

Wednesday 6 April 2011

Granting and withdrawing international protection ***I

P7_TA(2011)0136

European Parliament legislative resolution of 6 April 2011 on the proposal for a directive of the European Parliament and of the Council on minimum standards on procedures in Member States for granting and withdrawing international protection (recast) (COM(2009)0554 – C7-0248/2009 – 2009/0165(COD))

(2012/C 296 E/35)

(Ordinary legislative procedure – recast)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2009)0554),
 - having regard to Article 251(2) and Article 63, first indent, points 1(d) and 2(a), of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C7-0248/2009),
 - having regard to the Commission Communication to Parliament and the Council entitled ‘Consequences of the entry into force of the Treaty of Lisbon for ongoing interinstitutional decision-making procedures’ (COM(2009)0665),
 - having regard to Article 294(3) and Article 78(2) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 28 April 2010 ⁽¹⁾,
 - having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts ⁽²⁾,
 - having regard to its resolution of 10 March 2009 on the future of the Common European Asylum System ⁽³⁾,
 - having regard to the letter of 2 February 2010 from the Committee on Legal Affairs to the Committee on Civil Liberties, Justice and Home Affairs in accordance with Rule 87(3) of its Rules of Procedure,
 - having regard to Rules 87 and 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A7-0085/2011),
- A. whereas, according to the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission, the proposal in question does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance,
1. Adopts its position at first reading hereinafter set out, taking into account the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;

⁽¹⁾ OJ C 18, 19.1.2011, p. 85.

⁽²⁾ OJ C 77, 28.3.2002, p. 1.

⁽³⁾ OJ C 87 E, 1.4.2010, p. 10.

Wednesday 6 April 2011

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P7_TC1-COD(2009)0165

Position of the European Parliament adopted at first reading on 6 April 2011 with a view to the adoption of Directive 2011/.../EU of the European Parliament and of the Council on minimum standards on procedures in Member States for granting and withdrawing international protection (recast)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

- (1) A number of substantive changes are to be made to Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures for granting and withdrawing refugee status ⁽³⁾. In the interests of clarity, that Directive should be recast.
- (2) A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of establishing progressively an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Union.
- (3) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention of 28 July 1951 relating to the status of refugees, as amended by the New York Protocol of 31 January 1967 (Geneva Convention), thus affirming the principle of non-refoulement and ensuring that nobody is sent back to persecution.
- (4) The Tampere Conclusions provide that a Common European Asylum System should include, in the short term, common standards for fair and efficient asylum procedures in the Member States and, in the longer term, Community rules leading to a common asylum procedure in the European Community.
- (5) Directive 2005/85/EC was a first measure on asylum procedures.
- (6) The first phase in the creation of a Common European Asylum System has now been achieved. The European Council of 4 November 2004 adopted the Hague Programme, which sets the objectives to be implemented in the area of freedom, security and justice in the period 2005-2010. In this respect the Hague Programme invited the European Commission to conclude the evaluation of the first phase legal instruments and to submit the second-phase instruments and measures to the Council and the European Parliament, with a view to their adoption before 2010. In accordance with the Hague programme, the objective to be pursued for the creation of the Common European Asylum System is the establishment of a common asylum procedure and a uniform status valid throughout the Union.

⁽¹⁾ OJ C 18, 19.1.2011, p. 85.

⁽²⁾ Position of the European Parliament of 6 April 2011.

⁽³⁾ OJ L 326, 13.12.2005, p. 13.

Wednesday 6 April 2011

- (7) In the European Pact on Immigration and Asylum, adopted on 16 October 2008, the European Council noted that considerable disparities remain between one Member State and another concerning the grant of protection and called for new initiatives, including a proposal for establishing a single asylum procedure comprising common guarantees, to complete the establishment of a Common European Asylum System, provided for in the Hague Programme.
- (8) **It is necessary for** the resources of the European Refugee Fund and of the European Asylum Support Office **to** be mobilised, *inter alia*, to provide adequate support to the Member States' efforts relating to the implementation of the standards set in the second phase of the Common European Asylum System, in particular to those Member States which are faced with specific and disproportionate pressures on their asylum systems, due in particular to their geographical or demographic situation. **It is also necessary that in Member States that receive a disproportionately large number of asylum applications in relation to the size of their population, financial support and administrative/technical support be mobilised immediately under the European Refugee Fund and the European Asylum Support Office respectively in order to enable them to comply with this Directive.** [Am. 1]
- (9) In order to ensure a comprehensive and efficient evaluation of the international protection needs of applicants within the meaning of Directive [...]/.../EU [on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted (the Qualification Directive)] the Union framework on procedures for granting international protection should be based on the concept of a single asylum procedure.
- (10) The main objective of this Directive is to develop further minimum standards for procedures in Member States for granting and withdrawing international protection with a view to establishing a common asylum procedure in the Union.
- (11) The approximation of rules on the procedures for granting and withdrawing international protection should help to limit the secondary movements of applicants for international protection between Member States, where such movement would be caused by differences in legal frameworks, and create equivalent conditions for the application of Directive [...]/.../EU [the Qualification Directive] in Member States.
- (12) It is in the very nature of minimum standards that Member States should have the power to introduce or maintain more favourable provisions for third country nationals or stateless persons who ask for international protection from a Member State, where such a request is understood to be on the grounds that the person concerned is in need of international protection within the meaning of Directive [...]/.../EU [the Qualification Directive].
- (13) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular this Directive seeks to promote the application of **Articles 1, 4, 18, 19, 21, 24 and 47** of the Charter and has to be implemented accordingly. [Am. 2]
- (14) With respect to the treatment of persons falling within the scope of this Directive, Member States are bound by obligations under instruments of international law to which they are party.
- (15) **Member States are obliged to respect fully the principle of non-refoulement and the right to asylum, which includes access to an asylum procedure for any person who wishes to claim asylum and who is in their jurisdiction, including those under the effective control of a Union body or a body of a Member State.** [Am. 3]
- (16) It is essential that decisions on all applications for international protection be taken on the basis of the facts and, in the first instance, by authorities whose personnel has the appropriate knowledge **and** receives the necessary training in the field of asylum and refugee matters. [Am. 4]

Wednesday 6 April 2011

- (17) It is in the interest of both Member States and applicants for international protection to decide as soon as possible on applications for international protection, without prejudice to an adequate and complete examination.
- (18) The notion of public order may inter alia cover a conviction for committing a serious crime.
- (19) In the interests of a correct recognition of those persons in need of protection as refugees within the meaning of Article 1 of the Geneva Convention or as persons eligible for subsidiary protection, every applicant should have an effective access to procedures, the opportunity to cooperate and properly communicate with the competent authorities so as to present the relevant facts of his/her case and **effective** procedural guarantees to pursue his/her case throughout all stages of the procedure. Moreover, the procedure in which an application for international protection is examined should normally provide an applicant at least with the right to stay pending a **final** decision by the determining authority **and, in the case of a negative decision, the time necessary for seeking a judicial remedy, and for so long as a competent court or tribunal so authorises**, access to the services of an interpreter for submitting his/her case if interviewed by the authorities, the opportunity to communicate with a representative of the United Nations High Commissioner for Refugees (UNHCR) and with organizations providing advice or counselling to applicants for international protection, the right to appropriate notification of a decision, a motivation of that decision in fact and in law, the opportunity to consult a legal advisor or other counsellor, and the right to be informed of his/her legal position at decisive moments in the course of the procedure, in a language he/she **understands or may** reasonably be supposed to understand and, in the case of a negative decision, the right to an effective remedy before a court or tribunal. [Am. 5]
- (20) With a view to ensuring an effective access to the examination procedure, officials who first come into contact with persons seeking international protection, in particular those carrying out surveillance of land or maritime borders or conducting border checks, should receive instructions and necessary training on how to recognise, **register and forward to the competent determining authority** requests for international protection. They should be able to provide third country nationals or stateless persons who are present in the territory, including at the border, in the territorial waters or in the transit zones of the Member States, and wish to request international protection, with all relevant information as to where and how applications for international protection may be lodged. Where those persons are present in the territorial waters of a Member State, they should be disembarked in land and have their applications examined in accordance with this Directive. [Am. 6]
- (21) In addition, special procedural guarantees for vulnerable applicants, such as minors, unaccompanied minors, **pregnant women**, persons who have been subjected to torture, rape or other serious acts of violence, **such as violence based on gender and harmful traditional practices**, or disabled persons, should be laid down in order to create the conditions necessary for their effective access to procedures and presenting the elements needed to substantiate the application for international protection. [Am. 7]
- (22) National measures dealing with identification and documentation of symptoms and signs of torture or other serious acts of physical or mental violence, including acts of sexual violence, in procedures covered by this Directive should inter alia be based on the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).
- (23) With a view to ensuring substantive equality between female and male applicants, examination procedures should be gender sensitive. In particular, personal interviews should be organised in a way which makes it possible for both female and male applicants to speak about their past experiences in cases involving gender based persecution **to an interviewer of the same sex if so requested, who has specific training on the issue of interviews regarding gender-based persecution**. The complexity of gender related claims should be properly taken into account in procedures based on the safe third country concept, the safe country of origin concept or the notion of subsequent applications. [Am. 8]

