

COLLECTION OF INTERNATIONAL AND REGIONAL INSTRUMENTS AND EUROPEAN LEGAL TEXTS CONCERNING REFUGEES AND OTHERS OF CONCERN TO UNHCR

UNHCR REGIONAL REPRESENTATION FOR NORTHERN EUROPE
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CONVENTION
AND
PROTOCOL

RELATING TO THE
STATUS OF
REFUGEES

60
YEARS



UNHCR
The UN Refugee Agency

Text of the 1951 Convention
Relating to the Status of Refugees

Text of the 1967 Protocol
Relating to the Status of Refugees

Resolution 2198 (XXI) adopted by the
United Nations General Assembly

with an
Introductory Note
by the Office of the
United Nations High Commissioner for Refugees

INTRODUCTORY NOTE
by the Office of the
United Nations High Commissioner for Refugees
(UNHCR)

GROUNDING IN ARTICLE 14 of the Universal Declaration of human rights 1948, which recognizes the right of persons to seek asylum from persecution in other countries, the United Nations Convention relating to the Status of Refugees, adopted in 1951, is the centrepiece of international refugee protection today.⁽¹⁾ The Convention entered into force on 22 April 1954, and it has been subject to only one amendment in the form of a 1967 Protocol, which removed the geographic and temporal limits of the 1951 Convention.⁽²⁾ The 1951 Convention, as a post-Second World War instrument, was originally limited in scope to persons fleeing events occurring before 1 January 1951 and within Europe. The 1967 Protocol removed these limitations and thus gave the Convention universal coverage. It has since been supplemented by refugee and subsidiary protection regimes in several regions,⁽³⁾ as well as via the progressive development of international human rights law.

(1) United Nations General Assembly resolution 429(V) of 14 December 1950, available at <http://www.unhcr.org/refworld/docid/3b00f08a27.html>

(2) The Convention enabled States to make a declaration when becoming party, according to which the words “events occurring before 1 January 1951” are understood to mean “events occurring in Europe” prior to that date. This geographical limitation has been maintained by a very limited number of States, and with the adoption of the 1967 Protocol, has lost much of its significance. The Protocol of 1967 is attached to United Nations General Assembly resolution 2198 (XXI) of 16 December 1967, available at <http://www.unhcr.org/refworld/docid/3b00f1cc50.html>.

(3) See, for example, the Organization of African Unity (now African Union) Convention governing the Specific Aspects of Refugee Problems in Africa 1969, adopted in Addis Adaba, 10 September 1969; the European Union 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 granted, Official Journal L 304, 30/09/2004 P. 0012 – 0023. The Cartagena Declaration on Refugees, adopted at a colloquium held at Cartagena, Colombia, 19-22 November 1984, while non-binding, also sets out regional standards for refugees in Central America, Mexico and Panama.

The 1951 Convention consolidates previous international instruments relating to refugees and provides the most comprehensive codification of the rights of refugees at the international level. In contrast to earlier international refugee instruments, which applied to specific groups of refugees, the 1951 Convention endorses a single definition of the term “refugee” in Article 1. The emphasis of this definition is on the protection of persons from political or other forms of persecution. A refugee, according to the Convention, is someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.

The Convention is both a status and rights-based instrument and is underpinned by a number of fundamental principles, most notably non-discrimination, non-penalization and *non-refoulement*. Convention provisions, for example, are to be applied without discrimination as to race, religion or country of origin. Developments in international human rights law also reinforce the principle that the Convention be applied without discrimination as to sex, age, disability, sexuality, or other prohibited grounds of discrimination. The Convention further stipulates that, subject to specific exceptions, refugees should not be penalized for their illegal entry or stay. This recognizes that the seeking of asylum can require refugees to breach immigration rules. Prohibited penalties might include being charged with immigration or criminal offences relating to the seeking of asylum, or being arbitrarily detained purely on the basis of seeking asylum. Importantly, the Convention contains various safeguards against the expulsion of refugees. The principle of *non-refoulement* is so fundamental that no reservations or derogations may be made to it. It provides that no one shall expel or return (“*refouler*”) a refugee against his or her will, in any manner whatsoever, to a territory where he or she fears threats to life or freedom.

Finally, the Convention lays down basic minimum standards for the treatment of refugees, without prejudice to States granting more favourable treatment. Such rights include access to the courts, to primary education, to work, and the provision for documentation, including a refugee travel document in passport form. Most States parties to the Convention issue this document, which has become as widely accepted as the former “Nansen passport”, an identity document for refugees devised by the first Commissioner for Refugees, Fridtjof Nansen, in 1922.

The Convention does not however apply to all persons who might otherwise satisfy the definition of a refugee in Article I. In particular, the Convention does not apply to those for whom there are serious reasons for considering that they have committed war crimes or crimes against humanity, serious non-political crimes, or are guilty of acts contrary to the purposes and principles of the United Nations. The Convention also does not apply to those refugees who benefit from the protection or assistance of a United Nations agency other than UNHCR, such as refugees from Palestine who fall under the auspices of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). Nor does the Convention apply to those refugees who have a status equivalent to nationals in their country of asylum.

Apart from expanding the definition of a refugee, the Protocol obliges States to comply with the substantive provisions of the 1951 Convention to all persons covered by the refugee definition in Article I, without any limitation of date. Although related to the Convention in this way, the Protocol is an independent instrument, accession to which is not limited to States parties to the Convention.

Under the Convention and Protocol, there is a particular role for UNHCR. States undertake to cooperate with UNHCR in the exercise of its functions, which are set out in its Statute of 1950 along with a range of other General Assembly resolutions, and, in particular, to facilitate this specific duty of supervising the application of these instruments. By its Statute, UNHCR is tasked with, among others, promoting international instruments for the protection of refugees, and supervising their application.

The fundamental importance and enduring relevance of the Convention and the Protocol is widely recognized. In 2001, States parties issued a Declaration reaffirming their commitment to the 1951 Convention and the 1967 Protocol, and they recognized in particular that the core principle of *non-refoulement* is embedded in customary international law.⁽⁴⁾ Moreover, the General Assembly has frequently called upon States to become parties to these instruments.

(4) Declaration of States parties to the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees, Ministerial Meeting of States Parties, Geneva, Switzerland, 12-13 December 2001, UN Doc. HCR/MMSP/2001/09, 16 January 2002. The Declaration was welcomed by the UN General Assembly in resolution A/RES/57/187, para. 4, adopted on 18 December 2001.

