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NOTE

from: Presidency

to: Asylum Working Party

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No. Cion. prop.: 14959/09 ASILE 82 CODEC 1231

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Subject: 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)

With a view to the above-mentioned Working Party, delegations will find below compromise suggestions drafted by the Presidency concerning the Articles 2, 4, 6, 7, 9, 14, 15, 16, 17, 20, 24, 27 and 40.

It is further noted that the remarks made by the Consultative group of the legal services of 23 November 2009 have been incorporated in the text of the Directive (16769/09).

N.B. New text is indicated in **bold** and by underlining the insertion and including it within Council tags: **[...]**;
Deleted text is indicated within underlined square brackets as follows:
[...] or by ~~struck through and bold in case the deletion is made~~
within existing text between square brackets **[...]**.

Ⓒ 2005/85/EC

new

2009/0165 (COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT
AND OF THE COUNCIL**

**on minimum standards on procedures in Member States for granting and withdrawing
~~refugee status~~ international protection**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular point (1) (d)
and point (2) (a) of the first paragraph of Article 63 thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Economic and Social Committee²,

Having regard to the opinion of the Committee of the Regions³,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁴,

Whereas:

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

³ OJ C [...], [...], p. [...].

⁴ OJ C [...], [...], p. [...].

new

- (1) A number of substantive changes are to be made to Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures for granting and withdrawing refugee status¹. In the interests of clarity, that Directive should be recast.

Ⓔ 2005/85/EC recital 1

- (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 Community.

Ⓔ 2005/85/EC recital 2

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

Ⓔ 2005/85/EC recital 3

- (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.

¹ OJ L 326, 13.12.2005, p. 13.

- (5) ~~The Directive 2005/85/EC minimum standards laid down in this Directive on procedures in Member States for granting or withdrawing refugee status are therefore~~
was a first measure on asylum procedures.
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new

- (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.
- (7) In the European Pact on Immigration and Asylum, adopted on 16 October 2008, the European Council noted that considerable disparities remain between one Member State and another concerning the grant of protection and called for new initiatives, including a proposal for establishing a single asylum procedure comprising common guarantees, to complete the establishment of a Common European Asylum System, provided for in the Hague Programme.
- (8) The resources of the European Refugee Fund and of the European Asylum Support Office should be mobilised to provide adequate support to the Member States' efforts relating to the implementation of the standards set in the second phase of the Common European Asylum System, in particular to those Member States which are faced with specific and disproportionate pressures on their asylum systems, due in particular to their geographical or demographic situation.

- (9) In order to ensure a comprehensive and efficient evaluation of the international protection needs of applicants within the meaning of Directive [.../.../EC] [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 Community framework on procedures for granting international protection should be based on the concept of a single asylum procedure.
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© 2005/85/EC recital 5

new

- (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 Community ~~introduce a minimum framework in the Community on procedures for granting and withdrawing refugee status.~~
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© 2005/85/EC recital 6

new

- (11) The approximation of rules on the procedures for granting and withdrawing international protection ~~refugee status~~ should help to limit the secondary movements of applicants for ~~asylum~~ 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 [.../.../EC] [the Qualification Directive] in Member States .
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© 2005/85/EC recital 7

new

- (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 ~~a refugee~~ within the meaning of Directive [..././EC] [the Qualification Directive] ~~Article 1(A) of the Geneva Convention.~~

Ⓔ 2005/85/EC recital 8

new

- (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, 18, 19, 21, 24 and 47 of the Charter and has to be implemented accordingly.
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Ⓔ 2005/85/EC recital 9

new

- (14) With respect to the treatment of persons falling within the scope of this Directive, Member States are bound by obligations under instruments of international law to which they are party ~~and which prohibit discrimination.~~
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Ⓔ 2005/85/EC recital 10

new

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

Ⓔ 2005/85/EC recital 11

new

- (16) It is in the interest of both Member States and applicants for international protection asylum to decide as soon as possible on applications for asylum. international protection, without prejudice to an adequate and complete examination. ~~The organisation of the processing of applications for asylum should be left to the discretion of Member States, so that they may, in accordance with their national needs, prioritise or accelerate the processing of any application, taking into account the standards in this Directive.~~
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Ⓔ 2005/85/EC recital 12

new

- (17) The notion of public order may *inter alia* cover a conviction for committing a serious crime.
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Ⓔ 2005/85/EC recital 13

new

- (18) In the interests of a correct recognition of those persons in need of protection as refugees within the meaning of Article 1 of the Geneva Convention or as persons eligible for subsidiary protection, every applicant should, ~~subject to certain exceptions,~~ have an effective access to procedures, the opportunity to cooperate and properly communicate with the competent authorities so as to present the relevant facts of his/her case and sufficient procedural guarantees to pursue his/her case throughout all stages of the procedure. Moreover, the procedure in which an application for asylum international protection is examined should normally provide an applicant at least with the right to stay pending a decision by the determining authority, access to the services of an interpreter for submitting his/her case if interviewed by the authorities, the opportunity to communicate with a representative of the United Nations High Commissioner for Refugees (UNHCR) and with organizations providing advice or counselling to applicants for

international protection ~~or with any organisation working on its behalf~~, the right to appropriate notification of a decision, a motivation of that decision in fact and in law, the opportunity to consult a legal adviser or other counsellor, and the right to be informed of his/her legal position at decisive moments in the course of the procedure, in a language he/she can reasonably be supposed to understand and, in the case of a negative decision, the right to an effective remedy before a court or tribunal .

☒ 2005/85/EC recital 14

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

new

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

(20) In addition, special procedural guarantees for vulnerable applicants, such as minors, unaccompanied minors, persons who have been subjected to torture, rape or other serious acts of violence 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.

- (21) 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).
- (22) 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. 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.
- (23) 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.
- (24) Procedures for examining international protection needs should be organised in a way that makes it possible for the competent authorities to conduct a rigorous examination of applications for international protection.