Wednesday 6 April 2011

- (24) The 'best interests of the child' should be a primary consideration of Member States when implementing this Directive, in line with the 1989 United Nations Convention on the Rights of the Child.
- (25) Procedures for examining international protection needs should be organised in a way that makes it possible for the **determining** authorities to conduct a rigorous examination of applications for international protection. [Am. 9]
- (26) Where an applicant makes a subsequent application without presenting new evidence or arguments, it would be disproportionate to oblige Member States to carry out a new full examination procedure. In these cases, Member States should be able to dismiss an application as inadmissible in accordance with the *res judicata* principle.
- (27) Many applications for international protection are made at the border or in a transit zone of a Member State prior to a decision on the entry of the applicant. Member States should be able to provide for admissibility and/or substantive examination procedures which make it possible to decide on applications made at the border or in transit zones at those locations.
- (28) A key consideration for the well-foundedness of an application for international protection is the safety of the applicant in his/her country of origin. Where a third country can be regarded as a safe country of origin, Member States should be able to designate it as safe and presume its safety for a particular applicant, unless he/she presents counter-indications.
- (29) Given the level of harmonisation achieved on the qualification of third country nationals and stateless persons as refugees, common criteria for designating third countries as safe countries of origin should be established.
- (30) The designation of a third country as a safe country of origin for the purposes of this Directive cannot establish an absolute guarantee of safety for nationals of that country. By its very nature, the assessment underlying the designation can only take into account the general civil, legal and political circumstances in that country and whether actors of persecution, torture or inhuman or degrading treatment or punishment are subject to sanction in practice when found liable in the country concerned. For this reason, it is important that, where an applicant shows that there are valid reasons to consider the country not to be safe in his/her particular circumstances, the designation of the country as safe can no longer be considered relevant for him/her.
- (31) Member States should examine all applications on the substance, i.e. assess whether the applicant in question qualifies for international protection in accordance with Directive [.../.../EU] [the Qualification Directive] except where this Directive provides otherwise, in particular where it can be **ensured** that another country would do the examination or provide **effective** protection. In particular, Member States should not be obliged to assess the substance of an application for international protection where a first country of asylum has granted the applicant refugee status or otherwise **accessible and effective** protection and the applicant will be readmitted to this country. **Member States should proceed in this way only in cases where the applicant in question is safe in the third country concerned.** [Am. 10]
- (32) Member States should also not be obliged to assess the substance of an application for international protection where the applicant, due to a sufficient connection to a third country as defined by national law, can reasonably be expected to seek protection in that third country, and there are grounds for considering that the applicant will be admitted or re-admitted to that country. Member States should only proceed on this basis where this particular applicant would be safe in the third country concerned. In order to avoid secondary movements of applicants, common principles for the consideration or designation by Member States of third countries as safe should be established.

■ [Am. 11]

Wednesday 6 April 2011

- (33) With respect to the withdrawal of refugee or subsidiary protection status, Member States should ensure that persons benefiting from international protection are duly informed of a possible reconsideration of their status and have the opportunity to submit their point of view before the authorities can take a motivated decision to withdraw their status.
- (34) It reflects a basic principle of Union law that the decisions taken on an application for international protection and on the withdrawal of refugee or subsidiary protection status are subject to an effective remedy before a court or tribunal.
- (35) In accordance with Article 72 of the Treaty on the Functioning of the European Union, this Directive does not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.
- (36) This Directive does not deal with procedures between Member States governed by Regulation (EU) No [.../...] [establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (The Dublin Regulation)].
- (37) Applicants with regard to whom Regulation EU No [.../...] [the Dublin Regulation] applies should enjoy access to the basic principles and guarantees set out in this Directive and to the special guarantees pursuant to that Regulation.
- (38) The implementation of this Directive should be evaluated at regular intervals.
- (39) Since the objective of this Directive, namely to establish minimum standards on procedures in Member States for granting and withdrawing international protection cannot be sufficiently attained by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve this objective.
- (40) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark does not take part in the adoption of this Directive and is not bound by it or subject to its application.
- (41) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with Directive 2005/85/EC. The obligation to transpose the provisions which are unchanged arises under Directive 2005/85/EC.
- (42) This Directive should be without prejudice to the obligations of the Member States relating to the time-limit for transposition into national law of the Directive set out in Annex II, Part B,

HAVE 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 international protection by virtue of Directive [.../.../EU] [the Qualification Directive].

Wednesday 6 April 2011

Article 2

Definitions

For the purposes of this Directive:

- (a) 'Geneva Convention' means the Convention of 28 July 1951 relating to the status of refugees, as amended by the New York Protocol of 31 January 1967;
- (b) 'application' or 'application for international protection' means a request made by a third country national or a stateless person for protection from a Member State, who can be understood to seek refugee or subsidiary protection status, and who does not explicitly request another kind of protection outside the scope of Directive [...]/.../EU [the Qualification Directive], that can be applied for separately;
- (c) 'applicant' or 'applicant for international protection' means a third country national or stateless person who has made an application for international protection in respect of which a final decision has not yet been taken;
- (d) 'applicant with special needs' means an applicant who due to age, gender, **sexual orientation, gender identity**, disability, **physical or mental illnesses** or consequences of torture, rape or other serious forms of psychological, physical or sexual violence is in need of special guarantees in order to benefit from the rights and comply with the obligations in accordance with this Directive; **[Am. 13]**
- (e) 'final decision' means a decision on whether the third country national or stateless person be granted refugee or subsidiary protection status by virtue of Directive [...]/.../EU [the Qualification Directive] and which is no longer subject to a remedy within the framework of Chapter V of this Directive irrespective of whether such remedy has the effect of allowing applicants to remain in the Member States concerned pending its outcome;
- (f) 'determining authority' means any quasi-judicial or administrative body in a Member State responsible for examining applications for international protection and competent to take decisions at first instance in such cases, subject to Annex I;
- (g) 'refugee' means a third country national or a stateless person who fulfils the requirements of Article 2(d) of Directive [...]/.../EU [the Qualification Directive];
- (h) 'person eligible for subsidiary protection' means a third country national or a stateless person who fulfils the requirements of Article 2(f) of Directive [...]/.../EU [the Qualification Directive];
- (i) 'international protection' means the recognition by a Member State of a third country national or a stateless person as a refugee or a person eligible for subsidiary protection;
- (j) 'refugee status' means the recognition by a Member State of a third country national or a stateless person as a refugee;
- (k) 'subsidiary protection status' means the recognition by a Member State of a third country national or a stateless person as a person eligible for subsidiary protection;
- (l) 'minor' means a third country national or a stateless person below the age of 18 years;
- (m) 'unaccompanied minor' means a minor as defined in Article 2(l) of Directive [...]/.../EU [the Qualification Directive];
- (n) 'representative' means a person appointed by the competent authorities to act as a legal guardian in order to assist and represent an unaccompanied minor with a view to ensuring the child's best interests and exercising legal capacity for the minor where necessary;

Wednesday 6 April 2011

- (o) 'withdrawal of international protection' means the decision by a competent authority to revoke, end or refuse to renew refugee or subsidiary protection status of a person in accordance with Directive [...]/.../EU [the Qualification Directive];
- (p) 'remain in the Member State' means to remain in the territory, including at the border or in transit zones, of the Member State in which the application for international protection has been made or is being examined;
- (q) **'new facts and circumstances' means facts supporting the essence of the claim, which could contribute to the revision of an earlier decision. [Am. 15]**

Article 3

Scope

1. This Directive shall apply to all applications for international protection made in the territory, including at the border, in the territorial waters or in the transit zones of the Member States, and to the withdrawal of international protection.
2. This Directive shall not apply in cases of requests for diplomatic or territorial asylum submitted to representations of Member States.
3. Member States may decide to apply this Directive in procedures for deciding on applications for any kind of international protection falling outside the scope of Directive [...]/.../EU [the Qualification Directive].

Article 4

Responsible authorities

1. Member States shall designate for all procedures a determining authority which will be responsible for an appropriate examination of the applications in accordance with this Directive. Member States shall ensure that this authority has sufficient numbers of competent and specialized personnel at its disposal for carrying out its tasks within the prescribed time limits. To that end, Member States shall provide for initial and follow up training programmes for the personnel examining applications and taking decisions on international protection.
2. The training referred to in paragraph 1 shall include, in particular:
 - (a) substantive and procedural rules on international protection and Human Rights set out in relevant international and Union instruments, including the principles of non-refoulement and non-discrimination;
 - (b) applicants with special needs, as defined in Article 2(d); [Am. 16]**
 - (c) gender, **sexual orientation**, trauma and age awareness, **with particular attention being paid to unaccompanied minors**; [Am. 17]
 - (d) use of country of origin information;
 - (e) interview technics, including cross-culture communication;
 - (f) identification and documentation of signs and symptoms of torture;
 - (g) evidence assessment, including the principle of the benefit of the doubt;
 - (h) case law issues relevant to the examination of applications for international protection.

Wednesday 6 April 2011

3. However, Member States may provide that another authority is responsible for the purpose of processing cases pursuant to Regulation (EU) No [.../...] [the Dublin Regulation].

