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection*].

Section V

Article 33

Cases of subsequent applications

1) Member States may adopt or retain a specific procedure entailing a preliminary examination as referred to in paragraph 2, where a person makes a subsequent application for asylum:

   a) after his/her previous application has been withdrawn by virtue of Articles19 or 20;

   b) after a final decision has been reached on his/her previous application.

2) A subsequent application for asylum shall first be subject to a preliminary examination as to whether, after the withdrawal of the previous application or after the final decision on this application has been reached,

   (a) the personal circumstances of the applicant or his/her legal situation has changed or

   (b) there is new information indicating that a decision more favourable to the applicant could be taken or could have been taken or

   (c) the decision on a former application for asylum was taken on an incorrect or false basis or

   (d) there are other reasons under national law to further examine that subsequent application.

   If one of the reasons described under subparagraphs (a), (b), (c) and (d) applies and the applicant concerned was, through no fault of his/her own, incapable of asserting those reasons set forth in this paragraph in the previous procedure, in particular by filing an appeal before a court, the application will be further examined in conformity with Chapter II.

Article 34

Procedural rules

1. Member States shall ensure that applicants for asylum whose application is subject to a preliminary examination pursuant to Article 33 enjoy the guarantees listed in Article 9.
2. Member States may lay down in national law rules on the preliminary examination pursuant to Article 33. Those rules may inter alia:
   (a) oblige the applicant concerned to indicate facts and substantiate evidence which justify a new procedure;
   (b) require submission of the new information by the applicant concerned within a time limit after which it has been obtained by him or her;
   (c) permit the preliminary examination to be conducted on the sole basis of written submissions without a personal interview.

   The conditions shall not render the access applicants for asylum to a new procedure impossible nor result in the effective annulment or severe curtailment of such access.
3. Member States shall ensure that
   (a) the determining authority which has taken the decision on the previous application is responsible for the preliminary examination;
   (b) the applicant is informed in an appropriate manner of the outcome of the preliminary examination and, in case the application will not be further examined, of the reasons and of the possibilities of challenging it;
   (c) if one of the the situations referred to in Article 33(2) applies, the determining authority shall further examine the subsequent application in conformity with the provisions of Chapter II as soon as possible.

Section VI

Article 35

Cases of border procedures

1) Subject to the provisions of this Article, Member States may maintain, in accordance with laws or regulations in force at the time of adoption of this Directive, specific procedures in order to decide at the border on the entry to their territory of applicants for asylum who have arrived and made an application for asylum, in so far as those laws or regulations are compatible with Articles 5, 6, 8(2), 13(1), 14(1), 14(2), 15, 17, 21 and 22.
2) This procedure may also be applicable to applicants for asylum arriving in airport and port transit zones.
3) Member States shall ensure that the laws or regulations lay down rules for those specific procedures as regards the examination of applications and the decision on the application, the access to legal assistance and representation, the procedure, duration and conditions of detention as well as any time limits that apply.
4) Member States shall ensure that a decision to refuse entry to the territory of a Member State for a reason arising from the application for asylum is taken within two weeks,

subject to an extension of the time limit for no more than two weeks agreed upon by a competent judicial body in a procedure prescribed by law.

5) Non-compliance with the time limits provided for in this paragraph shall result in the applicant for asylum being granted entry to the territory of the Member State in order for his application to be processed in accordance with the other provisions of this Directive. Member States shall ensure that applicants for asylum, who are refused entry in accordance with this procedure, enjoy the guarantees referred to in Chapter IV.

6) The refusal of entry into the territory can not override the decision on the application for asylum, unless it is based upon a rejection of the application for asylum after an examination on the basis of the facts of the case by authorities competent in the field of asylum and refugee law.

Section VII

Article 36

Withdrawal or annulment of refugee status

Member States shall ensure that an examination may be started to withdraw or annul the refugee status of a particular person when information comes to light indicating that there are reasons to reconsider the validity of his refugee status.

Article 37

Procedural rules

1) Where in a Member State a determining authority reconsiders a refugee's qualification, the annulment or withdrawal of a refugee status shall be examined under the regular procedure in accordance with the provisions of this Directive.

   Where in a Member State a court or another body reconsiders a refugee's qualification, the annulment or withdrawal of a refugee status shall be examined under the same conditions as the review of decisions taken under the regular procedure.

2) Member States may derogate from Articles 9 to 12 when it is technically impossible for the competent authority to comply with the provisions of those Articles.

CHAPTER IV

Appeals procedures

Article 38

The right to an effective remedy before a court of law

1) Member States shall ensure that applicants for asylum have the right to an effective remedy of a decision taken on their application for asylum before a court of law.