Ⓒ 2005/85/EC recital 15

new

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

Ⓔ 2005/85/EC recital 16

new

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

Ⓔ 2005/85/EC recital 17

new

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

Ⓔ 2005/85/EC recital 18

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

Ⓒ 2005/85/EC recital 19

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

Ⓒ 2005/85/EC recital 20 (adapted)

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

Ⓒ 2005/85/EC recital 21

new

- (29) 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 **serious** **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.

Ⓔ 2005/85/EC recital 22 (adapted)

new

- (30) Member States should examine all applications on the substance, i.e. assess whether the applicant in question qualifies **as a refugee** for international protection in accordance with ~~Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted¹~~; Directive [...]/EC [the Qualification Directive] except where the present Directive provides otherwise, in particular where it can be reasonably assumed that another country would do the examination or provide sufficient protection. In particular, Member States should not be obliged to assess the substance of an **asylum** application **for international protection** where a first country of asylum has granted the applicant refugee status or otherwise sufficient protection and the applicant will be readmitted to this country.

Ⓔ 2005/85/EC recital 23

new

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

¹ ~~OJ L 304, 13.9.2004, p. 12.~~

Ⓒ 2005/85/EC recital 24

new

- (32) Furthermore, with respect to certain European third countries, which observe particularly high human rights and refugee protection standards, Member States should be allowed to not carry out, or not to carry out full examination of asylum applications regarding applicants who enter their territory from such European third countries. ~~Given the potential consequences for the applicant of a restricted or omitted examination, this application of the safe third country concept should be restricted to cases involving third countries with respect to which the Council has satisfied itself that the high standards for the safety of the third country concerned, as set out in this Directive, are fulfilled. The Council should take decisions in this matter after consultation of the European Parliament.~~
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Ⓒ 2005/85/EC recital 25

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

Ⓒ 2005/85/EC recital 26

new

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

Ⓔ 2005/85/EC recital 27

new

- (34) It reflects a basic principle of Community law that the decisions taken on an application for ~~asylum~~ international protection and on the withdrawal of refugee or subsidiary protection status are subject to an effective remedy before a court or tribunal ~~within the meaning of Article 234 of the Treaty. The effectiveness of the remedy, also with regard to the examination of the relevant facts, depends on the administrative and judicial system of each Member State seen as a whole.~~
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Ⓔ 2005/85/EC recital 28

- (35) In accordance with Article 64 of the Treaty, 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.
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Ⓔ 2005/85/EC recital 29 (adapted)

new

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

¹ ~~OJ L 50, 25.2.2003, p. 1.~~

new

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

Ⓔ 2005/85/EC recital 30

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

Ⓔ 2005/85/EC recital 31

new

- (39) Since the objective of this Directive, namely to establish minimum standards on procedures in Member States for granting and withdrawing ~~refugee status~~ 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 Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. 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.

Ⓔ 2005/85/EC recital 32 (adapted)

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

Ⓔ 2005/85/EC recital 33 (adapted)

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

Ⓔ 2005/85/EC recital 34

(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 establishing the European Community, Denmark does not take part in the adoption of this Directive and is not bound by it or subject to its application.

new

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

(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 III, 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 .../.../EC [the Qualification Directive] ~~refugee status~~.

Article 2

Definitions

For the purposes of this Directive:

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

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

new

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

2005/85/EC

new

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

new

Council

- (d) ~~"applicant with special needs" means an applicant who due to age, gender, disability, mental health problems 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;~~

"applicant in need of special procedural guarantees" means an applicant who has been identified in accordance with Article 21 (2) of the Reception Conditions Directive as having particular procedural needs due to his/her age, gender, disability, mental health problems or consequences of torture, rape or other serious forms of psychological, physical or sexual violence.

Ⓔ 2005/85/EC (adapted)

new

- (~~Ⓔ~~)(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 2004/83/EC ~~Directive [...]/../EC~~ [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, ~~subject to Annex III to this Directive~~;
- (~~Ⓔ~~)(f) "determining authority" means any quasi-judicial or administrative body in a Member State responsible for examining applications for ~~asylum~~ 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 1 ~~of the Geneva Convention as set out in 2 (d) of Directive 2004/83/EC~~ Directive [...]/../EC [the Qualification Directive];

new

- (h) "person eligible for subsidiary protection" means a third country national or a stateless person who fulfils the requirements of Article 2 (f) of Directive [...]/../EC [the Qualification Directive];
- (i) "international protection status" means the recognition by a Member State of a third country national or a stateless person as a refugee or a person eligible for subsidiary protection;

Ⓔ 2005/85/EC (adapted)

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

new

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

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

Ⓔ 2005/85/EC (adapted)

new

~~(h)(m)~~ "unaccompanied minor" means ~~a person below the age of 18 who arrives in the territory of the Member States unaccompanied by an adult responsible for him/her whether by law or by custom, and for as long as he/she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he/she has entered the territory of the Member States;~~ a minor as defined in Article 2 (l) of Directive [...]/.../EC [the Qualification Directive];

~~(i)(n)~~ "representative" means ~~a person acting on behalf of an organisation representing an unaccompanied minor as legal guardian, a person acting on behalf of a national organisation which is responsible for the care and well-being of minors or any other appropriate representation appointed to ensure his/her best interests;~~ 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;

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

~~(k)(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 ~~asylum~~ international protection has been made or is being examined.

Article 3

Scope

- 1- This Directive shall apply to all applications for **asylum** 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 **refugee status** international protection status .
- 2- This Directive shall not apply in cases of requests for diplomatic or territorial asylum submitted to representations of Member States.
- ~~3- Where Member States employ or introduce a procedure in which asylum applications are examined both as applications on the basis of the Geneva Convention and as applications for other kinds of international protection given under the circumstances defined by Article 15 of Directive 2004/83/EC, they shall apply this Directive throughout their procedure.~~
43. ~~Moreover,~~ 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 [...]/.../EC [the Qualification Directive] .