4. Where an authority is designated in accordance with paragraph 3, Member States shall ensure that the personnel of that authority have the appropriate knowledge **and** receive the necessary training to fulfil their obligations when implementing this Directive. [Am. 18]

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

Article 5

More favourable provisions

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

CHAPTER II

BASIC PRINCIPLES AND GUARANTEES

Article 6

Access to the procedure

1. Member States shall designate competent authorities responsible for the receipt and registration of applications for international protection. Without prejudice to paragraphs 5, 6, 7 and 8, Member States may require that applications for international protection be made in person and/or at a designated place.

2. Member States shall ensure that a person who wishes to make an application for international protection has an effective opportunity to lodge the application with the competent authority as soon as possible. **Where applicants are unable to lodge their application in person, Member States shall ensure that a legal representative is able to lodge the application on their behalf.** [Am. 19]

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

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

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

5. Member States shall ensure that a minor has the right to make an application for international protection either on his/her own behalf – **if he/she is considered under national law as capable of bringing proceedings** – or through his/her **legal representative or the latter's authorised representative.** **In all other cases, paragraph 6 shall apply.** [Am. 20]

Wednesday 6 April 2011

6. Member States shall ensure that the appropriate bodies referred to in Article 10 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals⁽¹⁾ have the right to lodge an application for international protection on behalf of an unaccompanied minor if, on the basis of an individual assessment of his/her personal situation, these bodies are of the opinion that the minor may have protection needs pursuant to Directive [.../.../EU] [the Qualification Directive].

7. Member States may determine in national legislation:

- (a) the cases in which a minor can make an application on his/her own behalf;
- (b) the cases in which the application of an unaccompanied minor has to be lodged by a representative as provided for in Article 21(1)(a).

■ [Am. 21]

8. Member States shall ensure that border guards, police and immigration authorities, and personnel of detention facilities have instructions and receive necessary training for **recognising, registering and forwarding** applications for international protection. If these authorities are designated as competent authorities pursuant to paragraph 1, the instructions shall include an obligation to register the application. In other cases, the instructions shall require to forward the application to the authority competent for this registration together with all relevant information. [Am. 22]

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

9. An application for international protection shall be registered by the competent authorities within 72 hours from the moment a person has expressed his/her wish to apply for international protection pursuant to subparagraph 1 of paragraph 8.

Article 7

Information and counseling at border crossing points and detention facilities

1. Member States shall ensure that information on procedures to be followed in order to make an application for international protection is made available at:

- (a) border crossing points, including transit zones, at external borders; and
- (b) detention facilities.

2. Member States shall provide for interpretation arrangements in order to ensure communication between persons who wish to make an application for international protection and border guards or personnel of detention facilities.

3. Member States shall ensure that organisations providing **legal assistance and/or representation** to applicants for international protection have **swift** access to the border crossing points, including transit zones, and detention facilities ■ [Am. 23]

Member States may provide for rules covering the presence of such organisations in the areas referred to in this Article, **as long as they do not limit access by applicants to advice and counselling**. [Am. 24]

⁽¹⁾ OJ L 348, 24.12.2008, p. 98.

Wednesday 6 April 2011

Article 8

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

1. Applicants shall be allowed to remain in the Member State, for the sole purpose of the procedure, until the determining authority has made a **final** decision, **including in cases where an applicant lodges an appeal, and for as long as a competent court or tribunal so authorises**. This right to remain shall not constitute an entitlement to a residence permit. [Am. 25]
2. Member States can make an exception only where a person makes a subsequent application as described in Article 34(7) or where they will surrender or extradite, as appropriate, a person either to another Member State pursuant to obligations in accordance with Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States ⁽¹⁾ or otherwise, or to a third country, with the exception of the country of origin of the applicant concerned, or to international criminal courts or tribunals.
3. A Member State may extradite an applicant to a third country pursuant to paragraph 2 only where **an extradition decision will not result in direct or indirect refoulement in violation of international obligations of the Member State or expose the applicant to inhuman or degrading treatment upon arrival in the third country**. [Am. 26]

Article 9

Requirements for the examination of applications

1. Member States shall ensure that applications for international protection are neither rejected nor excluded from examination on the sole ground that they have not been made as soon as possible.
2. Applications for international protection shall first be examined to determine whether applicants qualify as refugees. If not, they shall be examined to determine whether the applicants are eligible for subsidiary protection.
3. Member States shall ensure that decisions by the determining authority on applications for international protection are taken after an appropriate examination. To that end, Member States shall ensure that:
 - (a) applications are examined and decisions are taken individually, objectively and impartially;
 - (b) precise and up-to-date information is obtained from various sources, such as the United Nations High Commissioner for Refugees (UNHCR), the European Asylum Support Office **and international human rights organisations**, as to the general situation prevailing in the countries of origin of applicants 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 and, where the determining authority takes it into consideration for the purpose of taking a decision, to the applicant and his/her legal advisor; [Am. 27]
 - (c) the personnel examining applications and taking decisions have the knowledge with respect to relevant standards applicable in the field of asylum and refugee law **as well as human rights law and have completed the initial and follow-up training programme referred to in Article 4(1)**; [Am. 28]
 - (d) the personnel examining applications and taking decisions are instructed and have the possibility to seek advice, whenever necessary, from experts on particular issues, such as medical, cultural, child, gender, **religious or sexual orientation** issues; [Am. 29]

⁽¹⁾ OJ L 190, 18.7.2002, p. 1.

Wednesday 6 April 2011

(e) *the applicant and his/her legal advisor have access to information provided by the experts referred to in point (d).* [Am. 30]

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

5. Member States shall provide for rules concerning the translation of documents relevant for the examination of applications.

Article 10

Requirements for a decision by the determining authority

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

2. Member States shall also ensure that, where an application is rejected **or granted** with regard to refugee and/or subsidiary protection status, the reasons in fact and in law are **clearly** stated in the decision and information on how to challenge a negative decision is given in writing **at the time of issuing the decision and signed upon receipt by the recipient.** [Am. 31]

■ [Am. 32]

3. For the purposes of Article 6(4), and whenever the application is based on the same grounds, Member States may take one single decision, covering all dependants.

4. Paragraph 3 shall not apply to cases where disclosure of particular circumstances of a person to members of his/her family can jeopardize the interests of that person, including cases involving gender, **sexual orientation, gender identity** and/or age based persecution. In such cases, a separate decision shall be issued to the person concerned. [Am. 33]

Article 11

Guarantees for applicants for international protection

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

(a) they shall be informed in a language which they **understand or** may reasonably be supposed to understand of the procedure to be followed and of their rights and obligations during the procedure and the possible consequences of not complying with their obligations and not cooperating with the authorities. They shall be informed of the time-frame, as well as the means at their disposal for fulfilling the obligation to submit the elements as referred to in Article 4 of Directive [...]/.../EU [the Qualification Directive]. This information shall be given in time to enable them to exercise the rights guaranteed in this Directive and to comply with the obligations described in Article 12; [Am. 34]

(b) they shall receive the services of an interpreter for submitting their case to the competent authorities whenever necessary. Member States shall consider it necessary to provide these services at least when the determining authority calls upon the applicant to be interviewed as referred to in Articles 13, 14, 15, 16 and 31 and appropriate communication cannot be ensured without such services. In this case and in other cases where the competent authorities call upon the applicant, these services shall be paid for out of public funds;

Wednesday 6 April 2011

- (c) they shall not be denied the opportunity to communicate with the UNHCR or with any other organisation providing legal advice or counselling to asylum seekers in accordance with national legislation of that Member State;
 - (d) they shall be given notice in reasonable time of the decision by the determining authority on their application for international protection. If a legal advisor or other counsellor is legally representing the applicant, Member States may choose to give notice of the decision to him/her instead of to the applicant for international protection;
 - (e) they shall be informed of the result of the decision by the determining authority in a language that they **understand or** may reasonably be supposed to understand when they are not assisted or represented by a legal advisor or other counsellor. The information provided shall include information on how to challenge a negative decision in accordance with the provisions of Article 10(2). [**Am. 35**]
2. With respect to the procedures provided for in Chapter V, Member States shall ensure that all applicants enjoy equivalent guarantees to the ones referred to in paragraph 1(b), (c) and (d) of this Article.

Article 12

Obligations of the applicants for international protection

1. Applicants for international protection shall **be required to assist, to the extent of their physical and psychological capacities, in clarifying the situation and to reveal** their identity, **nationality** and other elements referred to in Article 4(2) of Directive [...]/.../EU] [the Qualification Directive] **to the competent authorities. If they are not in possession of a valid passport or a document in lieu of a passport, applicants shall be required to cooperate in obtaining an identity document. So long as applicants are permitted to remain in the Member State under international protection during the consideration of the application, they shall not be required to enter into contact with authorities of their country of origin if there is reason to fear persecution by that state.** Member States may impose upon applicants other obligations to cooperate with the competent authorities insofar as these obligations are necessary for the processing of the application. [**Am. 36**]
2. In particular, Member States may provide that:
- (a) applicants are required to report to the competent authorities or to appear before them in person, either without delay or at a specified time;
 - (b) applicants have to hand over documents in their possession relevant to the examination of the application, such as their passports;
 - (c) applicants are required to inform the competent authorities of their current place of residence or address and of any changes thereof as soon as possible. Member States may provide that the applicant shall have to accept any communication at the most recent place of residence or address which he/she indicated accordingly;
 - (d) the competent authorities may search the applicant and the items he/she carries with him/her, provided the search is carried out by a person of the same sex **who is sensitive to the applicant's age and culture and fully respects the principle of human dignity and physical and mental integrity;** [**Am. 37**]
 - (e) the competent authorities may take a photograph of the applicant; and
 - (f) the competent authorities may record the applicant's oral statements, provided he/she has previously been informed thereof.