2) Member States shall ensure that the effective remedy referred to in paragraph 1 includes the possibility of an examination on both facts and points of law.

3) Member States shall ensure that:

(a) a refusal to re-open the examination of an application after its discontinuation pursuant to Articles 19 and 20, and

(b) an extension of the time limit pursuant to Article 24 can also be subjected to examination through appeal proceedings before a court of law.

Article 39

Review and appeal proceedings against decisions taken under the regular procedure

1) Member States shall allow applicants for asylum lodging an appeal before a court of law against a decision taken in the regular procedure to remain on the territory of the Member State concerned pending its outcome. Member States shall also allow applicants for asylum requesting a review of a decision taken under the regular procedure by an administrative body prior to appeal before a court of law to remain on the territory of the Member State concerned pending its outcome.

2) Member States may derogate from paragraph 1 by virtue of laws or regulations in force on the date of adoption of this Directive.

3) Where national law provides that an applicant for asylum is not allowed to remain on the territory of the Member State concerned awaiting the outcome of his appeal or review, Member States shall ensure that the court of law has the competence to rule whether or not such an applicant may, given the particular circumstances of his/her case, remain on the territory of the Member State concerned, either upon request of the applicant or acting of its own motion.

4) No expulsion may take place until the court of law has ruled in the case referred to in paragraph 3. Member States may provide for an exception where it has been decided that grounds of national security or public policy preclude the applicant for asylum from remaining on the territory of the Member State concerned.

Article 40

Review and appeal proceedings against decisions taken in the accelerated procedure

1) Member States shall lay down in national law those cases in which applicants for asylum lodging an appeal against or requesting a review of a decision taken under the accelerated procedure are not to be allowed to remain on the territory of the Member State concerned pending its outcome.

2) In such cases, Member States shall ensure that a court of law has the competence to rule whether or not this applicant for asylum may, given the particular circumstances of his case, remain on the territory of the Member State concerned, either upon request of the concerned applicant or acting on its own motion.

3) No expulsion shall take place until the court of law has ruled in the case referred to in paragraph 2. Member States may provide for an exception in the following cases:

   a) where it has been decided that an application for asylum is inadmissible as referred to in Article 25;

   b) where a court of law has already rejected a request from the concerned applicant for asylum to remain on the territory of the Member State concerned and it has been decided that, since that rejection, no new relevant facts have been submitted with

respect to the particular circumstances of the applicant or his country of origin after this rejection;

c) Where a subsequent application will not be further examined in conformity with Chapter II as referred to in Article 33;

d) Where it has been decided that grounds of national security or public policy preclude the applicant for asylum from remaining at the border, the airport or port transit zones or on the territory of the Member State concerned.

Article 41

Time limits and scope of the examination in review or appeal

1. Member States shall lay down:

   a) reasonable time limits for giving notice of appeal and, where applicable, for requesting a review; these time limits may be shorter for giving notice of appeal and requests for review in respect of decisions taken under the accelerated procedure;

   b) all other necessary rules for lodging an appeal and, where applicable, for requesting a review;

   c) powers whereby the court of law is enabled to uphold or overturn the decision of the determining authority or has both;

   d) rules whereby, if the court of law overturns a decision, it must either remit the case to the determining authority for a new decision or must itself take a decision on the merits of the application.

2. Member States shall lay down the conditions under which it can be assumed that an applicant has implicitly withdrawn or abandoned his review or appeal together with the rules on the procedure to be followed in these cases.

CHAPTER V

General and final provisions

Article 42

Non-discrimination

Member States shall implement this Directive without discrimination on the basis of sex, race, nationality, membership of a particular social group, health, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinions, membership of a national minority, fortune, birth, disabilities, age or sexual orientation or country of origin.

Article 43

Penalties

Member States shall lay down the penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all the measures necessary to ensure that they are enforced. The penalties laid down must be effective, proportionate and dissuasive. Member States shall notify those provisions to the Commission by no later than the date specified in Article 45 and shall notify it without delay of any subsequent amendments affecting them.

Article 44

Report

No later than two years after the date specified in Article 45, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose any amendments that are necessary. Member States shall send the Commission all the information that is appropriate for drawing up this report. After presenting the report, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States at least every two years.