Accession has also been recommended by various regional organizations, such as the Council of Europe, the African Union, and the Organization of American States. As UNHCR prepares to commemorate, in 2011, the 60th anniversary of the 1951 Convention, it is hoped that more States will accede to these instruments. Today, there are 147 States Parties to one or both of these instruments.

In view of the increasing recognition of the fundamental significance of the Convention and the Protocol for the protection of refugees and for the establishment of minimum standards for their treatment, it is important that their provisions be known as widely as possible, both by refugees and by all those concerned with refugee problems.

Additional information on the Convention and the Protocol, including accession details, may be obtained from UNHCR, or directly from the UNHCR website at www.unhcr.org.

Geneva, December 2010

FINAL ACT
of the United Nations Conference of Plenipotentiaries
on the Status of Refugees and Stateless Persons

I. The General Assembly of the United Nations, by Resolution 429 (V) of 14 December 1950, decided to convene in Geneva a Conference of Plenipotentiaries to complete the drafting of, and to sign, a Convention relating to the Status of Refugees and a Protocol relating to the Status of Stateless Persons.

The Conference met at the European Office of the United Nations in Geneva from 2 to 25 July 1951.

The Governments of the following twenty-six States were represented by delegates who all submitted satisfactory credentials or other communications of appointment authorizing them to participate in the Conference:

Australia	Italy
Austria	Luxembourg
Belgium	Monaco
Brazil	Netherlands
Canada	Norway
Colombia	Sweden
Denmark	Switzerland (the Swiss delegation also represented Liechtenstein)
Egypt	Turkey
France	United Kingdom of Great Britain and Northern Ireland
Germany, Federal Republic of	United States of America
Greece	Venezuela
Holy See	Yugoslavia
Iraq	
Israel	

The Governments of the following two States were represented by observers:

Cuba
Iran

Pursuant to the request of the General Assembly, the United Nations High Commissioner for Refugees participated, without the right to vote, in the deliberations of the Conference.

The International Labour Organisation and the International Refugee Organization were represented at the Conference without the right to vote.

The Conference invited a representative of the Council of Europe to be represented at the Conference without the right to vote.

Representatives of the following Non-Governmental Organizations in consultative relationship with the Economic and Social Council were also present as observers:

CATEGORY A

International Confederation of Free Trade Unions
International Federation of Christian Trade Unions
Inter-Parliamentary Union

CATEGORY B

Agudas Israel World Organization
Caritas Internationalis
Catholic International Union for Social Service
Commission of the Churches on International Affairs
Consultative Council of Jewish Organizations
Co-ordinating Board of Jewish Organizations
Friends' World Committee for Consultation
International Association of Penal Law
International Bureau for the Unification of Penal Law
International Committee of the Red Cross
International Council of Women
International Federation of Friends of Young Women
International League for the Rights of Man
International Social Service
International Union for Child Welfare
International Union of Catholic Women's Leagues
Pax Romana
Women's International League for Peace and Freedom
World Jewish Congress
World Union for Progressive Judaism
World Young Women's Christian Association

REGISTER

International Relief Committee for Intellectual Workers
League of Red Cross Societies
Standing Conference of Voluntary Agencies
World Association of Girl Guides and Girl Scouts
World University Service

Representatives of Non-Governmental Organizations which have been granted consultative status by the Economic and Social Council as well as those entered by the Secretary-General on the Register referred to in Resolution 288 B (X) of the Economic and Social Council, paragraph 17, had under the rules of procedure adopted by the Conference the right to submit written or oral statements to the Conference.

The Conference elected Mr. Knud Larsen, of Denmark, as President, and Mr. A. Herment, of Belgium, and Mr. Talat Miras, of Turkey, as Vice-Presidents.

At its second meeting, the Conference, acting on a proposal of the representative of Egypt, unanimously decided to address an invitation to the Holy See to designate a plenipotentiary representative to participate in its work. A representative of the Holy See took his place at the Conference on 10 July 1951.

The Conference adopted as its agenda the Provisional Agenda drawn up by the Secretary-General (A/CONF.2/2/Rev.1). It also adopted the Provisional Rules of Procedure drawn up by the Secretary-General, with the addition of a provision which authorized a representative of the Council of Europe to be present at the Conference without the right to vote and to submit proposals (A/CONF.2/3/Rev.1).

In accordance with the Rules of Procedure of the Conference, the President and Vice-Presidents examined the credentials of representatives and on 17 July 1951 reported to the Conference the results of such examination, the Conference adopting the report.

The Conference used as the basis of its discussions the draft Convention relating to the Status of Refugees and the draft Protocol relating to the Status of Stateless Persons prepared by the *ad hoc* Committee on Refugees and Stateless Persons at its second session held in Geneva from 14 to 25 August 1950, with the exception of the preamble and Article 1 (Definition of the term

“refugee”) of the draft Convention. The text of the preamble before the Conference was that which was adopted by the Economic and Social Council on 11 August 1950 in Resolution 319 B II (XI). The text of Article 1 before the Conference was that recommended by the General Assembly on 14 December 1950 and contained in the Annex to Resolution 429 (V). The latter was a modification of the text as it had been adopted by the Economic and Social Council in Resolution 319 B II (XI).

The Conference adopted the Convention relating to the Status of Refugees in two readings. Prior to its second reading it established a Style Committee composed of the President and the representatives of Belgium, France, Israel, Italy, the United Kingdom of Great Britain and Northern Ireland and the United States of America, together with the High Commissioner for Refugees, which elected as its Chairman Mr. G. Warren, of the United States of America. The Style Committee re-drafted the text which had been adopted by the Conference on first reading, particularly from the point of view of language and of concordance between the English and French texts.

The Convention was adopted on 25 July by 24 votes to none with no abstentions and opened for signature at the European Office of the United Nations from 28 July to 31 August 1951. It will be re-opened for signature at the permanent headquarters of the United Nations in New York from 17 September 1951 to 31 December 1952.

The English and French texts of the Convention, which are equally authentic, are appended to this Final Act.

II. The Conference decided, by 17 votes to 3 with 3 abstentions, that the titles of the chapters and of the articles of the Convention are included for practical purposes and do not constitute an element of interpretation.

III. With respect to the draft Protocol relating to the Status of Stateless Persons, the Conference adopted the following resolution:

THE CONFERENCE,

HAVING CONSIDERED the draft Protocol relating to the Status of Stateless Persons,

CONSIDERING that the subject still requires more detailed study,

DECIDES not to take a decision on the subject at the present Conference and

refers the draft Protocol back to the appropriate organs of the United Nations for further study.