Ⓔ 2005/85/EC

new

Council

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, ~~in particular Articles 8(2) and 9.~~ Member States shall ensure that this authority **has sufficient numbers of competent is provided with appropriate means, including sufficient competent personnel, to carry out its tasks in accordance with this**

~~Directive, 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.~~

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Council

2. ~~Member States shall ensure that the personnel of the determining authority have the appropriate knowledge and skills regarding issues falling within the scope of this Directive and other EU instruments dealing with international protection. To that end, Member States shall provide for initial and, where relevant, follow up training, including~~ ~~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 ~~EU Community~~ instruments, including the principles of *non-refoulement* and non-discrimination;

(b) gender, ~~trauma~~ and age awareness;

(c) use of country of origin information;

(d) interview ~~techniques technics~~, including cross-culture communication;

(e) ~~identification and documentation of signs and symptoms of torture use of expert medical reports in procedures for granting international protection~~ ;

(f) evidence assessment, including the principle of the benefit of the doubt;

(g) case law issues relevant to the examination of applications for international protection.

Ⓔ 2005/85/EC

~~In accordance with Article 4(4) of Regulation (EC) No 343/2003, applications for asylum made in a Member State to the authorities of another Member State carrying out~~

~~immigration controls there shall be dealt with by the Member State in whose territory the application is made.~~

Ⓔ 2005/85/EC (adapted)

new

23. However, Member States may provide that another authority is responsible for the purposes of ~~the~~ processing cases pursuant to Regulation (EC) No .../.... [the Dublin Regulation].

~~(a) processing cases in which it is considered to transfer the applicant to another State according to the rules establishing criteria and mechanisms for determining which State is responsible for considering an application for asylum, until the transfer takes place or the requested State has refused to take charge of or take back the applicant;~~

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

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

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

~~(e) refusing permission to enter in the framework of the procedure provided for in Article 35(2) to (5), subject to the conditions and as set out therein;~~

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

24. Where an authority ~~authorities are~~ is designated in accordance with paragraph 23, Member States shall ensure that the personnel of that authority ~~such authorities~~ have the appropriate knowledge or receive the necessary training to fulfil their obligations when implementing this Directive.

new

5. Applications for international protection made in a Member State to the authorities of another Member State carrying out border or immigration controls there shall be dealt with by the Member State in whose territory the application is made.
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Ⓔ 2005/85/EC

new

Article 5

More favourable provisions

Member States may introduce or maintain more favourable standards on procedures for granting and withdrawing ~~refugee status~~ 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 may require that applications for asylum be made in person and/or at a designated place.~~

new

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.

2005/85/EC

new

23. Member States shall ensure that each adult having legal capacity has the right to make an application for international protection ~~asylum~~ on his/her own behalf.
34. Member States may provide that an application may be made by an applicant on behalf of his/her dependants. In such cases Member States shall ensure that dependant adults consent to the lodging of the application on their behalf, failing which they shall have an opportunity to make an application on their own behalf.

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

new

Council

5. Member States shall ensure that a minor has the right to make an application for international protection either on his/her own behalf, or through his/her parents or an

adult responsible for him/her whether by law or by national practice, or a representative other adult family members

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 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 [...]/.../EC] [the Qualification Directive].

Ⓔ 2005/85/EC

new

47. 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 ~~17~~21 (1)(a);
- (c) the cases in which the lodging of an application for ~~asylum~~ international protection is deemed to constitute also the lodging of an application for ~~asylum~~ international protection for any unmarried minor.

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

¹ OJ L 348, 24.12.2008, p. 98

new

Council

8. Member States shall ensure that border guards, police and immigration authorities, and personnel of detention facilities have instructions and receive necessary training for dealing with 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.

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 **relevant** organizations providing advice and counseling to applicants for international protection have access to **persons who express or have expressed an intention to apply for international protection at** the border crossing points, including transit zones, and detention facilities subject to an agreement with the competent authorities of the Member State.

Member States may provide for rules covering the presence of such organizations in the areas referred to in this Article.

CE 2005/85/EC

new

Article ~~7~~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 decision in accordance with the procedures at first instance set out in Chapter III. This right to remain shall not constitute an entitlement to a residence permit.
- 2- Member States can make an exception only where, ~~in accordance with Articles 32 and 34,~~ a person makes a subsequent application as described in Article 35 (8) ~~will not be further examined~~ or where they will surrender or extradite, as appropriate, a person either to another Member State pursuant to obligations in accordance with a European arrest warrant¹ 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.

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

new

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

Ⓔ 2005/85/EC (adapted)

new

Article 89

Requirements for the examination of applications

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

new

Council

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. When assessing the elements of applications for international protection, the determining authority shall first determine whether applicants qualify as refugees and, if not, determine if the applicants are eligible for subsidiary protection~~ .

Ⓒ 2005/85/EC (adapted)

new

23. Member States shall ensure that decisions by the determining authority on applications for international protection ~~asylum~~ are taken after an appropriate examination. To that end, Member States shall ensure that:
- (a) applications are examined and decisions are taken individually, objectively and impartially;
 - (b) precise and up-to-date information is obtained from various sources, such as the United Nations High Commissioner for Refugees (UNHCR) and the European Asylum Support Office, as to the general situation prevailing in the countries of origin of applicants ~~for asylum~~ and, where necessary, in countries through which they have transited, and that such information is made available to the personnel responsible for examining applications and taking decisions and, where the determining authority takes it into consideration for the purpose of taking a decision, to the applicant and his/her legal adviser ;
 - (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;

new

- (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 or gender issues.

Ⓒ 2005/85/EC

new

34. The authorities referred to in Chapter V shall, through the determining authority or the applicant or otherwise, have access to the general information referred to in paragraph 23(b), necessary for the fulfilment of their task.