Article 45

Transposal

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 2005 at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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

Article 46

Entry into force

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

Article 47

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President

ANNEX I

PRINCIPLES WITH RESPECT TO THE DESIGNATION OF SAFE THIRD COUNTRIES

I. Requirements for designation

A country is considered as a safe third country if it fulfils, with respect to those foreign nationals or stateless persons to which the designation would apply, the following two requirements:

A. it consistently observes the standards laid down in international law for the protection of refugees;

B. it consistently observes basic standards laid down in international human rights law from which there may be no derogation in time of war or other public emergency threatening the life of the nation.

A. The standards laid down in international law for the protection of refugees

1) A safe third country is any country that has ratified the Geneva Convention, observes the provisions of that Convention with respect to the rights of persons who are recognised and admitted as refugees and has in place with respect to persons who wish to be recognised and admitted as refugees an asylum procedure in accordance with the following principles:

   - The asylum procedure is prescribed by law.
   - Decisions on applications for asylum are taken objectively and impartially.
   - Applicants for asylum are allowed to remain at the border or on the territory of the country as long as the decision on their application for asylum has not been decided on.
   - Applicants for asylum have the right to a personal interview, where necessary with the assistance of an interpreter.
   - Applicants for asylum are not denied the opportunity to communicate with the UNHCR or other organisations that are working on behalf of the UNHCR pursuant to an agreement with this country.
   - There is provision for appeal to a higher administrative authority or to a court of law against the decision on each application for asylum or there is an effective possibility to have the decision reviewed.
   - The UNHCR or other organisations working on behalf of the UNHCR pursuant to an agreement with this country have, in general, access to asylum applicants and to the authorities to request information regarding individual applications, the course of the procedure and the decisions taken and, in the exercise of their supervisory responsibilities under Article 35 of the Geneva Convention, can make representations to these authorities regarding individual applications for asylum.

2) Notwithstanding the above, a country that has not ratified the Geneva Convention may still be considered a safe third country if:

   - it consistently observes the principle of non-refoulement as laid down in the OAU Convention governing the specific aspects of refugee problems in Africa of 10 September 1969 and has in place with respect to the persons who request asylum

for this purpose a procedure that is in accordance with the above-mentioned principles; or

- it has followed the conclusions of the 19–22 November 1984 Cartagena Declaration of Refugees to ensure that national laws and regulations reflect the principles and criteria of the Geneva Convention and that a minimum standard of treatment for refugees is established; or
- it nonetheless consistently observes in practice the standards laid down in the Geneva Convention with respect to the rights of persons in need of international protection within the meaning of this Convention and has in place with respect to the persons who wish to be so protected a procedure which is in accordance with the above-mentioned principles; or
- as evinced by the UNHCR it complies in another manner with the need for international protection of these persons, either through cooperation with UNHCR or other organisations which may be working on behalf of the UNHCR or by other means deemed to be adequate for that purpose by the UNHCR.

For the purpose of part A a safe third country is also a country that has ratified the Geneva Convention and, while not having (yet) put in place a procedure in accordance with the principles under 1), nonetheless consistently observes in practice the standards laid down in the Geneva Convention with respect to the rights of persons in need of international protection within the meaning of this Convention as evinced by the UNHCR.

B. The basic standards laid down in international human rights law

1) Any country that has ratified either the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter referred to as 'European Convention') or both the 1966 International Covenant on Civil and Political Rights (hereafter referred to as 'International Covenant') and the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter referred to as 'Convention against Torture'), and consistently observes the standards laid down therein with respect to the right to life, freedom from torture and cruel, inhuman or degrading treatment, freedom from slavery and servitude, the prohibition of retro-active criminal laws, the right to recognition as a person before the law, freedom from being imprisoned merely on the ground of inability to fulfil a contractual obligation and the right to freedom of thought, conscience and religion.
2) Observance of the standards for the purpose of designating a country as a safe third country also includes provision by that country of effective remedies that guarantee these foreign nationals or stateless persons from being removed in breach of Article 3 of the European Convention or Article 7 of the International Covenant and Article 3 of the Convention against Torture.

II. Procedure for designation

Every general assessment of the observance of these standards for the purpose of designating a country as a safe third country in general or with respect to certain foreign nationals or stateless persons in particular must be based on a range of sources of information, which may include reports from diplomatic missions, international and non-governmental organisations and press reports. Member States may in particular take into consideration information from the UNHCR.

The report of the general assessment shall be in the public domain.

Where Member States solely assess in an individual decision the safety of a third country with respect to a particular applicant, such a decision need not be motivated on the basis of a general assessment as provided above.