IV. The Conference adopted unanimously the following recommendations:

A

(Facilitation of refugee travels)⁽¹⁾

THE CONFERENCE,

CONSIDERING that the issue and recognition of travel documents is necessary to facilitate the movement of refugees, and in particular their resettlement,

URGES Governments which are parties to the Inter-Governmental Agreement on Refugee Travel Documents signed in London on 15 October 1946, or which recognize travel documents issued in accordance with the Agreement, to continue to issue or to recognize such travel documents, and to extend the issue of such documents to refugees as defined in Article I of the Convention relating to the Status of Refugees or to recognize the travel documents so issued to such persons, until they shall have undertaken obligations under Article 28 of the said Convention.

B

(Principle of unity of the family)⁽¹⁾

THE CONFERENCE,

CONSIDERING that the unity of the family, the natural and fundamental group unit of society, is an essential right of the refugee, and that such unity is constantly threatened, and

NOTING with satisfaction that, according to the official commentary of the *ad hoc* Committee on Statelessness and Related Problems (E/1618, p. 40), the rights granted to a refugee are extended to members of his family,

RECOMMENDS Governments to take the necessary measures for the protection of the refugee's family especially with a view to:

(1) Headline added.

- (1) Ensuring that the unity of the refugee's family is maintained particularly in cases where the head of the family has fulfilled the necessary conditions for admission to a particular country,
- (2) The protection of refugees who are minors, in particular unaccompanied children and girls, with special reference to guardianship and adoption.

C

(Welfare services)⁽¹⁾

THE CONFERENCE,

CONSIDERING that, in the moral, legal and material spheres, refugees need the help of suitable welfare services, especially that of appropriate non-governmental organizations,

RECOMMENDS Governments and inter-governmental bodies to facilitate, encourage and sustain the efforts of properly qualified organizations.

D

(International co-operation in the field of asylum and resettlement)⁽¹⁾

THE CONFERENCE,

CONSIDERING that many persons still leave their country of origin for reasons of persecution and are entitled to special protection on account of their position,

RECOMMENDS that Governments continue to receive refugees in their territories and that they act in concert in a true spirit of international co-operation in order that these refugees may find asylum and the possibility of resettlement.

E

(Extension of treatment provided by the Convention)⁽¹⁾

THE CONFERENCE,

EXPRESSES the hope that the Convention relating to the Status of Refugees will have value as an example exceeding its contractual scope and that

(1) Headline added.

all nations will be guided by it in granting so far as possible to persons in their territory as refugees and who would not be covered by the terms of the Convention, the treatment for which it provides.

IN WITNESS WHEREOF the President, Vice-Presidents and the Executive Secretary of the Conference have signed this Final Act.

DONE at Geneva this twenty-eighth day of July one thousand nine hundred and fifty-one in a single copy in the English and French languages, each text being equally authentic. Translations of this Final Act into Chinese, Russian and Spanish will be prepared by the Secretary-General of the United Nations, who will, on request, send copies thereof to each of the Governments invited to attend the Conference.

The President of the Conference:	Knud Larsen
The Vice-Presidents of the Conference:	A. Herment, Talat Miras
The Executive Secretary of the Conference:	John P. Humphrey

CONVENTION

Relating to the Status of Refugees

Preamble

THE HIGH CONTRACTING PARTIES,

CONSIDERING that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination,

CONSIDERING that the United Nations has, on various occasions, manifested its profound concern for refugees and endeavoured to assure refugees the widest possible exercise of these fundamental rights and freedoms,

CONSIDERING that it is desirable to revise and consolidate previous international agreements relating to the status of refugees and to extend the scope of and protection accorded by such instruments by means of a new agreement,

CONSIDERING that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation,

EXPRESSING the wish that all States, recognizing the social and humanitarian nature of the problem of refugees, will do everything within their power to prevent this problem from becoming a cause of tension between States,

NOTING that the United Nations High Commissioner for Refugees is charged with the task of supervising international conventions providing for the protection of refugees, and recognizing that the effective co-ordination of measures taken to deal with this problem will depend upon the co-operation of States with the High Commissioner,

HAVE AGREED as follows:

CHAPTER I: General Provisions

Article 1

DEFINITION OF THE TERM “REFUGEE”

A. For the purposes of the present Convention, the term “refugee” shall apply to any person who:

- (1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization;

Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section;

- (2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

In the case of a person who has more than one nationality, the term “the country of his nationality” shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

B.(1) For the purposes of this Convention, the words “events occurring

before 1 January 1951” in article 1, section A, shall be understood to mean either:

- (a) “events occurring in Europe before 1 January 1951”; or
 - (b) “events occurring in Europe or elsewhere before 1 January 1951”, and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention.
- (2) Any Contracting State which has adopted alternative (a) may at any time extend its obligations by adopting alternative (b) by means of a notification addressed to the Secretary-General of the United Nations.

C. This Convention shall cease to apply to any person falling under the terms of section A if:

- (1) He has voluntarily re-availed himself of the protection of the country of his nationality; or
- (2) Having lost his nationality, he has voluntarily re-acquired it; or
- (3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or
- (4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or
- (5) He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;
Provided that this paragraph shall not apply to a refugee falling under section A(1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;
- (6) Being a person who has no nationality he is, because of the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.

D. This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.

When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall *ipso facto* be entitled to the benefits of this Convention.

E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

- (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
- (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
- (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

Article 2

GENERAL OBLIGATIONS

Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.

Article 3

NON-DISCRIMINATION

The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.

Article 4

RELIGION

The Contracting States shall accord to refugees within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practice their religion and freedom as regards the religious education of their children.

Article 5

RIGHTS GRANTED APART FROM THIS CONVENTION

Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to refugees apart from this Convention.

Article 6

THE TERM “IN THE SAME CIRCUMSTANCES”

For the purposes of this Convention, the term “in the same circumstances” implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a refugee, must be fulfilled by him, with the exception of requirements which by their nature a refugee is incapable of fulfilling.

Article 7

EXEMPTION FROM RECIPROCITY

1. Except where this Convention contains more favourable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally.
2. After a period of three years' residence, all refugees shall enjoy exemption from legislative reciprocity in the territory of the Contracting States.

3. Each Contracting State shall continue to accord to refugees the rights and benefits to which they were already entitled, in the absence of reciprocity, at the date of entry into force of this Convention for that State.

4. The Contracting States shall consider favourably the possibility of according to refugees, in the absence of reciprocity, rights and benefits beyond those to which they are entitled according to paragraphs 2 and 3, and to extending exemption from reciprocity to refugees who do not fulfil the conditions provided for in paragraphs 2 and 3.