45. Member States ~~may~~ shall provide for rules concerning the translation of documents relevant for the examination of applications.

Article ~~9~~10

Requirements for a decision by the determining authority

- 1- Member States shall ensure that decisions on applications for ~~asylum~~ international protection are given in writing.
- 2- Member States shall also ensure that, where an application is rejected with regard to refugee status and/or subsidiary protection status, the reasons in fact and in law are stated in the decision and information on how to challenge a negative decision is given in writing.

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

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

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

new

- 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 and/or age based persecution. In such cases, a separate decision shall be issued to the person concerned.

Article ~~10~~11

Guarantees for applicants for ~~asylum~~ international protection

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

- (a) they shall be informed in a language which they 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 2004/83/EC~~ Directive [...]/EC [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 ~~11~~12;
- (b) they shall receive the services of an interpreter for submitting their case to the competent authorities whenever necessary. Member States shall consider it necessary to give these services at least when the determining authority calls upon the applicant to be interviewed as referred to in Articles ~~12 and 13~~ 13, 14, 15, 16 and 30 and appropriate communication cannot be ensured without such services. In this case and in other cases where the competent authorities call upon the applicant, these services shall be paid for out of public funds;
- (c) they shall not be denied the opportunity to communicate with the UNHCR or with any other organisation ~~working on behalf of the UNHCR in the territory of the Member State pursuant to an agreement with~~ 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 ~~asylum~~ international protection . If a legal adviser or other counsellor is legally representing the applicant, Member States may choose to give notice of the decision to him/her instead of to the applicant for ~~asylum~~ international protection ;
- (e) they shall be informed of the result of the decision by the determining authority in a language that they may reasonably be supposed to understand when they are not assisted or represented by a legal adviser or other counsellor ~~and when free legal assistance is not available~~. The information provided shall include information on how to challenge a negative decision in accordance with the provisions of Article ~~9~~10(2).

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

Article ~~11~~12

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

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

2. In particular, Member States may provide that:

- (a) applicants ~~for asylum~~ are required to report to the competent authorities or to appear before them in person, either without delay or at a specified time;
- (b) applicants ~~for asylum~~ have to hand over documents in their possession relevant to the examination of the application, such as their passports;

- (c) applicants ~~for asylum~~ are required to inform the competent authorities of their current place of residence or address and of any changes thereof as soon as possible. Member States may provide that the applicant shall have to accept any communication at the most recent place of residence or address which he/she indicated accordingly;
- (d) the competent authorities may search the applicant and the items he/she carries with him/her, ~~provided the search is carried out by a person of the same sex~~;
- (e) the competent authorities may take a photograph of the applicant; and
- (f) the competent authorities may record the applicant's oral statements, provided he/she has previously been informed thereof.

Article ~~12~~13

Personal interview

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

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

new

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

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

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

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

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

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

43. The absence of a personal interview in accordance with this Article shall not prevent the determining authority from taking a decision on an application for ~~asylum~~ international protection .
54. The absence of a personal interview pursuant to ~~paragraph 2(b) and (c) and paragraph 3~~ shall not adversely affect the decision of the determining authority.
65. Irrespective of Article ~~2024~~(1), Member States, when deciding on the application for ~~asylum~~ 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 ~~13~~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 ~~sufficiently~~ competent to take account of the personal or general circumstances surrounding the application, including the applicant's cultural origin, ~~gender,~~ or vulnerability; ~~insofar as it is possible to do so; and~~

new

Council

(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 **as long as this request is not based on discriminatory reasons** ;

Ⓔ 2005/85/EC (adapted)

new

(~~b~~c) select a **competent** interpreter who is able to ensure appropriate communication between the applicant and the person who conducts the interview. The communication need not necessarily take place in the language preferred by the applicant ~~for asylum~~ if there is another language which he/she ~~may reasonably be supposed to~~ 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;

new

Council

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

e) ensure that interviews with minors are conducted in a child- **appropriate** **friendly** manner.

Ⓔ 2005/85/EC

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

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

new

Council

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 **is given the opportunity to present elements needed to substantiate the application in accordance with Article 4 of Directive [...]/../EC [the Qualification Directive] as completely as possible. This shall include the opportunity to give an explanation regarding elements which may be missing and/or any inconsistencies or contradictions in his/her statements.** ~~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 [...]/../EC [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 [...]/../EC [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 14~~

~~**Status of the report of a personal interview in the procedure**~~

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

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

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

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

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

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

new

Council

Article 16

Transcript recording and report of personal interviews

1. Member States shall ensure that a transcript is made of every personal interview **unless the interview is audio and/or video recorded and this recording is admissible as evidence in procedures in accordance with Chapter V** .

Member States shall request the applicant's approval on the contents of the transcript at the end of the personal interview **or within a specified time limit. To that end, Member States shall ensure that the applicant is informed, with the assistance of an interpreter if necessary, of the content of the transcript. 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** .

2. 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.

3. Without prejudice to paragraphs 1 and 2, Member States may make a written report 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 **and/or recording** of the personal interview is annexed to the report.

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

Medico-legal reports

- 1- Member States ~~may shall~~ allow ~~an applicant applicants, upon request,~~ to have a medical examination carried out in order to submit a medical certificate to the determining authority in support of his/her statements regarding in relation to past persecution or serious harm. Member States may, however, require the applicant to submit the results of the medical examination to the determining authority within a time limit after the moment he/she has been informed about his/her rights pursuant to this Article. 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 the determining authority considers that there is reason to believe there are reasonable grounds to consider that the applicant suffers from post-traumatic stress disorder, and this might interfere with his/her ability to be interviewed and/or to give accurate and coherent statements, it the determining authority, subject to the consent of the applicant, shall ensure that a medical examination is carried out with the applicant's consent.
- 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.
- 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- 4. Member States shall ensure that persons interviewing applicants in accordance with this Directive receive training with regard to awareness of medical problems that can have consequences for the ability of the applicants to be interviewed and to comply with the obligation to substantiate the application for international protection 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.~~
-

CE 2005/85/EC

new

Article ~~15~~18

Right to legal assistance and representation

1. Applicants for international protection shall be given the opportunity ~~Member States shall allow applicants for asylum the opportunity, at their own cost,~~ to consult in an effective manner a legal adviser or other counsellor, admitted or permitted as such under national law, on matters relating to their ~~asylum~~ applications for international protection, at all stages of the procedure, including following a negative decision .
2. ~~In the event of a negative decision by a determining authority,~~ Member States shall ensure that free legal assistance and/or representation be granted on request, subject to the provisions of paragraph 3. To that end, Member States shall:
-

new

- (a) provide for free legal assistance 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 and explanations of reasons in fact and in law in the case of a negative decision;
- (b) provide for free legal assistance or 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.