ANNEX II

PRINCIPLES WITH RESPECT TO THE DESIGNATION OF SAFE COUNTRIES OF ORIGIN

I. Requirements for designation

A country is considered as a safe country of origin if it consistently observes the basic standards laid down in international human rights law from which there may be no derogation in time of war or other public emergency threatening the life of the nation, and it:

A. has democratic structures and the following rights are consistently observed there: the right to freedom of thought, conscience and religion, the right to freedom of expression, the right to freedom of peaceful assembly, the right to freedom of associations with others, including the right to form and join trade unions and the right to take part in government directly or through freely chosen representatives;

B. allows monitoring by international organisations and NGOs of its observance of human rights;

C. is governed by the rule of law and the following rights are consistently observed there: the right to liberty and security of person, the right to recognition as a person before the law and equality before the law;

D. provides for generally effective remedies against violations of these civil and political rights and, where necessary, for extraordinary remedies;

E. is a stable country.

II. Procedure for designation

Every general assessment of the observance of these standards for the purpose of a designating a country as a safe country of origin must be based on a range of sources of information, which may include reports from diplomatic missions, international and non-governmental organisations and press reports. Member States may in particular take into consideration information from the UNHCR.

The report of the general assessment shall be in the public domain.

Where Member States solely assess in an individual decision the safety of a country of origin with respect to a particular applicant, such a decision need not be motivated on the basis of a general assessment as provided above.

LEGISLATIVE FINANCIAL STATEMENT

Policy area(s):	**JUSTICE AND HOME AFFAIRS**
Activity(ies):	**Asylum and Immigration**

TITLE OF ACTION:	**AMENDED PROPOSAL FOR A COUNCIL DIRECTIVE ON MINIMUM STANDARDS ON PROCEDURES IN MEMBER STATES FOR GRANTING AND WITHDRAWING REFUGEE STATUS**

1. BUDGET LINE(S) + HEADING(S)

A0 7030 (meetings)

2. OVERALL FIGURES

2.1. Total allocation for action (Part B): EUR million for commitment

2.2. Period of application:

2001- September-2006

2.3. Overall multi-annual estimate on expenditure:

(a) Schedule of commitment appropriations/payment appropriations (financial intervention) *(see point 6.1.1)*

EUR million (*to 3rd decimal place)*

	Year n	n + 1	n + 2	n + 3	n + 4	n + 5 and subs. years	Total
Commitments							
Payments							

(b) Technical and administrative assistance and support expenditure*(see point 6.1.2)*

Commitments							
Payments							

Subtotal (a)+(b)							
Commitments							
Payments							

(c) Overall financial impact of human resources and other administrative expenditure *(see points 7.2 and 7.3)*

Commitments/ payments	0.029	0.029	0.029	0.029	0.029	0.029	0.175

TOTAL (a)+(b)+(c)							
Commitments	0.029	0.029	0.029	0.029	0.029	0.029	0.175
Payments	0.029	0.029	0.029	0.029	0.029	0.029	0.175

2.4. Compatibility with the financial programming and the financial perspective

X Proposal compatible with the existing financial programming

2.5. Financial impact on revenue[1]:

X No financial implications (involves technical aspects regarding implementation of a measure)

Note: All details and observations pertaining to the method of calculating the effect on revenue should be included in a separate annex.

EUR million *(to 1 decimal place)*

		Prior to action (Year n-1)	Situation following action					
Budget line	Revenue		Year n	n+1	n+2	n+3	n+4	n+5
	(a) Revenue in absolute terms							
	(b Change in Revenue	*Δ*						

(Please state each budget line involved, adding the appropriate number of rows to the table if there is an effect on more than one budget line)

[1] For further information see a separate guidance paper.

3. BUDGET CHARACTERISTICS

Type of expenditure		New	EFTA participation	Participation applicant countries	Heading Financial Perspective
Comp/ Non-comp	Diff/ Non-diff	YES/ NO	YES/NO	YES/NO	No

4. LEGAL BASIS

Article 63 of the EC Treaty, point 1(d)of first paragraph.

5. DESCRIPTION AND GROUNDS

5.1. Need for Community intervention[2]

5.1.1. Objectives pursued

The aim of the Directive is to establish minimum standards at Community level for asylum procedures in Member States in which refugee status is granted or withdrawn.

The proposal is one of the Community initiatives on asylum related issues for the purpose of achieving a Common European Asylum System. As Conclusion 15 of the Presidency at the tampere European Council in October 1999 states that in the long term Community rules should lead to a common asylum procedure in the European Union, the minimum standars for procedures in Member States are only a first step towards further harmonisation on procedural rules. The November 2000 Communication of the Commission on asylum, states that at the end of the first stage, in which the current Proposal has been presented, and whatever the result, it will be necessary to consider whether mechanisms can be developed to correct certain differences that might remain or to prevent the phenomenon of divergent interpretation of Community rules.