5. The provisions of paragraphs 2 and 3 apply both to the rights and benefits referred to in articles 13, 18, 19, 21 and 22 of this Convention and to rights and benefits for which this Convention does not provide.

Article 8

EXEMPTION FROM EXCEPTIONAL MEASURES

With regard to exceptional measures which may be taken against the person, property or interests of nationals of a foreign State, the Contracting States shall not apply such measures to a refugee who is formally a national of the said State solely on account of such nationality. Contracting States which, under their legislation, are prevented from applying the general principle expressed in this article, shall, in appropriate cases, grant exemptions in favour of such refugees.

Article 9

PROVISIONAL MEASURES

Nothing in this Convention shall prevent a Contracting State, in time of war or other grave and exceptional circumstances, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person, pending a determination by the Contracting State that that person is in fact a refugee and that the continuance of such measures is necessary in his case in the interests of national security.

Article 10

CONTINUITY OF RESIDENCE

1. Where a refugee has been forcibly displaced during the Second World

War and removed to the territory of a Contracting State, and is resident there, the period of such enforced sojourn shall be considered to have been lawful residence within that territory.

2. Where a refugee has been forcibly displaced during the Second World War from the territory of a Contracting State and has, prior to the date of entry into force of this Convention, returned there for the purpose of taking up residence, the period of residence before and after such enforced displacement shall be regarded as one uninterrupted period for any purposes for which uninterrupted residence is required.

Article II

REFUGEE SEAMEN

In the case of refugees regularly serving as crew members on board a ship flying the flag of a Contracting State, that State shall give sympathetic consideration to their establishment on its territory and the issue of travel documents to them or their temporary admission to its territory particularly with a view to facilitating their establishment in another country.

CHAPTER II: Juridical Status

Article 12

PERSONAL STATUS

1. The personal status of a refugee shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence.
2. Rights previously acquired by a refugee and dependent on personal status, more particularly rights attaching to marriage, shall be respected by a Contracting State, subject to compliance, if this be necessary, with the formalities required by the law of that State, provided that the right in question is one which would have been recognized by the law of that State had he not become a refugee.

Article 13

MOVABLE AND IMMOVABLE PROPERTY

The Contracting States shall accord to a refugee treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.

Article 14

ARTISTIC RIGHTS AND INDUSTRIAL PROPERTY

In respect of the protection of industrial property, such as inventions, designs or models, trade marks, trade names, and of rights in literary, artistic, and scientific works, a refugee shall be accorded in the country in which he has his habitual residence the same protection as is accorded to nationals of that

country. In the territory of any other Contracting State, he shall be accorded the same protection as is accorded in that territory to nationals of the country in which he has his habitual residence.

Article 15

RIGHT OF ASSOCIATION

As regards non-political and non-profit-making associations and trade unions the Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country, in the same circumstances.

Article 16

ACCESS TO COURTS

1. A refugee shall have free access to the courts of law on the territory of all Contracting States.
2. A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the Courts, including legal assistance and exemption from *cautio judicatum solvi*.
3. A refugee shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence.

CHAPTER III: Gainful Employment

Article 17

WAGE-EARNING EMPLOYMENT

1. The Contracting State shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment.

2. In any case, restrictive measures imposed on aliens or the employment of aliens for the protection of the national labour market shall not be applied to a refugee who was already exempt from them at the date of entry into force of this Convention for the Contracting State concerned, or who fulfils one of the following conditions:

- (a) He has completed three years' residence in the country;
- (b) He has a spouse possessing the nationality of the country of residence.
A refugee may not invoke the benefits of this provision if he has abandoned his spouse;
- (c) He has one or more children possessing the nationality of the country of residence.

3. The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, and in particular of those refugees who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.

Article 18

SELF-EMPLOYMENT

The Contracting States shall accord to a refugee lawfully in their territory

treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.

Article 19

LIBERAL PROFESSIONS

1. Each Contracting State shall accord to refugees lawfully staying in their territory who hold diplomas recognized by the competent authorities of that State, and who are desirous of practicing a liberal profession, treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.
2. The Contracting States shall use their best endeavours consistently with their laws and constitutions to secure the settlement of such refugees in the territories, other than the metropolitan territory, for whose international relations they are responsible.

CHAPTER IV: Welfare

Article 20

RATIONING

Where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, refugees shall be accorded the same treatment as nationals.

Article 21

HOUSING

As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

Article 22

PUBLIC EDUCATION

1. The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.
2. The Contracting States shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.

Article 23

PUBLIC RELIEF

The Contracting States shall accord to refugees lawfully staying in their ter-

ritory the same treatment with respect to public relief and assistance as is accorded to their nationals.

Article 24

LABOUR LEGISLATION AND SOCIAL SECURITY

1. The Contracting States shall accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters:

- (a) In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities: remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining;
- (b) Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:
 - (i) There may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;
 - (ii) National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension.

2. The right to compensation for the death of a refugee resulting from employment injury or from occupational disease shall not be affected by the fact that the residence of the beneficiary is outside the territory of the Contracting State.

3. The Contracting States shall extend to refugees the benefits of

agreements concluded between them, or which may be concluded between them in the future, concerning the maintenance of acquired rights and rights in the process of acquisition in regard to social security, subject only to the conditions which apply to nationals of the States signatory to the agreements in question.

4. The Contracting States will give sympathetic consideration to extending to refugees so far as possible the benefits of similar agreements which may at any time be in force between such Contracting States and non-contracting States.

CHAPTER V: Administrative Measures

Article 25

ADMINISTRATIVE ASSISTANCE

1. When the exercise of a right by a refugee would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting States in whose territory he is residing shall arrange that such assistance be afforded to him by their own authorities or by an international authority.
2. The authority or authorities mentioned in paragraph 1 shall deliver or cause to be delivered under their supervision to refugees such documents or certifications as would normally be delivered to aliens by or through their national authorities.
3. Documents or certifications so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities, and shall be given credence in the absence of proof to the contrary.
4. Subject to such exceptional treatment as may be granted to indigent persons, fees may be charged for the services mentioned herein, but such fees shall be moderate and commensurate with those charged to nationals for similar services.
5. The provisions of this article shall be without prejudice to articles 27 and 28.

Article 26

FREEDOM OF MOVEMENT

Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances.

Article 27

IDENTITY PAPERS

The Contracting States shall issue identity papers to any refugee in their territory who does not possess a valid travel document.

Article 28

TRAVEL DOCUMENTS

1. The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other refugee in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence.

2. Travel documents issued to refugees under previous international agreements by parties thereto shall be recognized and treated by the Contracting States in the same way as if they had been issued pursuant to this article.