Ⓔ 2005/85/EC (adapted)

new

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

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

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

~~(c)~~(b) only to legal advisers or other counsellors specifically designated by national law to assist and/or represent applicants ~~for asylum~~ for international protection. ~~and/or~~

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

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

new

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.

Ⓔ 2005/85/EC

new

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

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

Ⓔ 2005/85/EC (adapted)

new

- ~~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.

Scope of legal assistance and representation

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

Member States may make an exception where disclosure of information or sources would jeopardise national security, the security of the organisations or person(s) providing the information or the security of the person(s) to whom the information relates or where the investigative interests relating to the examination of applications of for asylum 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:

new

- (a) grant access to the information or sources in question at least to a legal adviser 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;

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new

- (b) make access to the information or sources in question shall be available to the authorities referred to in Chapter V, ~~except where such access is precluded in cases of national security.~~

2. Member States shall ensure that the legal adviser or other counsellor who assists or represents an applicant for international protection ~~asylum~~ 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 adviser or other counsellor is not thereby severely limited or rendered impossible.

new

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

2005/85/EC

new

34. Member States may provide rules covering the presence of legal advisers or other counsellors at all interviews in the procedure, without prejudice to this Article or to Article ~~17~~21(1)(b).

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

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

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

new

Council

Article 20

Applicants with special needs

1. Member States shall take into account the specific situation of applicant with special needs when implementing this Directive, providing relevant support where needed to ensure that they are given the opportunity to present the elements of an application as completely as possible and with all evidence. ~~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.~~
2. ~~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 [.../.../EC] [laying down minimum standards for the reception of asylum seekers (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.~~
3. ~~Article 27 (6) and (7) shall not apply to the applicants referred to in paragraph 2 .~~

Article ~~17~~21

Guarantees for unaccompanied minors

~~1-~~ With respect to all procedures provided for in this Directive and without prejudice to the provisions of Articles ~~12 and 14~~ 13, 14 and 15, Member States shall:

- (a) as soon as possible take measures to ensure that a representative represents and/or 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 ~~Article 19 of Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers~~¹ Directive [...]/.../EC [the Reception Conditions Directive];
- (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 ~~allow~~ ensure that ~~the~~ a representative and/or a legal advisor or other counsellor admitted as such under national law are ~~to be~~ present at that interview and have an opportunity to ask questions or make comments, within the framework set by the person who conducts the interview.

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

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

¹ ~~OJ L 31, 6.2.2003, p. 18~~

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

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

~~(c)~~(b) is married or has been married.

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

43. Member States shall ensure that:

- (a) If an unaccompanied minor has a personal interview on his/her application for ~~asylum~~ international protection as referred to in Articles ~~12, 13 and 14~~, 13, 14 and 15 that interview is conducted by a person who has the necessary knowledge of the special needs of minors;
- (b) an official with the necessary knowledge of the special needs of minors prepares the decision by the determining authority on the application of an unaccompanied minor.

new

4. Subject to the conditions set out in Article 18, unaccompanied minors shall be granted free legal assistance with respect to all procedures provided for in this Directive.

Ⓒ 2005/85/EC

new

5. Member States may use medical examinations to determine the age of unaccompanied minors within the framework of the examination of an application for ~~asylum~~

international protection , where, following his/her general statements or other relevant evidence, Member States still have doubts concerning his/her age .

new

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

Ⓔ 2005/85/EC

new

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

- (a) unaccompanied minors are informed prior to the examination of their application for ~~asylum~~ 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 ~~asylum~~ international protection , as well as the consequences of refusal on the part of the unaccompanied minor to undergo the medical examination;
- (b) unaccompanied minors and/or their representatives consent to carry out an examination to determine the age of the minors concerned; and
- (c) the decision to reject an application for ~~asylum~~ international protection from an unaccompanied minor who refused to undergo this medical examination shall not be based solely on that refusal.

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

new

6. Article 27 (6) and (7), Article 29 (2) (c), Article 32, and Article 37 shall not apply to unaccompanied minors.

2005/85/EC

new

Council

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

Article ~~18~~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 ~~asylum~~. Grounds and conditions of detention as well as guarantees available to detained applicants for international protection shall be in accordance with Directive [.../.../EC] [the Reception Conditions Directive].

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

Article ~~19~~23

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 ~~for asylum~~ explicitly withdraws his/her application for ~~asylum~~ international protection, Member States shall ensure that the

determining authority takes a decision to either discontinue the examination or reject the application.