Wednesday 6 April 2011

Article 13

Personal interview

1. Before a decision is taken by the determining authority, the applicant shall be given the opportunity of a personal interview on his/her application for international protection **in a language which he/she understands** with a person competent under national law to conduct such an interview. Interviews on **the admissibility of an application for international protection and on** the substance of an application for international protection shall always be conducted by the personnel of the determining authority. [Am. 38]

Where a person has made an application for international protection on behalf of his/her dependants, each adult to whom the applicant relates must be given the opportunity to express his/her opinion in private and to be interviewed on his/her application.

Member States **shall** determine in national legislation the cases in which a minor shall be given the opportunity of a personal interview, **taking due account of the child's best interests and special needs**. [Am. 39]

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

- (a) the determining authority is able to take a positive decision with regard to refugee status on the basis of evidence available; or
- (b) the **determining** authority is of the opinion that the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond his/her control. When in doubt, the **determining** authority shall consult a medical expert to establish whether the condition is temporary or permanent. [Am. 40]

Where the **determining authority** does not provide the applicant with the opportunity for a personal interview pursuant to point (b), or where applicable, to the dependant, **the determining authority** shall **■** allow the applicant or the dependant to **reschedule the personal interview and to** submit further information. [Am. 41]

■ [Am. 42]

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

4. Irrespective of Article 25(1), Member States, when deciding on the application for international protection, may take into account the fact that the applicant failed to appear for the personal interview, unless he/she had good reasons for the failure to appear.

Article 14

Requirements for a personal interview

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

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

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

- (a) ensure that the person who conducts the interview is **qualified, trained and** competent to take account of the personal **and** general circumstances surrounding the application, including the applicant's cultural origin, gender, **sexual orientation, gender identity**, or vulnerability; [Am. 43]

Wednesday 6 April 2011

- (b) wherever possible, provide for the interview with the applicant to be conducted by a person of the same sex if the applicant concerned so requests;
 - (c) select a competent interpreter who is able to ensure appropriate communication between the applicant and the person who conducts the interview **and is required to comply with a code of conduct laying down the rights and duties of the interpreter**. The communication need not necessarily take place in the language preferred by the applicant if there is another language which he/she understands and in which he/she is able to communicate clearly. Wherever possible, Member States shall provide an interpreter of the same sex if the applicant so requests; [Am. 44]
 - (d) ensure that the person who conducts an interview on the substance of an application for international protection does not wear a uniform;
 - (e) ensure that interviews with minors are conducted in a child-friendly manner **and by a person with the necessary knowledge of the special needs and rights of minors**. [Am. 45]
4. Member States may provide for rules concerning the presence of third parties at a personal interview.

Article 15

Content of a personal interview

When conducting a personal interview on the substance of an application for international protection, the determining authority shall ensure that the applicant has an adequate opportunity to present elements needed to substantiate his/her application for international protection in accordance with Article 4(1) and (2) of Directive [.../.../EU] [the Qualification Directive]. To that end, Member States shall ensure that:

- (a) questions addressed to the applicant are relevant to the assessment of whether he/she is in need of international protection in accordance with Directive [.../.../EU] [the Qualification Directive];
- (b) the applicant has an adequate opportunity to give an explanation regarding elements needed to substantiate the application which may be missing and/or any inconsistencies or contradictions in his/her statements.

Article 16

Transcript and report of personal interviews

1. Member States shall ensure that a transcript is made of every personal interview.
2. Member States shall request the applicant's approval on the contents of the transcript at the end of the personal interview. To that end, Member States shall ensure that the applicant has the opportunity to make comments and/or provide clarifications with regard to any mistranslations or misconceptions appearing in the transcript.
3. Where an applicant refuses to approve the contents of the transcript, the reasons for this refusal shall be entered into the applicant's file.

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

4. Without prejudice to paragraphs 1 and 2, Member States may ensure that a written report is made of a personal interview, containing at least the essential information regarding the application, as presented by the applicant. In such cases, Member States shall ensure that the transcript of the personal interview is annexed to the report.

Wednesday 6 April 2011

5. Member States shall ensure that applicants have timely access to the transcript and, where applicable, the report of the personal interview before the determining authority takes a decision.

Article 17

Medico-legal reports

1. Member States shall allow applicants, upon request, to have a medical examination carried out in order to support statements in relation to past persecution or serious harm. To that end, Member States shall grant applicants a reasonable period to submit a medical certificate to the determining authority.

2. Without prejudice to paragraph 1, in cases where there are reasonable grounds to consider that the applicant suffers from post-traumatic stress disorder, the determining authority, subject to the consent of the applicant, shall ensure that a medical examination is carried out.

3. Member States shall provide for relevant arrangements in order to ensure that impartial and qualified medical expertise is made available for the purpose of a medical examination referred to in paragraph 2 **and that the less invasive medical examination is selected when the applicant is a minor.** [Am. 46]

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

5. Member States shall ensure that persons interviewing applicants in accordance with this Directive receive training with regard to the identification of symptoms of torture.

6. The results of medical examinations referred to in paragraphs 1 and 2 shall be assessed by the determining authority along with other elements of the application. They shall, in particular, be taken into account when establishing whether the applicant's statements are credible and sufficient.

Article 18

Right to **advice on procedural and legal aspects**, legal assistance and representation [Am. 47]

1. Applicants for international protection shall be given the opportunity to consult in an effective manner a legal advisor or other counsellor, admitted or permitted as such under national law, on matters relating to their applications for international protection, at all stages of the procedure, including following a negative decision.

2. Member States shall ensure that free legal assistance and/or representation be granted on request, subject to the provisions of paragraph 3. To that end, Member States shall:

(a) provide for free **advice on procedural and legal aspects** in procedures in accordance with Chapter III. This shall include, at least, the provision of information on the procedure to the applicant in the light of his/her particular circumstances, **preparation of the necessary procedural documents, including during the personal interview**, and explanations of reasons in fact and in law in the case of a negative decision. **Such advice may be delivered by a qualified non-governmental organisation or by qualified professionals.** [Am. 48]

(b) provide for free legal assistance **and** representation in procedures in accordance with Chapter V. This shall include, at least, the preparation of the required procedural documents and participation in the hearing before a court or tribunal of first instance on behalf of the applicant. [Am. not concerning all languages]

Wednesday 6 April 2011

3. Member States may provide in their national legislation that free legal assistance and/or representation is granted:

- (a) only to those who lack sufficient resources; and/or
- (b) only **for the services provided by** legal advisors or other counsellors specifically designated by national law to assist and/or represent applicants for international protection. [Am. 50]

With respect to the procedures provided for in Chapter V, Member States may choose to only make free legal assistance and/or representation available to applicants insofar as such assistance is necessary to ensure their effective access to justice. Member States shall ensure that legal assistance and/or representation granted pursuant to this paragraph is not arbitrarily restricted. **Member States may choose to grant such legal assistance and/or representation only if there is a sufficient prospect of success as assessed by the court.** [Am. 51]

4. Rules concerning the modalities for filing and processing requests for legal assistance and/or representation may be provided by Member States.

5. Member States **shall allow and facilitate the provision by** non-governmental organisations **of** free legal assistance and/or representation to applicants for international protection in procedures provided for in Chapter III and/or Chapter V. [Am. 52]

6. Member States may also:

- (a) impose monetary and/or time-limits on the provision of free legal assistance and/or representation, provided that such limits do not arbitrarily restrict access to legal assistance and/or representation;
- (b) provide that, as regards fees and other costs, the treatment of applicants shall not be more favourable than the treatment generally accorded to their nationals in matters pertaining to legal assistance.

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

Article 19

Scope of legal assistance and representation

1. Member States shall ensure that a legal advisor or other counsellor admitted or permitted as such under national law, and who assists or represents an applicant for international protection under the terms of national law, shall enjoy access to the information in the applicant's file upon which a decision is or will be made.

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

- (a) grant access to the information or sources in question at least to a legal advisor or counsellor who has undergone a security check, insofar as the information is relevant to the examination of the application or taking a decision to withdraw international protection;
- (b) make access to the information or sources in question available to the authorities referred to in Chapter V.

Wednesday 6 April 2011

2. Member States shall ensure that the legal advisor or other counsellor who assists or represents an applicant for international protection has access to closed areas, such as detention facilities and transit zones, for the purpose of consulting that applicant.

Member States may only limit the possibility of visiting applicants in closed areas where such limitation is, by virtue of national legislation, objectively necessary for the security, public order or administrative management of the area, or in order to ensure an efficient examination of the application, provided that access by the legal advisor or other counsellor is not thereby severely limited or rendered impossible.

3. Member States shall allow the applicant to bring to the personal interview a legal advisor or other counsellor admitted or permitted as such under national law, **or a qualified professional**. [Am. 53]

4. Member States may provide rules covering the presence of legal advisors or other counsellors at all interviews in the procedure, without prejudice to this Article or to Article 21(1)(b).