Article 29

FISCAL CHARGES

1. The Contracting States shall not impose upon refugees duties, charges or taxes, of any description whatsoever, other or higher than those which are or may be levied on their nationals in similar situations.

2. Nothing in the above paragraph shall prevent the application to refugees of the laws and regulations concerning charges in respect of the issue to aliens of administrative documents including identity papers.

Article 30

TRANSFER OF ASSETS

1. A Contracting State shall, in conformity with its laws and regulations, permit refugees to transfer assets which they have brought into its territory,

to another country where they have been admitted for the purposes of resettlement.

2. A Contracting State shall give sympathetic consideration to the application of refugees for permission to transfer assets wherever they may be and which are necessary for their resettlement in another country to which they have been admitted.

Article 31

REFUGEES UNLAWFULLY IN THE COUNTRY OF REFUGEE

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

Article 32

EXPULSION

1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.

2. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.

3. The Contracting States shall allow such a refugee a reasonable period

within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

Article 33

PROHIBITION OF EXPULSION OR RETURN (“REFOULEMENT”)

1. No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

Article 34

NATURALIZATION

The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.

CHAPTER VI: Executory and Transitory Provisions

Article 35

CO-OPERATION OF THE NATIONAL AUTHORITIES WITH THE UNITED NATIONS

1. The Contracting States undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention.

2. In order to enable the Office of the High Commissioner or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the Contracting States undertake to provide them in the appropriate form with information and statistical data requested concerning:

- (a) The condition of refugees,
- (b) The implementation of this Convention, and;
- (c) Laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

Article 36

INFORMATION ON NATIONAL LEGISLATION

The Contracting States shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of this Convention.

Article 37

RELATION TO PREVIOUS CONVENTIONS

Without prejudice to article 28, paragraph 2, of this Convention, this

Convention replaces, as between parties to it, the Arrangements of 5 July 1922, 31 May 1924, 12 May 1926, 30 June 1928 and 30 July 1935, the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 and the Agreement of 15 October 1946.

CHAPTER VII: Final Clauses

Article 38

SETTLEMENT OF DISPUTES

Any dispute between parties to this Convention relating to its interpretation or application, which cannot be settled by other means, shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

Article 39

SIGNATURE, RATIFICATION AND ACCESSION

1. This Convention shall be opened for signature at Geneva on 28 July 1951 and shall thereafter be deposited with the Secretary-General of the United Nations. It shall be open for signature at the European Office of the United Nations from 28 July to 31 August 1951 and shall be re-opened for signature at the Headquarters of the United Nations from 17 September 1951 to 31 December 1952.
2. This Convention shall be open for signature on behalf of all States Members of the United Nations, and also on behalf of any other State invited to attend the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons or to which an invitation to sign will have been addressed by the General Assembly. It shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. This Convention shall be open from 28 July 1951 for accession by the States referred to in paragraph 2 of this article. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 40

TERRITORIAL APPLICATION CLAUSE

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.
2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.
3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

Article 41

FEDERAL CLAUSE

In the case of a Federal or non-unitary State, the following provisions shall apply:

- (a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of Parties which are not Federal States;
- (b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of states, provinces or cantons at the earliest possible moment;
- (c) A Federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of

the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention showing the extent to which effect has been given to that provision by legislative or other action.

Article 42

RESERVATIONS

1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 1, 3, 4, 16(1), 33, 36-46 inclusive.
2. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

Article 43

ENTRY INTO FORCE

1. This Convention shall come into force on the ninetieth day following the day of deposit of the sixth instrument of ratification or accession.
2. For each State ratifying or acceding to the Convention after the deposit of the sixth instrument of ratification or accession, the Convention shall enter into force on the ninetieth day following the date of deposit by such State of its instrument or ratification or accession.

Article 44

DENUNCIATION

1. Any Contracting State may denounce this Convention at any time by a notification addressed to the Secretary-General of the United Nations.
2. Such denunciation shall take effect for the Contracting State concerned one year from the date upon which it is received by the Secretary-General of the United Nations.
3. Any State which has made a declaration or notification under article 40

may, at any time thereafter, by a notification to the Secretary-General of the United Nations, declare that the Convention shall cease to extend to such territory one year after the date of receipt of the notification by the Secretary-General.

Article 45

REVISION

1. Any Contracting State may request revision of this Convention at any time by a notification addressed to the Secretary-General of the United Nations.
2. The General Assembly of the United Nations shall recommend the steps, if any, to be taken in respect of such request.

Article 46

NOTIFICATIONS BY

THE SECRETARY-GENERAL OF THE UNITED NATIONS

The Secretary-General of the United Nations shall inform all Members of the United Nations and non-member States referred to in article 39:

- (a) Of declarations and notifications in accordance with section B of article 1;
- (b) Of signatures, ratifications and accessions in accordance with article 39;
- (c) Of declarations and notifications in accordance with article 40;
- (d) Of reservations and withdrawals in accordance with article 42;
- (e) Of the date on which this Convention will come into force in accordance with article 43;
- (f) Of denunciations and notifications in accordance with article 44;
- (g) Of requests for revision in accordance with article 45.

IN FAITH WHEREOF the undersigned, duly authorized, have signed this Convention on behalf of their respective Governments,

DONE at Geneva, this twenty-eighth day of July, one thousand nine hundred and fifty-one, in a single copy, of which the English and French texts are

equally authentic and which shall remain deposited in the archives of the United Nations, and certified true copies of which shall be delivered to all Members of the United Nations and to the non-member States referred to in article 39.

SCHEDULE

Paragraph 1

1. The travel document referred to in article 28 of this Convention shall be similar to the specimen annexed hereto.
2. The document shall be made out in at least two languages, one of which shall be English or French.

Paragraph 2

Subject to the regulations obtaining in the country of issue, children may be included in the travel document of a parent or, in exceptional circumstances, of another adult refugee.

Paragraph 3

The fees charged for issue of the document shall not exceed the lowest scale of charges for national passports.

Paragraph 4

Save in special or exceptional cases, the document shall be made valid for the largest possible number of countries.

Paragraph 5

The document shall have a validity of either one or two years, at the discretion of the issuing authority.

Paragraph 6

1. The renewal or extension of the validity of the document is a matter for the authority which issued it, so long as the holder has not established lawful residence in another territory and resides lawfully in the territory of the said

authority. The issue of a new document is, under the same conditions, a matter for the authority which issued the former document.

2. Diplomatic or consular authorities, specially authorized for the purpose, shall be empowered to extend, for a period not exceeding six months, the validity of travel documents issued by their Governments.