- 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 ~~20~~24

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~~ international protection has implicitly withdrawn or abandoned his/her application for ~~asylum~~ international protection, Member States shall ensure that the determining authority takes a decision to ~~either~~ **either** discontinue the examination **or, provided that the determining authority considers the application to be unfounded on the basis of a complete examination of the substance of the application in accordance with [...]/../EC] [The Qualification Directive], rejects the application** ~~or reject the application on the basis that the applicant has not established an entitlement to refugee status in accordance with Directive 2004/83/EC.~~

Member States may assume that the applicant has implicitly withdrawn or abandoned his/her application for ~~asylum~~ 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 ~~2004/83/EC~~ [...]/../EC] [the Qualification Directive] or has not appeared for a personal interview as provided for in Articles ~~12~~13, ~~13~~14, 15 and ~~14~~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 of this Article is taken, is entitled to request that his/her case be reopened ~~unless the request is examined in accordance with Articles 32 and 34.~~

~~Member States may provide for a time limit after which the applicant's case can no longer be re-opened.~~

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.

new

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

Ⓔ 2005/85/EC

new

Article ~~24~~25

The role of UNHCR

1. Member States shall allow the UNHCR:

- (a) to have access to applicants for international protection asylum, including those in detention and in airport or port transit zones;
- (b) to have access to information on individual applications for asylum international protection, on the course of the procedure and on the decisions taken, provided that the applicant for asylum agrees thereto;
- (c) to present its views, in the exercise of its supervisory responsibilities under Article 35 of the Geneva Convention, to any competent authorities regarding individual applications for asylum 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 the UNHCR pursuant to an agreement with that Member State.

Article ~~22~~26

Collection of information on individual cases

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

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

CHAPTER III

PROCEDURES AT FIRST INSTANCE

SECTION I

Article ~~23~~27

Examination procedure

- 1- Member States shall process applications for ~~asylum~~ 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.

new

Council

- 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 **including cases of applicants with special needs, and in the case of arrivals involving a large number of third country nationals or stateless persons lodging applications for international protection**.

- 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.

Ⓔ 2005/85/EC (adapted)

new

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

~~(a) be informed of the delay; or~~

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

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

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

(b) where the applicant has special needs;

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

Ⓔ 2005/85/EC (adapted)

new

Council

46. Member States may ~~also~~ provide that an examination procedure in accordance with the basic principles and guarantees of Chapter II be ~~prioritised or~~ accelerated if:

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

~~(b) the applicant clearly does not qualify as a refugee or for refugee status in a Member State under Directive 2004/83/EC; or~~ **(b) the applicant clearly does not qualify as a refugee or a person eligible for subsidiary protection in a Member State under Directive [...]/../EC [The Qualification Directive]; or**

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

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

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

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

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

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

~~(g) the applicant has made inconsistent, contradictory, improbable or insufficient representations which make his/her claim clearly unconvincing in relation to his/her having been the object of persecution referred to in Directive 2004/83/EC; or~~

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

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

new

Council

~~(f)(e)~~ the application was made by an unmarried minor to whom Article 6 (7) (c) applies, after the application of the parents or parent responsible for the minor has been rejected and no relevant new elements were raised with respect to his/her particular circumstances or to the situation in his/her country of origin; or

2005/85/EC (adapted)

new

Council

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

~~(k) the applicant has failed without good reason to comply with obligations referred to in Article 4(1) and (2) of Directive 2004/83/EC or in Articles 11(2)(a) and (b) and 20(1) of this Directive; or~~

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

~~(m) the applicant is a danger to the national security or public order of the Member State, or the applicant has been forcibly expelled for serious reasons of public security and public order under national law; or~~

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

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

new

7. In cases of unfounded applications, as referred to in Article 28, in which any of the circumstances listed in paragraph 6 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 or use of forged documents, shall not *per se* entail an automatic recourse to an accelerated examination procedure.

Article 28

Unfounded applications

Without prejudice to Article 23, 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 [..././EC] [the Qualification Directive].

Article 24

Specific procedures

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

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

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

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

SECTION II

Article ~~25~~29

Inadmissible applications

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

2. Member States may consider an application for ~~asylum~~ international protection as inadmissible ~~only pursuant to this Article~~ 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 ~~26~~31;

(c) a country which is not a Member State is considered as a safe third country for the applicant, pursuant to Article ~~27~~32;

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

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

~~(f)~~(d) the applicant has lodged an identical application after a final decision;

~~(g)~~(e) a dependant of the applicant lodges an application, after he/she has in accordance with Article 6~~(3)~~(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.

new

Article 30

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 29 in their particular circumstances before a decision to consider an application inadmissible is taken. To that end, Member States shall conduct a personal interview on the admissibility of the application. Member States may make an exception only in accordance with Article 36 in cases of subsequent applications.
2. Paragraph 1 shall be without prejudice to Article 5 of Regulation (EC) No .../.... [the Dublin Regulation].

Ⓔ 2005/85/EC

new

Article ~~26~~31

The concept of first country of asylum

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

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

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 asylum~~ applicant for international protection Member States may take into account Article ~~27~~32 (1).

Article ~~27~~32

The safe third country concept

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

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

new

- (b) there is no risk of serious harm as defined in [Directive .../..EC] [the Qualification Directive];

2005/85/EC

new

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

~~(c)~~(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; and

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

- 2- The application of the safe third country concept shall be subject to rules laid down in national legislation, including:
- (a) rules requiring a connection between the person seeking ~~asylum~~ 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) rules on the methodology by which the competent authorities satisfy themselves that the safe third country concept may be applied to a particular country or to a particular applicant. Such methodology shall include case-by-case consideration of the safety of the country for a particular applicant and/or national designation of countries considered to be generally safe;
 - (c) rules in accordance with international law, allowing an individual examination of whether the third country concerned is safe for a particular applicant which, as a minimum, shall permit the applicant to challenge the application of the safe third country concept ~~on the grounds that he/she would be subjected to torture, cruel, inhuman or degrading treatment or punishment~~ 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) .
- 3- When implementing a decision solely based on this Article, Member States shall:
- (a) inform the applicant accordingly; and
 - (b) provide him/her with a document informing the authorities of the third country, in the language of that country, that the application has not been examined in substance.
- 4- Where the third country does not permit the ~~applicant for asylum~~ applicant for international protection to enter its territory, Member States shall ensure that access to a procedure is given in accordance with the basic principles and guarantees described in Chapter II.
- 5- Member States shall inform the Commission periodically of the countries to which this concept is applied in accordance with the provisions of this Article.