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

The absence of a legal advisor or other counsellor shall not prevent the determining authority from conducting the personal interview with the applicant, without prejudice to Article 21(1)(b).

Article 20

Applicants with special needs

1. **In accordance with Article 21 of Directive [...]/.../EU [laying down minimum standards for the reception of asylum seekers (the Reception Conditions Directive)], Member States shall establish procedures in national law with a view to identifying, as soon as an application for international protection is lodged, whether the applicant has special needs and indicating the nature of such needs.** [Am. 54]

2. Member States shall take appropriate measures to ensure that applicants with special needs are given the opportunity to present the elements of an application as completely as possible and with all available evidence. Where needed, they shall be granted time extensions to enable them to submit evidence or take other necessary steps in the procedure.

3. In cases where the determining authority consider that an applicant has been subjected to torture, rape or other serious forms of psychological, physical or sexual violence as described in Article 21 of Directive [...]/.../EU [the Reception Conditions Directive], the applicant shall be granted sufficient time and relevant support to prepare for a personal interview on the substance of his/her application. **Particular attention shall be given to those applicants who did not mention their sexual orientation at the outset.** [Am. 55]

4. Article 28(6) and (7) shall not apply to the applicants referred to in paragraph 3 of this Article.

5. **In accordance with the conditions laid down in Article 18, applicants with special needs shall enjoy free legal assistance in all procedures provided for in this Directive.** [Am. 56]

Article 21

Guarantees for unaccompanied minors

1. With respect to all procedures provided for in this Directive and without prejudice to Articles 13, 14 and 15, Member States shall:

Wednesday 6 April 2011

- (a) **immediately** take measures to ensure that a representative represents and assists the unaccompanied minor with respect to the lodging and the examination of the application. The representative shall be impartial and have the necessary expertise in the field of childcare. This representative can also be the representative referred to in Directive [...]/.../EU [the Reception Conditions Directive]; **[Am. not concerning all languages]**
- (b) ensure that the representative is given the opportunity to inform the unaccompanied minor about the meaning and possible consequences of the personal interview and, where appropriate, how to prepare himself/herself for the personal interview. Member States shall ensure that a representative and/or a legal advisor or other counsellor admitted as such under national law **or qualified professional** are present at that interview and have an opportunity to ask questions or make comments, within the framework set by the person who conducts the interview. **[Am. 58]**

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

■ **[Am. 59]**

2. Member States shall ensure that:

- (a) If an unaccompanied minor has a personal interview on his/her application for international protection as referred to in Articles 13, 14 and 15 that interview is conducted by a person who has the necessary knowledge of the special needs **and rights** of minors; **[Am. 60]**
- (b) an official with the necessary knowledge of the special needs **and rights** of minors prepares the decision by the determining authority on the application of an unaccompanied minor. **[Am. 61]**

3. Subject to the conditions set out in Article 18, unaccompanied minors **together with their appointed representative** shall, **with respect to all procedures provided for in this Directive**, be granted free legal **advice on procedural and legal aspects and free legal representation**. **[Am. 62]**

4. Member States may use medical examinations to determine the age of unaccompanied minors within the framework of the examination of an application for international protection, where, following his/her general statements or other relevant evidence, Member States still have doubts concerning his/her age. **If those doubts persist after the medical examination, any decision shall always be for the benefit of the unaccompanied minor**. **[Am. 63]**

Any medical examination shall be performed in full respect of the individual's dignity, selecting **the most reliable and** the less invasive exams **and carried out by qualified and impartial medical experts**. **[Am. 65]**

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

- (a) unaccompanied minors are informed prior to the examination of their application for international protection, and in a language which they **may reasonably be supposed to** understand, of the possibility that their age may be determined by medical examination. This shall include information on the method of examination and the possible consequences of the result of the medical examination for the examination of the application for international protection, as well as the consequences of refusal on the part of the unaccompanied minor to undergo the medical examination; **[Am. 66]**
- (b) unaccompanied minors and/or their representatives consent to an examination to determine the age of the minors concerned; and
- (c) the decision to reject an application for international protection from an unaccompanied minor who refused to undergo this medical examination shall not be based ■ on that refusal. **[Am. 67]**

Wednesday 6 April 2011

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

5. Article 28(6) and (7), Article 30(2)(c), and Article 36 shall not apply to unaccompanied minors.

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

Article 22

Detention

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

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

Article 23

Detention of minors

The detention of minors shall be strictly prohibited in all circumstances. [Am. 68]

Article 24

Procedure in case of withdrawal of the application

1. Insofar as Member States provide for the possibility of explicit withdrawal of the application under national law, when an applicant explicitly withdraws his/her application for international protection, Member States shall ensure that the determining authority takes a decision to **discontinue the examination, and explain to the applicant the consequences of the withdrawal. [Am. 69]**

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

Article 25

Procedure in the 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/her application for asylum **without reasonable cause**, Member States shall ensure that the determining authority takes a decision to **either discontinue the examination or reject the application on the basis that the applicant has not established an entitlement to refugee status in accordance with Directive [...]/.../EU] [the Qualification Directive], if he/she in the addition to the above-mentioned reasons:**

— ***has refused to cooperate, or***

— ***has absconded illegally, or***

— ***in all likelihood has no right to international protection, or***

Wednesday 6 April 2011

— *originates from or has transited via a safe third country in accordance with Article 37.* [Am. 103]

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

- (a) he/she has failed to respond to requests to provide information essential to his/her application in terms of Article 4 of Directive [...] [the Qualification Directive] or has not appeared for a personal interview as provided for in Articles 13, 14, 15 and 16, unless the applicant demonstrates within a reasonable time that his/her failure was due to circumstances beyond his control;
- (b) he/she has absconded or left without authorisation the place where he/she lived or was held, without contacting the competent authority within a reasonable time, or he/she has not within a reasonable time complied with reporting duties or other obligations to communicate.

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

2. Member States shall ensure that the applicant who reports again to the competent authority after a decision to discontinue as referred to in paragraph 1 is taken, is entitled to request that his/her case be reopened. ***Only one request for a case to be reopened may be submitted during an asylum procedure.*** [Am. 70]

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

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

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

Article 26

The role of UNHCR

1. Member States shall allow the UNHCR:
 - (a) to have access to applicants for international protection, including those in detention and in airport or port transit zones;
 - (b) to have access to information on individual applications for international protection, on the course of the procedure and on the decisions taken, provided that the applicant 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 international protection at any stage of the procedure.
2. Paragraph 1 shall also apply to an organization which is working in the territory of the Member State concerned on behalf of UNHCR pursuant to an agreement with that Member State.

Article 27

Collection of information on individual cases

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

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

Wednesday 6 April 2011

- (b) obtain any information from the alleged actor(s) of persecution or serious harm in a manner that would result in such actor(s) being informed of the fact that an application has been made by the applicant in question, and would jeopardise the physical integrity of the applicant and his/her dependants, or the liberty and security of his/her family members still living in the country of origin. [Am. 71]

CHAPTER III

PROCEDURES AT FIRST INSTANCE

SECTION I

Article 28

Examination procedure

1. Member States shall process applications for international protection in an examination procedure in accordance with the basic principles and guarantees of Chapter II.
2. Member States shall ensure that such a procedure is concluded as soon as possible, without prejudice to an adequate and complete examination.
3. Member States shall ensure that a procedure is concluded within 6 months after the application is lodged.

Member States may extend that time limit for a period not exceeding a further 6 months in individual cases involving complex issues of fact and law.

4. Member States shall ensure that, where a decision cannot be taken within the time period referred to in subparagraph 1 of paragraph 3, the applicant concerned shall:
 - (a) be informed of the delay; and
 - (b) receive, upon his/her request, information on the reasons for the delay and the time-frame within which the decision on his/her application is to be expected.

The consequences of failure to adopt a decision within the time limits provided for in paragraph 3 shall be determined in accordance with national law.

5. **The determining authorities** may prioritise an examination of an application for international protection in accordance with the basic principles and guarantees of Chapter II: [Am. 73]
 - (a) where the application is likely to be well founded;
 - (b) where the applicant has special needs, **in particular unaccompanied minors**; [Am. 74]
 - (c) in other cases with the exception of applications referred to in paragraph 6.