3. The Contracting States shall give sympathetic consideration to renewing or extending the validity of travel documents or issuing new documents to refugees no longer lawfully resident in their territory who are unable to obtain a travel document from the country of their lawful residence.

Paragraph 7

The Contracting States shall recognize the validity of the documents issued in accordance with the provisions of article 28 of this Convention.

Paragraph 8

The competent authorities of the country to which the refugee desires to proceed shall, if they are prepared to admit him and if a visa is required, affix a visa on the document of which he is the holder.

Paragraph 9

1. The Contracting States undertake to issue transit visas to refugees who have obtained visas for a territory of final destination.

2. The issue of such visas may be refused on grounds which would justify refusal of a visa to any alien.

Paragraph 10

The fees for the issue of exit, entry or transit visas shall not exceed the lowest scale of charges for visas on foreign passports.

Paragraph 11

When a refugee has lawfully taken up residence in the territory of another

Contracting State, the responsibility for the issue of a new document, under the terms and conditions of article 28, shall be that of the competent authority of that territory, to which the refugee shall be entitled to apply.

Paragraph 12

The authority issuing a new document shall withdraw the old document and shall return it to the country of issue if it is stated in the document that it should be so returned; otherwise it shall withdraw and cancel the document.

Paragraph 13

1. Each Contracting State undertakes that the holder of a travel document issued by it in accordance with article 28 of this Convention shall be readmitted to its territory at any time during the period of its validity.
2. Subject to the provisions of the preceding sub-paragraph, a Contracting State may require the holder of the document to comply with such formalities as may be prescribed in regard to exit from or return to its territory.
3. The Contracting States reserve the right, in exceptional cases, or in cases where the refugee's stay is authorized for a specific period, when issuing the document, to limit the period during which the refugee may return to a period of not less than three months.

Paragraph 14

Subject only to the terms of paragraph 13, the provisions of this Schedule in no way affect the laws and regulations governing the conditions of admission to, transit through, residence and establishment in, and departure from, the territories of the Contracting States.

Paragraph 15

Neither the issue of the document nor the entries made thereon determine or affect the status of the holder, particularly as regards nationality.

Paragraph 16

The issue of the document does not in any way entitle the holder to the protection of the diplomatic or consular authorities of the country of issue, and does not confer on these authorities a right of protection.

ANNEX
Specimen Travel Document

The document will be in booklet form (approximately 15 x 10 centimetres).

It is recommended that it be so printed that any erasure or alteration by chemical or other means can be readily detected, and that the words “Convention of 28 July 1951” be printed in continuous repetition on each page, in the language of the issuing country.

(Cover of booklet)
TRAVEL DOCUMENT
(Convention of 28 July 1951)

No......

(1)
TRAVEL DOCUMENT
(Convention of 28 July 1951)

This document expires on
unless its validity is extended or renewed.

Name

Forename(s)

Accompanied by child (children).

1. This document is issued solely with a view to providing the holder with a travel document which can serve in lieu of a national passport. It is without prejudice to and in no way affects the holder's nationality.

2. The holder is authorized to return to
[state here the country whose authorities are issuing the document] on or
before

unless some later date is hereafter specified. [The period during which the holder is allowed to return must not be less than three months.]

3. Should the holder take up residence in a country other than that which issued the present document, he must, if he wishes to travel again, apply to the competent authorities of his country of residence for a new document. [The old travel document shall be withdrawn by the authority issuing the new document and returned to the authority which issued it.]⁽¹⁾

(This document contains.....pages, exclusive of cover.)

(2)

Place and date of birth
Occupation
Present residence
*Maiden name and forename(s) of wife
.....
*Name and forename(s) of husband
.....

Description

Height.....
Hair.....
Colour of eyes.....
Nose
Shape of face.....
Complexion.....
Special peculiarities.....

Children accompanying holder

Name	Forename(s)	Place and date of birth	Sex
.....
.....
.....

*Strike out whichever does not apply

(This document contains.....pages, exclusive of cover.)

(1) The sentence in brackets to be inserted by Governments which so desire.

(3)

Photograph of holder and stamp of issuing authority

Finger-prints of holder (if required)

Signature of holder

(This document contains.....pages, exclusive of cover.)

(4)

1. This document is valid for the following countries:.....

.....
.....
.....

2. Document or documents on the basis of which the present document is issued:.....

.....
.....
.....

Issued at.....

Date.....

Signature and stamp of authority
issuing the document:

Fee paid:

(This document contains.....pages, exclusive of cover.)

(5)

Extension or renewal of validity

Fee paid:

From.....

To.....

Done at..... Date

Signature and stamp of authority
extending or renewing the validity of
the document:

Extension or renewal of validity

Fee paid: From.....
To.....
Done at Date
Signature and stamp of authority
extending or renewing the validity of
the document:

(This document contains.....pages, exclusive of cover.)

(6)

Extension or renewal of validity

Fee paid: From.....
To.....
Done at Date
Signature and stamp of authority
extending or renewing the validity of
the document:

Extension or renewal of validity

Fee paid: From.....
To.....
Done at Date
Signature and stamp of authority
extending or renewing the validity of
the document:

(This document contains.....pages, exclusive of cover.)

(7-32)

Visas

The name of the holder of the document must be repeated in each visa.

(This document contains.....pages, exclusive of cover.)

PROTOCOL RELATING TO THE STATUS OF REFUGEES

THE STATES PARTIES TO THE PRESENT PROTOCOL,

CONSIDERING that the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 (hereinafter referred to as the Convention) covers only those persons who have become refugees as a result of events occurring before 1 January 1951,

CONSIDERING that new refugee situations have arisen since the Convention was adopted and that the refugees concerned may therefore not fall within the scope of the Convention,

CONSIDERING that it is desirable that equal status should be enjoyed by all refugees covered by the definition in the Convention irrespective of the dateline 1 January 1951,

HAVE AGREED as follows:

Article I

GENERAL PROVISION

1. The States Parties to the present Protocol undertake to apply articles 2 to 34 inclusive of the Convention to refugees as hereinafter defined.
2. For the purpose of the present Protocol, the term “refugee” shall, except as regards the application of paragraph 3 of this article, mean any person within the definition of article 1 of the Convention as if the words “As a result of events occurring before 1 January 1951 and ...” “and the words” ... “a result of such events”, in article 1 A (2) were omitted.
3. The present Protocol shall be applied by the States Parties hereto without any geographic limitation, save that existing declarations made by States already Parties to the Convention in accordance with article 1 B (1) (a) of the

Convention, shall, unless extended under article I B (2) thereof, apply also under the present Protocol.