SECTION III

~~Article 28~~

~~Unfounded applications~~

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

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

~~Article 29~~

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

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

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

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

~~4. Where the Council requests the Commission to submit a proposal for removing a third country from the minimum common list, the obligation of Member States pursuant to~~

~~Article 31(2) shall be suspended with regard to this third country as of the day following the Council decision requesting such a submission.~~

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

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

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

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

Article ~~30~~33

National designation of third countries as safe countries of origin

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

~~2. By derogation from paragraph 1, Member States may retain legislation in force on 1 December 2005 that allows for the national designation of third countries, other than those appearing on the minimum common list, as safe countries of origin for the purposes of~~

~~examining applications for asylum where they are satisfied that persons in the third countries concerned are generally neither subject to:~~

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

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

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

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

new

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

Ⓔ 2005/85/EC (adapted)

new

~~53.~~ The assessment of whether a country is a safe country of origin in accordance with this Article shall be based on a range of sources of information, including in particular information from other Member States, the European Asylum Support Office, the UNHCR, the Council of Europe and other relevant international organisations.

~~64.~~ Member States shall notify to the Commission the countries that are designated as safe countries of origin in accordance with this Article.

The safe country of origin concept

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

- (a) he/she has the nationality of that country; or
- (b) he/she is a stateless person and was formerly habitually resident in that country;
- (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 2004/83/EC~~ [Directive .../.../EC] [the Qualification Directive] .

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

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

SECTION IV

Subsequent application

1. Where a person who has applied for ~~asylum~~ international protection in a Member State makes further representations or a subsequent application in the same Member State, that Member State ~~may~~ 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 competent authorities can take into account and consider all the elements underlying the further representations or subsequent application within this framework.

2. ~~Moreover,~~ For the purpose of taking a decision on the admissibility of an application for international protection pursuant to Article 29 (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 ~~asylum~~ international protection :

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

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

new

(b) after a final decision has been taken on the previous application.

Ⓒ 2005/85/EC

new

3. A subsequent application for ~~asylum~~ 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) of this Article 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 2004/83/EC ~~Directive [...]/EC~~ [the Qualification Directive] have arisen or have been presented by the applicant.

4. If, following the preliminary examination referred to in paragraph 3 of this Article, 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 2004/83/EC~~ Directive [...]/.../EC] [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.
- 6- Member States may decide to further examine the application only if the applicant concerned was, through no fault of his/her own, incapable of asserting the situations set forth in paragraphs 3, 4 and 5 of this Article in the previous procedure, in particular by exercising his/her right to an effective remedy pursuant to Article ~~39~~ 41.
- 7- 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(2)~~(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.

new

8- If, following a final decision to consider a subsequent application inadmissible pursuant to Article 29 (2) (d) or a final decision to reject a subsequent application as unfounded, the person concerned lodges a new application for international protection in the same Member State before a return decision has been enforced, that Member State may:

- (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 29; and/or
- (c) provide that an examination procedure be accelerated in accordance with Article 27 (6) (f).

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.

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

Ⓔ 2005/85/EC (adapted)

new

~~Article 33~~

Failure to appear

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

Article ~~33~~ 36

Procedural rules

1. Member States shall ensure that applicants ~~for asylum~~ for international protection whose application is subject to a preliminary examination pursuant to Article ~~32~~ 35 enjoy the guarantees provided for in Article ~~10~~ 11 (1).
2. Member States may lay down in national law rules on the preliminary examination pursuant to Article ~~32~~ 35. Those rules may, inter alia:

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

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

~~(c)~~(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 35 (7) .

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

3- Member States shall ensure that:

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

(b) if one of the situations referred to in Article ~~32(2)~~ 35(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 ~~35~~ 37

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 applications made at such locations; and/or

new

(b) the substance of an application in an accelerated procedure pursuant to Article 27 (6).

Ⓔ 2005/85/EC

new

Council

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

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

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

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

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

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

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

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

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

42. Member States shall ensure that a decision in the framework of the procedures provided for in paragraph 21 is taken within a reasonable time. When a decision has not been taken within four weeks, the applicant ~~for asylum~~ shall be granted entry to the territory of the Member State in order for his/her application to be processed in accordance with the other provisions of this Directive.

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

SECTION VI

Article ~~36~~38

The European safe third countries concept

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

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

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

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

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

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

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

~~43.~~ The Member States concerned shall lay down in national law the modalities for implementing the provisions of paragraph 1 and the consequences of decisions pursuant to those provisions in accordance with the principle of non-refoulement ~~under the Geneva Convention~~, including providing for exceptions from the application of this Article for humanitarian or political reasons or for reasons of public international law.

~~54.~~ When implementing a decision solely based on this Article, the Member States concerned shall:

(a) inform the applicant accordingly; and

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

~~65.~~ 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.

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

CHAPTER IV

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

Article ~~37~~39

Withdrawal of ~~refugee~~ international protection status

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

Article ~~38-40~~

Procedural rules

- 4- Member States shall ensure that, where the competent authority is considering withdrawing the ~~refugee~~ international protection status of a third country national or stateless person in accordance with Article 14 or Article 19 of ~~Directive 2004/83/EC~~ Directive [...]/.../EC] [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 ~~refugee~~ international protection status and the reasons for such a reconsideration; and
 - (b) to be given the opportunity to submit, in a personal interview in accordance with Article ~~10~~ 11 (1) (b) and Articles ~~12, 13, and 14~~ and 15 or in a written statement, reasons as to why his/her ~~refugee~~ international protection status should not be withdrawn.