5.1.2. Measures taken in connection with ex ante *evaluation*

Not applicable

5.1.3. Measures taken following ex post *evaluation*

Not applicable

5.2. Actions envisaged and arrangements for budget intervention

With respect to this Directive, the Commission intends to establish a Contact Committee.

The reasons to establish this Committee are the following. Firstly, the Committee is to help the Member States implement the minimum standards in a forward-looking and co-ordinating spirit. Secondly, it is to be the forum for Member States that wish to go jointly beyond the minimum standards at this stage of the harmonisation process, notably with respect to coordinating the designation of safe third countries and safe countries of origin. Thirdly, it is to set aside the impediments for a common asylum procedure and create the necessary conditions for achieving the objective set by the European Council in Tampere.

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[2] For further information see a separate guidance paper.

Thus, the Committee could promote further approximation of asylum policy in the future and it could pave the way forward from minimum standards on procedures to a common procedure.

In the period before 1 January 2005 the Contact Committee will meet three times a year to prepare transposal of the Directive and henceforth two or three times a year to facilitate consultation between Member States on additional standards, etc.

5.3. Methods of implementation

Not applicable

6. FINANCIAL IMPACT

6.1. Total financial impact on Part B - (over the entire programming period)

(The method of calculating the total amounts set out in the table below must be explained by the breakdown in Table 6.2.)

6.1.1. Financial intervention

Commitments in EUR million (to the 3rd decimal place)

Breakdown	Year N	N + 1	N + 2	N + 3	N + 4	N + 5 and subs. Years	Total
Action 1							
Action 2							
Etc.							
TOTAL							

6.1.2. Technical and administrative assistance, support expenditure and IT expenditure (Commitment appropriations)

	Year N	N + 1	N + 2	N + 3	N + 4	N + 5 and subs. Years	Total
1. Technical and administrative assistance							
(a) Technical assistance							
(b) Other technical and administrative assistance: - intra muros: - extra muros: *of which for construction and maintenance of computerised management systems*							
Subtotal 1							
2. Support expenditure							
(a) Studies							
(b) Meetings of experts							
(c) Information and publications							
Subtotal 2							
TOTAL							

6.2. Calculation of costs by measure envisaged in Part B (over the entire programming period)[3]

(Where there is more than one action, give sufficient detail of the specific measures to be taken for each one to allow the volume and costs of the outputs to be estimated.).

Commitments in EUR million (to the 3rd decimal place)

Breakdown	Type of outputs (projects, files)	Number of outputs (total for years 1…n)	Average unit cost	Total cost (total for years 1…n)
	1	2	3	4=(2X3)
Action 1 - *Measure 1* - *Measure 2* Action 2 - *Measure 1* - *Measure 2* - *Measure 3* *Etc.*				
TOTAL COST				

If necessary explain the method of calculation

[3] For further information see a separate guidance paper.

7. IMPACT ON STAFF AND ADMINISTRATIVE EXPENDITURE

7.1. Impact on human resources

Types of post		Staff to be assigned to management of the action using existing and/or additional resources		Total	Description of tasks deriving from the action
		Number of permanent posts	Number of temporary posts		
Permanent officials or Temporary staff	A B C				*If necessary, a fuller description of the tasks may be annexed.*
Other human resources					
Total					

7.2. Overall financial impact of human resources

Type of human resources	Amount EUR	Method of calculation *
Officials Temporary staff		
Other human resources (give budget line)		
Total		

The amounts are total expenditure for twelve months.

The needs for human and administrative resources shall be covered within the allocation granted to the managing DG in the framework of the annual allocation procedure.

7.3. Other administrative expenditure deriving from the action

Budget line (number and heading)	Amount EUR	Method of calculation
Overall allocation (Title A7) A07030 – Meetings	29 250	3 meetings/year at average cost of EUR 9 750 (15 x EUR 650) per meeting
Information systems (A-5001/A-4300)		
Other expenditure - Part A		
Total	29 250	

The amounts are total expenditure for twelve months.

I.	Annual total (7.2 + 7.3)	EUR 29 250
II.	Duration of action	6 Years
III.	Total cost of action (I x II)	EUR 175 500

8. FOLLOW-UP AND EVALUATION

8.1. Follow-up arrangements

Every two years the Commission shall report to the EP and the Council on the application of the Directive.

8.2. Arrangements and schedule for the planned evaluation

Not applicable

9. ANTI-FRAUD MEASURES

Not applicable