6. Member States may provide that an examination procedure in accordance with the basic principles and guarantees of Chapter II be accelerated if:
 - (a) the applicant, in submitting his/her application and presenting the facts, has only raised issues that are not relevant to the examination of whether he/she qualifies as a refugee or a person eligible for subsidiary protection by virtue of Directive [...]/EU [the Qualification Directive]; or

Wednesday 6 April 2011

- (b) *the applicant clearly does not qualify as a refugee or for refugee status in a Member State under Directive [...]/.../EU] [the Qualification Directive]; or [Am. 105]*
- (c) the applicant is from a safe country of origin within the meaning of this Directive; or
- (d) the applicant has misled the authorities by presenting false information or documents or by withholding relevant information or documents with respect to his/her identity and/or nationality that could have had a negative impact on the decision; or
- (e) it is likely that, in bad faith, he/she has destroyed or disposed of an identity or travel document that would have helped establish his/her identity or nationality; or
- (f) *the applicant has made clearly inconsistent, contradictory, improbable, insufficient or false representations which make his/her claim plainly unconvincing in relation to his/her having been the object of persecution referred to in Directive [...]/.../EU] [the Qualification Directive]; or [Am. 75]*
- (g) *the applicant has submitted a subsequent application which clearly does not raise any relevant new elements with respect to his/her particular circumstances or to the situation in his/her country of origin; or [Am. 107]*
- (h) *the applicant has failed without reasonable cause to make his/her application earlier, having had opportunity to do so; or [Am. 108]*

■ [Am. 76]

- (i) the applicant is making an application merely in order to delay or frustrate the enforcement of an earlier or imminent decision which would result in his/her removal; or
- (j) *the applicant has failed without good reason to comply with his/her obligations to cooperate in the examination of the facts of his/her case and the establishment of his/her identity referred to in Article 4(1) and (2) of Directive [...]/.../EU] [the Qualification Directive] or in Article 12(1) and (2)(a), (b) and (c) and Article 25(1) of this Directive; or [Am. 109]*
- (k) *the applicant entered the territory of the Member State unlawfully or extended his/her stay unlawfully and, without good reason, has either not presented himself/herself to the authorities and/or filed an application for asylum as soon as possible, given the circumstances of his/her entry; or [Am. 110]*
- (l) *the applicant may for serious reasons be considered a danger to the national security of the Member State, or the applicant has been forcibly expelled for serious reasons of public security and public order under national law. [Am. 77]*

7. In cases of unfounded applications, as referred to in Article 29, in which any of the circumstances listed in paragraph 6 of this Article apply, Member States may reject an application as manifestly unfounded following an adequate and complete examination.

8. Member States shall lay down reasonable time limits for the adoption of a decision in the procedure at first instance pursuant to paragraph 6.

9. The fact that an application for international protection was submitted after an irregular entry into the territory or at the border, including in transit zones, as well as the lack of documents **on entry** or **the** use of forged documents, shall not per se entail an automatic recourse to an accelerated examination procedure. [Am. 78]

Wednesday 6 April 2011

Article 29

Unfounded applications

Member States shall only consider an application for international protection as unfounded if the determining authority has established that the applicant does not qualify for international protection pursuant to Directive [.../.../EU] [the Qualification Directive]. [Am. 79]

SECTION II

Article 30

Inadmissible applications

1. In addition to cases in which an application is not examined in accordance with Regulation (EU) [No .../...] [the Dublin Regulation], Member States are not required to examine whether the applicant qualifies for international protection in accordance with Directive [.../.../EU] [the Qualification Directive] where an application is considered inadmissible pursuant to this Article.

2. Member States may consider an application for international protection as inadmissible only if:

- (a) another Member State has granted refugee status;
- (b) a country which is not a Member State is considered as a first country of asylum for the applicant, pursuant to Article 32;
- (c) a country which is not a Member State is considered as a safe third country for the applicant, pursuant to Article 37;
- (d) the applicant has lodged an identical application after a final decision;
- (e) a dependant of the applicant lodges an application, after he/she has in accordance with Article 6(4) consented to have his/her case be part of an application made on his/her behalf, and there are no facts relating to the dependant's situation, which justify a separate application.

Article 31

Special rules on an admissibility interview

1. Member States shall allow applicants to present their views with regard to the application of the grounds referred to in Article 30 in their particular circumstances before a decision to consider an application inadmissible is taken. To that end, **the determining authority** shall conduct a personal interview on the admissibility of the application. Member States may make an exception only in accordance with Article 35 in cases of subsequent applications. [Am. 80]

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

3. Member States shall ensure that the member of staff of the determining authority who conducts the interview on the admissibility of the application does not wear a uniform. [Am. 81]

Article 32

The concept of first country of asylum

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

Wednesday 6 April 2011

- (a) he/she has been recognised in that country as a refugee and he/she can still avail himself/herself of that protection; or
- (b) he/she otherwise enjoys *effective* protection in that country, including benefiting from the principle of non-refoulement; [Am. 82]

provided that he/she will be readmitted to that country.

In applying the concept of first country of asylum to the particular circumstances of an applicant for international protection Member States *shall* take into account Article 37(1).

The applicant shall be allowed to challenge the application of the concept of first country of asylum on the grounds that the first country of asylum in question is not safe in his or her particular case. [Am. 83]

■ [Am. 84]

SECTION III

■ [Am. 85]

Article 33

The safe country of origin concept

1. A third country designated as a safe country of origin in accordance with this Directive may, after an individual examination of the application, be considered as a safe country of origin for a particular applicant only if:

- (a) he/she has the nationality of that country; or
- (b) he/she is a stateless person and was formerly habitually resident in that country;
- (c) and he/she has not submitted any serious grounds for considering the country not to be a safe country of origin in his/her particular circumstances and in terms of his/her qualification as a refugee or a person eligible for subsidiary protection in accordance with Directive [...]/.../EU] [the Qualification Directive].

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

SECTION IV

Article 34

Subsequent application

1. Where a person who has applied for international protection in a Member State makes further representations or a subsequent application in the same Member State, that Member State shall examine these further representations or the elements of the subsequent application in the framework of the examination of the previous application or in the framework of the examination of the decision under review or appeal, insofar as the *determining authority* can take into account and consider all the elements underlying the further representations or subsequent application within this framework. [Am. 87]

2. For the purpose of taking a decision on the admissibility of an application for international protection pursuant to Article 30(2)(d), Member States may apply a specific procedure as referred to in paragraph 3 of this Article, where a person makes a subsequent application for international protection:

- (a) after his/her previous application has been withdrawn by virtue of Article 24;
- (b) after a final decision has been taken on the previous application.

Wednesday 6 April 2011

3. A subsequent application for international protection shall be subject first to a preliminary examination as to whether, after the withdrawal of the previous application or after the decision referred to in paragraph 2(b) on this application has been reached, new elements or findings relating to the examination of whether he/she qualifies as a refugee or a person eligible for subsidiary protection by virtue of Directive [...]/.../EU [the Qualification Directive] have arisen or have been presented by the applicant.

4. If, following the preliminary examination referred to in paragraph 3, new elements or findings arise or are presented by the applicant which significantly add to the likelihood of the applicant qualifying as a refugee or a person eligible for subsidiary protection by virtue of Directive [...]/.../EU [the Qualification Directive], the application shall be further examined in conformity with Chapter II.

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

■ [Am. 88]

6. The procedure referred to in this Article may also be applicable in the case of a dependant who lodges an application after he/she has, in accordance with Article 6(4), consented to have his/her case be part of an application made on his/her behalf. In this case the preliminary examination referred to in paragraph 3 of this Article will consist of examining whether there are facts relating to the dependant's situation which justify a separate application.

7. If, **after the procedure relating to the initial application has been terminated pursuant to paragraph 2**, the person concerned lodges a new application for international protection in the same Member State before a return decision has been enforced, **and that new application does not lead to a further examination pursuant to this Article**, that Member State may: [Am. 113]

- (a) make an exception to the right to remain in the territory, provided the determining authority is satisfied that a return decision will not lead to direct or indirect *refoulement* in violation of international and Community obligations of that Member State; and/or
- (b) provide that the application be subjected to the admissibility procedure in accordance with this Article and Article 30; and/or
- (c) provide that an examination procedure be accelerated in accordance with Article 28(6)(i).

In cases referred to in points (b) and (c) of the first subparagraph, Member States may derogate from the time limits normally applicable in the admissibility and/or accelerated procedures, in accordance with national legislation.

8. Where a person with regard to whom a transfer decision has to be enforced pursuant to Regulation (EU) [No .../...] [the Dublin Regulation] makes further representations or a subsequent application in the transferring Member State, those representations or subsequent applications shall be examined by the responsible Member State, as defined in that Regulation, in accordance with this Directive.

Article 35

Procedural rules

1. Member States shall ensure that applicants for international protection whose application is subject to a preliminary examination pursuant to Article 34 enjoy the guarantees provided for in Article 11(1).
2. Member States may lay down in national law rules on the preliminary examination pursuant to Article 34. Those rules may, inter alia:

Wednesday 6 April 2011

- (a) oblige the applicant concerned to indicate facts and substantiate evidence which justify a new procedure;
- (b) permit the preliminary examination to be conducted on the sole basis of written submissions without a personal interview, with the exception of cases referred to in Article 34(6).

The conditions shall not render impossible the access of applicants to a new procedure or result in the effective annulment or severe curtailment of such access.

3. Member States shall ensure that:

- (a) the applicant is informed in an appropriate manner of the outcome of the preliminary examination and, in case the application will not be further examined, of the reasons for this and the possibilities for seeking an appeal or review of the decision;
- (b) if one of the situations referred to in Article 34(3) applies, the determining authority shall further examine the subsequent application in conformity with the provisions of Chapter II as soon as possible.

SECTION V

Article 36

Border procedures

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

- (a) the admissibility of an application, **within the meaning of Article 30**, made at such locations; and/or [Am. 89]
- (b) the substance of an application in an accelerated procedure pursuant to Article 28(6).