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

- (a) the competent authority is able to obtain precise and up-to-date information from various sources, such as, where appropriate, from the 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 refugee international protection status, it is not obtained from the actor(s) of persecution or serious harm in a manner that would result in such actor(s) being directly informed of the fact that the person concerned is a refugee 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 refugee international protection status is given in writing. The reasons in fact and in law shall be stated in the decision and information on how to challenge the decision shall be given in writing.
- 3- Once the competent authority has taken the decision to withdraw the refugee international protection status, Article 1518, paragraph 2, Article 1619, paragraph 1 and Article 24 25 are equally applicable.
- 4- By derogation to paragraphs 1, 2 and 3 of this Article, Member States may decide that the refugee international protection status shall lapse by law ~~in case of cessation in accordance with Article 11(1)(a) to (d) of Directive 2004/83/EC or~~ if the refugee beneficiary of international protection has unequivocally renounced his/her recognition as a refugee beneficiary of international protection . **Member States may also provide that refugee status or subsidiary protection status shall lapse by law where a refugee or a person granted subsidiary protection has acquired the nationality of the Member State concerned.**

CHAPTER V

APPEALS PROCEDURES

Article ~~39~~41

The right to an effective remedy

1. Member States shall ensure that applicants for ~~asylum~~ 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 ~~asylum~~ international protection, including a decision:

new

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

2005/85/EC

new

- ~~(i)(ii)~~ to consider an application inadmissible pursuant to Article ~~25(2)~~ 29,

- ~~(ii)(iii)~~ taken at the border or in the transit zones of a Member State as described in Article ~~35~~ 37 (1),

- ~~(iii)(iv)~~ not to conduct an examination pursuant to Article ~~36~~ 38;

- (b) a refusal to re-open the examination of an application after its discontinuation pursuant to Articles ~~19~~ 23 and ~~20~~ 24;

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

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

~~(e)(c)~~ a decision to withdraw of refugee international protection status pursuant to Article ~~38~~40.

new

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 [...]/EC [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 [...]/EC [the Qualification Directive], at least in appeal procedures before a court or tribunal of first instance.

Ⓔ 2005/85/EC Article 4

new

24. Member States shall provide for reasonable time-limits and other necessary rules for the applicant to exercise his/her right to an effective remedy pursuant to paragraph 1.

Ⓔ 2005/85/EC Article 4

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

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

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

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

new

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 37.

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 27 (6) and of a decision to consider an application inadmissible pursuant to Article 29 (2) (d), and where the right to remain in the Member State pending the outcome of the remedy is not foreseen under national legislation, a court or tribunal shall have the power to rule whether or not the applicant may remain on the territory of the Member State, either upon request of the concerned applicant or acting on its own motion.

This paragraph shall not apply to procedures referred to in Article 37.

7. Member States shall allow the applicant to remain in the territory pending the outcome of the procedure referred to in paragraph 6.

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

49. Member States ~~may~~ shall lay down time-limits for the court or tribunal pursuant to paragraph 1 to examine the decision of the determining authority.
510. Where an applicant has been granted a status which offers the same rights and benefits under national and Community law as the refugee status by virtue of ~~Directive 2004/83/EC~~ Directive [...]/.../EC [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.
611. 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 ~~4042~~

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 ~~44~~3

Confidentiality

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

new

Article 44

Cooperation

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

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

Ⓔ 2005/85/EC (adapted)

new

Article ~~42~~45

Report

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

presenting the report, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States at least every ~~two years~~ five years .

Article ~~43~~46

Transposition

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

new

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 27 (3) by [3 years from the date of the transposition]. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

Ⓒ 2005/85/EC (adapted)

new

When Member States adopt those provisions, they shall contain a reference to this Directive or ~~shall~~ be accompanied by such a reference on the occasion of their official publication. ~~The methods of making such reference shall be laid down by Member States.~~

They shall also include a statement that references in existing laws, regulations and administrative provisions to the directive repealed by this Directive shall be construed as

references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

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

Article ~~44~~47

Transitional provisions

Member States shall apply the laws, regulations and administrative provisions set out in subparagraph 1 of Article ~~43~~ 46 to applications for ~~asylum~~ international protection lodged after ~~1 December 2007~~ [...] and to procedures for the withdrawal of ~~refugee status~~ international protection started after ~~1 December 2007~~ [..] .

Applications submitted before [...] and procedures for the withdrawal of refugee status initiated before [...] shall be governed by the laws, regulations and administrative provisions in accordance with Directive 2005/85/EC.

new

Member States shall apply the laws, regulations and administrative provisions set out in subparagraph 2 of Article 46 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 48

Repeal

Directive 2005/85/EC is repealed with effect from [day after the date set out in the first subparagraph of Article 46 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 III, 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 IV.

Ⓔ 2005/85/EC (adapted)

Article ~~45~~49

Entry into force

This Directive shall enter into force on the ~~20th~~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 subparagraph of Article 46].

Ⓔ 2005/85/EC (adapted)

Article ~~46~~50

Addressees

This Directive is addressed to the Member States in conformity with the Treaty establishing the European Community.

Done at [...]

For the European Parliament

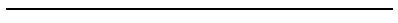
The President

[...]

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 ~~(e)~~ (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 ~~(e)~~ (f) of this Directive shall include recommendations of the Refugee Applications Commissioner as to whether an applicant should or, as the case may be, should not be declared to be a refugee.

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

ANNEX II

Designation of safe countries of origin for the purposes of Articles ~~29~~ and ~~30~~ 33(1)

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

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

- (a) the relevant laws and regulations of the country and the manner in which they are applied;
- (b) observance of the rights and freedoms laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms and/or the International Covenant for Civil and Political Rights and/or the Convention against Torture, in particular the rights from which derogation cannot be made under Article 15(2) of the said European Convention;
- (c) respect of the non-refoulement principle according to the Geneva Convention;
- (d) provision for a system of effective remedies against violations of these rights and freedoms.

ANNEX III

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

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

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

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

ANNEX III

Part A

Repealed Directive

(referred to in Article 48)

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 48)

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

ANNEX IV**CORRELATION TABLE**

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)
-	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)
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
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)
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)	-
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

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Annex III

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Annex IV