Article II

CO-OPERATION OF THE NATIONAL AUTHORITIES WITH THE UNITED NATIONS

1. The States Parties to the present Protocol undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of the present Protocol.

2. In order to enable the Office of the High Commissioner, or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the States Parties to the present Protocol undertake to provide them with the information and statistical data requested, in the appropriate form, concerning:

- (a) The condition of refugees;
- (b) The implementation of the present Protocol;
- (c) Laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

Article III

INFORMATION ON NATIONAL LEGISLATION

The States Parties to the present Protocol shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of the present Protocol.

Article IV

SETTLEMENT OF DISPUTES

Any dispute between States Parties to the present Protocol which relates to its interpretation or application and which cannot be settled by other means shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

Article V
ACCESSION

The present Protocol shall be open for accession on behalf of all States Parties to the Convention and of any other State Member of the United Nations or member of any of the specialized agencies or to which an invitation to accede may have been addressed by the General Assembly of the United Nations. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article VI
FEDERAL CLAUSE

In the case of a Federal or non-unitary State, the following provisions shall apply:

- (a) With respect to those articles of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of States Parties which are not Federal States;
- (b) With respect to those articles of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment;
- (c) A Federal State Party to the present Protocol shall, at the request of any other State Party hereto transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol, showing the extent to which effect has been given to that provision by legislative or other action.

Article VII

RESERVATIONS AND DECLARATIONS

1. At the time of accession, any State may make reservations in respect of article IV of the present Protocol and in respect of the application in accordance with article I of the present Protocol of any provisions of the Convention other than those contained in articles 1, 3, 4, 16 (1) and 33 thereof, provided that in the case of a State Party to the Convention reservations made under this article shall not extend to refugees in respect of whom the Convention applies.
2. Reservations made by States Parties to the Convention in accordance with article 42 thereof shall, unless withdrawn, be applicable in relation to their obligations under the present Protocol.
3. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw such reservation by a communication to that effect addressed to the Secretary-General of the United Nations.
4. Declarations made under article 40, paragraphs 1 and 2, of the Convention by a State Party thereto which accedes to the present Protocol shall be deemed to apply in respect of the present Protocol, unless upon accession a notification to the contrary is addressed by the State Party concerned to the Secretary-General of the United Nations. The provisions of article 40, paragraphs 2 and 3, and of article 44, paragraph 3, of the Convention shall be deemed to apply *mutatis mutandis* to the present Protocol.

Article VIII

ENTRY INTO FORCE

1. The present Protocol shall come into force on the day of deposit of the sixth instrument of accession.
2. For each State acceding to the Protocol after the deposit of the sixth instrument of accession, the Protocol shall come into force on the date of deposit by such State of its instrument of accession.

Article IX

DENUNCIATION

1. Any State Party hereto may denounce this Protocol at any time by a notification addressed to the Secretary-General of the United Nations.
2. Such denunciation shall take effect for the State Party concerned one year from the date on which it is received by the Secretary-General of the United Nations.

Article X

NOTIFICATIONS

BY THE SECRETARY-GENERAL OF THE UNITED NATIONS

The Secretary-General of the United Nations shall inform the States referred to in article V above of the date of entry into force, accessions, reservations and withdrawals of reservations to and denunciations of the present Protocol, and of declarations and notifications relating hereto.

Article XI

DEPOSIT IN THE ARCHIVES

OF THE SECRETARIAT OF THE UNITED NATIONS

A copy of the present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, signed by the President of the General Assembly and by the Secretary-General of the United Nations, shall be deposited in the archives of the Secretariat of the United Nations. The Secretary-General will transmit certified copies thereof to all States Members of the United Nations and to the other States referred to in article V above.

GENERAL ASSEMBLY RESOLUTION 2198 (XXI)

Protocol relating to the Status of Refugees

THE GENERAL ASSEMBLY,

CONSIDERING that the Convention relating to the Status of Refugees, signed at Geneva on 28 July 1951⁽¹⁾, covers only those persons who have become refugees as a result of events occurring before 1 January 1951,

CONSIDERING that new refugee situations have arisen since the Convention was adopted and that the refugees concerned may therefore not fall within the scope of the Convention,

CONSIDERING that it is desirable that equal status should be enjoyed by all refugees covered by the definition in the Convention, irrespective of the date-line of 1 January 1951,

TAKING NOTE of the recommendation of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees⁽²⁾ that the draft Protocol relating to the Status of Refugees should be submitted to the General Assembly after consideration by the Economic and Social Council, in order that the Secretary-General might be authorized to open the Protocol for accession by Governments within the shortest possible time,

(1) United Nations, *Treaty Series*, vol. 189 (1954), No. 2545.

(2) See A/6311/Rev.1/Add.1, part two, para. 38.

CONSIDERING that the Economic and Social Council, in its resolution 1186 (XLI) of 18 November 1966, took note with approval of the draft Protocol contained in the addendum to the report of the United Nations High Commissioner for Refugees and concerning measures to extend the personal scope of the Convention⁽³⁾ and transmitted the addendum to the General Assembly,

1. **TAKES NOTE** of the Protocol relating to the Status of Refugees, the text of which⁽³⁾ is contained in the addendum to the report of the United Nations High Commissioner for Refugees;
2. **REQUESTS** the Secretary-General to transmit the text of the Protocol to the States mentioned in article V thereof, with a view to enabling them to accede to the Protocol⁽⁴⁾.

1495th plenary meeting, 16 December 1966

(3) Ibid., part one, para. 2.

(4) The Protocol was signed by the President of the General Assembly and by the Secretary-General on 31 January 1967.



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Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocols No. 11 and No. 14^{*}

Rome, 4.XI.1950

The governments signatory hereto, being members of the Council of Europe,

Considering the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10th December 1948;

Considering that this Declaration aims at securing the universal and effective recognition and observance of the Rights therein declared;

Considering that the aim of the Council of Europe is the achievement of greater unity between its members and that one of the methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms;

Reaffirming their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the human rights upon which they depend;

Being resolved, as the governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration,

Have agreed as follows:

Article 1 – Obligation to respect human rights

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

Section I – Rights and freedoms

Article 2 – Right to life

- 1 Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

- 2 Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
 - a in defence of any person from unlawful violence;
 - b in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
 - c in action lawfully taken for the purpose of quelling a riot or insurrection.

Article 3 – Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 4 – Prohibition of slavery and forced labour

- 1 No one shall be held in slavery or servitude.
- 2 No one shall be required to perform forced or compulsory labour.
- 3 For the purpose of this article the term "forced or compulsory labour" shall not include:
 - a any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
 - b any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
 - c any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
 - d any work or service which forms part of normal civic obligations.