2. Member States shall ensure that a decision in the framework of the procedures provided for in paragraph 1 is taken within a reasonable time. When a decision has not been taken within four weeks, the applicant shall be granted entry to the territory of the Member State in order for his/her application to be processed in accordance with the other provisions of this Directive. **The holding of applicants at Member States' borders or transit zones is equivalent to placing them in detention, as referred to in Article 22.** [Am. 90]

3. In the event of arrivals involving a large number of third country nationals or stateless persons lodging applications for international protection at the border or in a transit zone, which makes it practically impossible to apply there the provisions of paragraph 1, those procedures may also be applied where and for as long as these third country nationals or stateless persons are accommodated normally at locations in proximity to the border or transit zone.

SECTION VI

Article 37

The ■ safe third countries concept

■

1. A third country may only be considered as a safe third country ■ where **a person seeking international protection will be treated in accordance with the following principles and conditions in the third country concerned:**

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

Wednesday 6 April 2011

- (b) *there is no risk of serious harm as defined in Directive [...]/.../EU [the Qualification Directive];*
- (c) *the principle of non-refoulement in accordance with the Geneva Convention is respected;*
- (d) *the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected;*
- (e) *the possibility exists to request refugee status or another complementary form of protection comparable to that granted under Directive [...]/.../EU [the Qualification Directive] and, if granted such status or protection, to receive protection comparable to that afforded under that Directive;*
- (f) *it has ratified and observes the provisions of the Geneva Convention without any geographical limitations;*
- (g) *it has in place an asylum procedure prescribed by law; and*
- (h) *it has been so designated by the European Parliament and the Council in accordance with paragraph 2.*

2. *The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure, adopt or amend a common list of third countries that shall be regarded as safe third countries for the purposes of paragraph 1.*

3. The Member States concerned shall lay down in national law the modalities for implementing the provisions of paragraph 1 and **rules requiring:**

- (a) *a connection between the person seeking international protection and the third country concerned on the basis of which it would be reasonable for that person to go to that country;*
- (b) *methodology by which the competent authorities satisfy themselves that the safe third country concept may be applied to a particular country or to a particular applicant. Such methodology shall include case-by-case consideration of the safety of the country for a particular applicant;*
- (c) *rules in accordance with international law, allowing an individual examination of whether the third country concerned is safe for a particular applicant which, as a minimum, shall permit the applicant to challenge the application of the safe third country concept on the grounds that the third country is not safe in his/her particular circumstances. The applicant shall also be allowed to challenge the existence of a connection between him/her and the third country in accordance with point (a).*

4. When implementing a decision **■** based on this Article, the Member States concerned shall **■** inform the applicant accordingly **■**.

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

6. *Member States shall not designate national lists of safe countries of origin or national lists of safe third countries. [Am. 91]*

Wednesday 6 April 2011

CHAPTER IV

PROCEDURES FOR THE WITHDRAWAL OF INTERNATIONAL PROTECTION

Article 38

Withdrawal of international protection

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

Article 39

Procedural rules

1. Member States shall ensure that, where the competent authority is considering withdrawing the international protection of a third country national or stateless person in accordance with Article 14 or Article 19 of Directive [.../.../EU] [the Qualification Directive], the person concerned shall enjoy the following guarantees:

- (a) to be informed in writing that the competent authority is reconsidering his or her qualification for international protection and the reasons for such a reconsideration; and
- (b) to be given the opportunity to submit, in a personal interview in accordance with Article 11(1)(b) and Articles 13, 14 and 15 or in a written statement, reasons as to why his/her international protection should not be withdrawn.

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

- (a) the competent authority is able to obtain precise and up-to-date information from various sources, such as, where appropriate, from the UNHCR and the European Asylum Support Office, as to the general situation prevailing in the countries of origin of the persons concerned; and
- (b) where information on an individual case is collected for the purposes of reconsidering the international protection, it is not obtained from the actor(s) of persecution or serious harm in a manner that would result in such actor(s) being directly informed of the fact that the person concerned is a beneficiary of international protection whose status is under reconsideration, nor jeopardise the physical integrity of the person and his/her dependants, or the liberty and security of his/her family members still living in the country of origin.

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

3. Once the competent authority has taken the decision to withdraw the international protection, Article 18, paragraph 2, Article 19, paragraph 1 and Article 26 are equally applicable.

4. By derogation to paragraphs 1, 2 and 3 of this Article, Member States may decide that the international protection shall lapse by law if the beneficiary of international protection has unequivocally renounced his/her recognition as a beneficiary of international protection.

Wednesday 6 April 2011

CHAPTER V

APPEALS PROCEDURES

Article 40

The right to an effective remedy

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

- (a) a decision taken on their application for international protection, including a decision:
 - (i) to consider an application unfounded in relation to refugee status and/or subsidiary protection status,
 - (ii) to consider an application inadmissible pursuant to Article 30,
 - (iii) taken at the border or in the transit zones of a Member State as described in Article 36(1),
 - (iv) not to conduct an examination pursuant to Article 37;
- (b) a refusal to re-open the examination of an application after its discontinuation pursuant to Articles 24 and 25;
- (c) a decision to withdraw international protection pursuant to Article 39.

2. Member States shall ensure that persons recognized by the determining authority as eligible for subsidiary protection have the right to an effective remedy as referred to in paragraph 1 against a decision to consider an application unfounded in relation to refugee status. The person concerned shall be entitled to the rights and benefits guaranteed to beneficiaries of subsidiary protection pursuant to Directive [...]/.../EU] [the Qualification Directive] pending the outcome of the appeal procedures.

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

4. Member States shall provide for **minimum** time-limits and other necessary rules for the applicant to exercise his/her right to an effective remedy pursuant to paragraph 1. [Am. 92]

The Member States shall set a minimum time limit of 45 working days during which applicants may exercise their right to an effective remedy. For applicants under the accelerated procedure referred to in Article 28(6), the Member States shall lay down a minimum time limit of thirty working days. The time limits shall not render impossible or excessively difficult the access of applicants to an effective remedy pursuant to paragraph 1. Member States may also provide for an ex officio review of decisions taken pursuant to Article 36. [Am. 93]

5. Without prejudice to paragraph 6, the remedy provided for in paragraph 1 of this Article shall have the effect of allowing applicants to remain in the Member State concerned pending its outcome.

6. In the case of a decision taken in the accelerated procedure pursuant to Article 28(6) and of a decision to consider an application inadmissible pursuant to Article 30(2)(d), and **if, in such cases**, the right to remain in the Member State pending the outcome of the remedy is not foreseen under national legislation, a court or tribunal shall have the power to rule whether or not the applicant may remain on the territory of the Member State, either upon request of the concerned applicant or acting on its own motion. [Am. 94]

This paragraph shall not apply to procedures referred to in Article 36.

Wednesday 6 April 2011

7. Member States shall allow the applicant to remain in the territory pending the outcome of the procedure referred to in paragraph 6. **An exception may be made for subsequent applications which do not lead to a further examination pursuant to Articles 34 and 35, if a return decision pursuant to Article 3(4) of Directive 2008/115/EC has been taken, and for decisions in the procedure pursuant to Article 37 if this is provided for in national legislation.** [Am. 117]

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

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

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

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

CHAPTER VI

GENERAL AND FINAL PROVISIONS

Article 41

Challenge by public authorities

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

Article 42

Confidentiality

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

Article 43

Cooperation

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

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

Article 44

Report

No later than [...], the Commission shall report to the European Parliament and the Council on the application **and the financial cost** of this Directive in the Member States and shall propose any amendments that are necessary. Member States shall send the Commission all the information **and financial data** 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. [Am. 95]

Wednesday 6 April 2011

Article 45

Transposition

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles [...] by [...] at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 28(3) by ... ⁽¹⁾. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive. **[Am. 96]**

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. They shall also include a statement that references in existing laws, regulations and administrative provisions to the Directive repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

Member States shall communicate to the Commission the text of the main provisions of national law covered by this Directive and a correlation table between those provisions and this Directive.

Article 46

Transitional provisions

Member States shall apply the laws, regulations and administrative provisions set out in paragraph 1 of Article 45 to applications for international protection lodged after [...] and to procedures for the withdrawal of international protection started after [...]. Applications submitted before [...] and procedures for the withdrawal of refugee status initiated before [...] shall be governed by the laws, regulations and administrative provisions in accordance with Directive 2005/85/EC.

Member States shall apply the laws, regulations and administrative provisions set out in paragraph 2 of Article 45 to applications for international protection lodged after [...] Applications submitted before [...] shall be governed by the laws, regulations and administrative provisions in accordance with Directive 2005/85/EC.

Article 47

Repeal

Directive 2005/85/EC is repealed with effect from [day after the date set out in the first paragraph of Article 45 of this Directive], without prejudice to the obligations of the Member States relating to the time-limit for transposition into national law of the Directive set out in Annex II, Part B.

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

Article 48

Entry into force

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

Articles [...] shall apply from [day after the date set out in the first paragraph of Article 45].

⁽¹⁾ **Two years** from the date of the transposition of this Directive.

Wednesday 6 April 2011

Article 49

Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at ...

For the European Parliament
The President

For the Council
The President

ANNEX I

Definition of 'determining authority'

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

- 'determining authority' provided for in Article 2(f) of this Directive shall, insofar as the examination of whether an applicant should or, as the case may be, should not be declared to be a refugee is concerned, mean the Office of the Refugee Applications Commissioner; and
- 'decisions at first instance' provided for in Article 2(f) of this Directive shall include recommendations of the Refugee Applications Commissioner as to whether an applicant should or, as the case may be, should not be declared to be a refugee.

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

■ [Am. 85]

ANNEX II

Part A

Repealed Directive

(referred to in Article 47)

Council Directive 2005/85/EC

(OJ L 326, 13.12.2005, p. 13)

Part B

Time-limit for transposition into national law

(referred to in Article 47)

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

Wednesday 6 April 2011

ANNEX III

CORRELATION TABLE ⁽¹⁾

Directive 2005/85/EC	This directive
Article 1	Article 1
Article 2 (a)	Article 2 (a)
Article 2 (b)	Article 2 (b)
Article 2 (c)	Article 2 (c)
—	Article 2 (d)
Article 2 (d)	Article 2 (e)
Article 2 (e)	Article 2 (f)
Article 2 (f)	Article 2 (g)
—	Article 2 (h)
—	Article 2 (i)
Article 2 (g)	Article 2 (j)
—	Article 2 (k)
—	Article 2 (l)
Article 2 (h)	Article 2 (m)
Article 2 (i)	Article 2 (n)
Article 2 (j)	Article 2 (o)
Article 2 (k)	Article 2 (p)
Article 3 (1)	Article 3 (1)
Article 3 (2)	Article 3 (2)
Article 3 (3)	—
Article 3 (4)	Article 3 (3)
Article 4 (1) first subparagraph	Article 4 (1) first subparagraph
Article 4 (1) second subparagraph	—
—	Article 4 (2)
Article 4 (2)	Article 4 (3)
Article 4 (3)	Article 4 (4)
—	Article 4 (5)
Article 5	Article 5
Article 6 (1)	—
—	Article 6 (1)
—	Article 6 (2)
Article 6 (2)	Article 6 (3)
Article 6 (3)	Article 6 (4)
—	Article 6 (5)

Wednesday 6 April 2011

Directive 2005/85/EC	This directive
—	Article 6 (6)
Article 6 (4)	Article 6 (7)
Article 6 (5)	—
—	Article 6 (8)
—	Article 6 (9)
—	Article 7 (1) to (3)
Article 7 (1)	Article 8 (1)
Article 7 (2)	Article 8 (2)
—	Article 8 (3)
Article 8 (1)	Article 9 (1)
—	Article 9 (2)
Article 8 (2) (a)	Article 9 (3) (a)
Article 8 (2) (b)	Article 9 (3) (b)
Article 8 (2) (c)	Article 9 (3) (c)
—	Article 9 (3) (d)
Article 8 (3)	Article 9 (4)
Article 8 (5)	Article 9 (5)
Article 9 (1)	Article 10 (1)
Article 9 (2), first subparagraph	Article 10 (2), first subparagraph
Article 9 (2), second subparagraph	—
Article 9 (3)	Article 10 (3)
—	Article 10 (4)
Article 10	Article 11
Article 11	Article 12
Article 12 (1)	Article 13 (1)
Article 12 (2) (a)	Article 13 (2) (a)
Article 12 (2) (b)	—
Article 12 (2) (c)	—
Article 12 (3)	Article 13 (2) (b)
Article 12 (4) to (6)	Article 13 (3) to (5)
Article 13 (1) and (2)	Article 14 (1) and (2)
Article 13 (3) (a)	Article 14 (3) (a)
—	Article 14 (3) (b)
Article 13 (3) (b)	Article 14 (3) (c)
—	Article 14 (3) (d)
—	Article 14 (3) (e)

Wednesday 6 April 2011

Directive 2005/85/EC	This directive
Article 13 (4)	Article 14 (4)
Article 13 (5)	—
—	Article 15
Article 14	—
—	Article 16
—	Article 17
Article 15 (1), (2) and (3) first subparagraph	Article 18 (1), (2) and (3) first subparagraph
Article 15 (3) (a)	—
Article 15 (3) (b)	Article 18 (3) (a)
Article 15 (3) (c)	Article 18 (3) (b)
Article 15 (3) (d)	—
Article 15 (3) second subparagraph	—
—	Article 18 (3) second subparagraph
Article 15 (4)	Article 18 (4)
—	Article 18 (5)
Article 15 (5)	Article 18 (6)
Article 15 (6)	Article 18 (7)
Article 16 (1)	Article 19 (1)
Article 16 (2)	Article 19 (2)
—	Article 19 (3)
Article 16 (3)	Article 19 (4)
Article 16 (4)	Article 19 (4)
—	Article 20 (1) to (3)
Article 17 (1)	Article 21 (1)
Article 17 (2) (a)	Article 21 (2) (a)
Article 17 (2) (b)	—
Article 17 (2) (c)	Article 21 (2) (b)
Article 17 (3)	—
Article 17 (4)	Article 21 (3)
—	Article 21 (4)
Article 17 (5)	Article 21 (5)
—	Article 21 (6)
Article 17 (6)	Article 21 (7)
Article 18	Article 22
Article 19	Article 23

Wednesday 6 April 2011

Directive 2005/85/EC	This directive
Article 20	Article 24
Article 20 (1) (a) and (b)	Article 24 (1) (a) and (b)
Article 20 (2)	Article 24 (2)
—	Article 24 (3)
Article 21	Article 25
Article 22	Article 26
Article 23	Article 27
Article 23 (1)	Article 27 (1)
Article 23 (2), first subparagraph	Article 27 (2)
Article 23 (2), second subparagraph	—
—	Article 27 (3)
—	Article 27 (4)
Article 23 (3)	Article 27 (5)
Article 23 (4)	Article 27 (6)
Article 23 (4) (a)	Article 27 (6) (a)
Article 23 (4) (b)	—
Article 23 (4) (c) (i)	Article 27 (6) (b)
Article 23 (4) (c) (ii)	—
Article 23 (4) (d)	Article 27 (6) (c)
Article 23 (4) (e)	—
Article 23 (4) (f)	Article 27 (6) (d)
Article 23 (4) (g)	—
Article 23 (4) (h)	—
Article 23 (4) (i)	—
Article 23 (4) (j)	Article 27 (6) (f)
Article 23 (4) (k) to (n)	—
Article 23 (4) (o)	Article 27 (6) (e)
—	Article 27 (7)
—	Article 27 (8)
—	Article 27 (9)
—	Article 28
Article 24	—
Article 25	Article 29
Article 25 (1)	Article 29 (1)
Article 25 (2) (a) to (c)	Article 29 (2) (a) to (c)

Wednesday 6 April 2011

Directive 2005/85/EC	This directive
Article 25 (2) (d) and (e)	—
Article 25 (2) (f) and (g)	Article 29 (2) (d) and (e)
—	Article 30
Article 26	Article 31
Article 27	Article 32
Article 27 (1) (a)	Article 32 (1) (a)
—	Article 32 (1) (b)
Article 27 (1) (b) to (d)	Article 32 (1) (c) to (e)
Article 27 (2) to (5)	Article 32 (2) to (5)
Article 28	—
Article 29	—
Article 30	Article 33
Article 30 (2) to (4)	—
—	Article 33 (2)
Article 30 (5)	Article 33 (3)
Article 30 (6)	Article 33 (4)
Article 31	Article 34
Article 31 (2)	—
Article 31 (3)	Article 34 (2)
Article 32 (1) to (7)	Article 35 (1) to (7)
—	Article 35 (8) and (9)
Article 33	—
Article 34	Article 36
Article 34 (1) and (2) (a)	Article 36 (1) and (2) (a)
Article 34 (2) (b)	—
Article 34 (2) (c)	Article 36 (2) (b)
Article 34 (3) (a) and (b)	Article 36 (3) (a) and (b)
Article 35 (1)	Article 37 (1) (a)
—	Article 37 (1) (b)
Article 35 (2) and (3) (a) to (f)	—
Article 35 (4)	Article 37 (2)
Article 35 (5)	Article 37 (3)
Article 36 (1) to (2)(c)	Article 38 (1) to 2(c)
Article 36 (2)(d)	—
Article 36(3)	—

Wednesday 6 April 2011

Directive 2005/85/EC	This directive
Article 36(4)	Article 38(3)
Article 36(5)	Article 38(4)
Article 36(6)	Article 38(5)
Article 36(7)	—
Article 37	Article 39
Article 38	Article 40
Article 39	Article 41
Article 39 (1) (a)	Article 41 (1) (a)
—	Article 41 (1) (a) (i)
Article 39 (1) (a) (i)	Article 41 (1) (a) (ii)
Article 39 (1) (a) (ii)	Article 41 (1) (a) (iii)
Article 39 (1) (a) (iii)	—
Article 39 (1) (b)	Article 41 (1) (b)
Article 39 (1) (c) and (d)	—
Article 39 (1) (e)	Article 41 (1) (c)
—	Article 41 (2) and (3)
Article 39 (2)	Article 41 (4)
Article 39 (3)	—
—	Article 41 (5) to (8)
Article 39 (4)	Article 41 (9)
Article 39 (5)	Article 41(10)
Article 39 (6)	Article 41 (11)
Article 40	Article 42
Article 41	Article 43
—	Article 44
Article 42	Article 45
Article 43	Article 46
Article 44	Article 47
—	Article 48
Article 45	Article 49
Article 46	Article 50
Annex I	Annex I
Annex II	Annex II
Annex III	—
—	Annex III
—	Annex IV

(¹) The correlation table has not been updated.