Article 5 – Right to liberty and security

- 1 Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
 - a the lawful detention of a person after conviction by a competent court;
 - b the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
 - c the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
 - d the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
 - e the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
 - f the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

- 2 Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
- 3 Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
- 4 Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
- 5 Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

Article 6 – Right to a fair trial

- 1 In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
- 2 Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
- 3 Everyone charged with a criminal offence has the following minimum rights:
 - a to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
 - b to have adequate time and facilities for the preparation of his defence;
 - c to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
 - d to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - e to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Article 7 – No punishment without law

- 1 No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
- 2 This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

Article 8 – Right to respect for private and family life

- 1 Everyone has the right to respect for his private and family life, his home and his correspondence.
- 2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 9 – Freedom of thought, conscience and religion

- 1 Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
- 2 Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 10 – Freedom of expression

- 1 Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
- 2 The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 11 – Freedom of assembly and association

- 1 Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
- 2 No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Article 12 – Right to marry

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

Article 13 – Right to an effective remedy

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

Article 14 – Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 15 – Derogation in time of emergency

- 1 In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.
- 2 No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.
- 3 Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

Article 16 – Restrictions on political activity of aliens

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

Article 17 – Prohibition of abuse of rights

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

Article 18 – Limitation on use of restrictions on rights

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

Section II – European Court of Human Rights

Article 19 – Establishment of the Court

To ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto, there shall be set up a European Court of Human Rights, hereinafter referred to as "the Court". It shall function on a permanent basis.

Article 20 – Number of judges

The Court shall consist of a number of judges equal to that of the High Contracting Parties.

Article 21 – Criteria for office

- 1 The judges shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence.

- 2 The judges shall sit on the Court in their individual capacity.
- 3 During their term of office the judges shall not engage in any activity which is incompatible with their independence, impartiality or with the demands of a full-time office; all questions arising from the application of this paragraph shall be decided by the Court.

Article 22 – Election of judges

The judges shall be elected by the Parliamentary Assembly with respect to each High Contracting Party by a majority of votes cast from a list of three candidates nominated by the High Contracting Party.

Article 23 – Terms of office and dismissal

- 1 The judges shall be elected for a period of nine years. They may not be re-elected.
- 2 The terms of office of judges shall expire when they reach the age of 70.
- 3 The judges shall hold office until replaced. They shall, however, continue to deal with such cases as they already have under consideration.
- 4 No judge may be dismissed from office unless the other judges decide by a majority of two-thirds that that judge has ceased to fulfil the required conditions.

Article 24 – Registry and rapporteurs

- 1 The Court shall have a registry, the functions and organisation of which shall be laid down in the rules of the Court.
- 2 When sitting in a single-judge formation, the Court shall be assisted by rapporteurs who shall function under the authority of the President of the Court. They shall form part of the Court's registry.

Article 25 – Plenary Court

- 1 The plenary Court shall
 - a elect its President and one or two Vice-Presidents for a period of three years; they may be re-elected;
 - b set up Chambers, constituted for a fixed period of time;
 - c elect the Presidents of the Chambers of the Court; they may be re-elected;
 - d adopt the rules of the Court;
 - e elect the Registrar and one or more Deputy Registrars;
 - f make any request under Article 26, paragraph 2.

Article 26 – Single-judge formation, committees, Chambers and Grand Chamber

- 1 To consider cases brought before it, the Court shall sit in a single-judge formation, in committees of three judges, in Chambers of seven judges and in a Grand Chamber of seventeen judges. The Court's Chambers shall set up committees for a fixed period of time.
- 2 At the request of the plenary Court, the Committee of Ministers may, by a unanimous decision and for a fixed period, reduce to five the number of judges of the Chambers.

- 3 When sitting as a single judge, a judge shall not examine any application against the High Contracting Party in respect of which that judge has been elected.
- 4 There shall sit as an ex officio member of the Chamber and the Grand Chamber the judge elected in respect of the High Contracting Party concerned. If there is none or if that judge is unable to sit, a person chosen by the President of the Court from a list submitted in advance by that Party shall sit in the capacity of judge.
- 5 The Grand Chamber shall also include the President of the Court, the Vice-Presidents, the Presidents of the Chambers and other judges chosen in accordance with the rules of the Court. When a case is referred to the Grand Chamber under Article 43, no judge from the Chamber which rendered the judgment shall sit in the Grand Chamber, with the exception of the President of the Chamber and the judge who sat in respect of the High Contracting Party concerned.

Article 27 – Competence of single judges

- 1 A single judge may declare inadmissible or strike out of the Court's list of cases an application submitted under Article 34, where such a decision can be taken without further examination.
- 2 The decision shall be final.
- 3 If the single judge does not declare an application inadmissible or strike it out, that judge shall forward it to a committee or to a Chamber for further examination.

Article 28 – Competence of committees

- 1 In respect of an application submitted under Article 34, a committee may, by a unanimous vote,
 - a declare it inadmissible or strike it out of its list of cases, where such decision can be taken without further examination; or
 - b declare it admissible and render at the same time a judgment on the merits, if the underlying question in the case, concerning the interpretation or the application of the Convention or the Protocols thereto, is already the subject of well-established case-law of the Court.
- 2 Decisions and judgments under paragraph 1 shall be final.
- 3 If the judge elected in respect of the High Contracting Party concerned is not a member of the committee, the committee may at any stage of the proceedings invite that judge to take the place of one of the members of the committee, having regard to all relevant factors, including whether that Party has contested the application of the procedure under paragraph 1.b.

Article 29 – Decisions by Chambers on admissibility and merits

- 1 If no decision is taken under Article 27 or 28, or no judgment rendered under Article 28, a Chamber shall decide on the admissibility and merits of individual applications submitted under Article 34. The decision on admissibility may be taken separately.
- 2 A Chamber shall decide on the admissibility and merits of inter-State applications submitted under Article 33. The decision on admissibility shall be taken separately unless the Court, in exceptional cases, decides otherwise.

Article 30 – Relinquishment of jurisdiction to the Grand Chamber

Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects.

Article 31 – Powers of the Grand Chamber

The Grand Chamber shall:

- a determine applications submitted either under Article 33 or Article 34 when a Chamber has relinquished jurisdiction under Article 30 or when the case has been referred to it under Article 43;
- b decide on issues referred to the Court by the Committee of Ministers in accordance with Article 46, paragraph 4; and
- c consider requests for advisory opinions submitted under Article 47.

Article 32 – Jurisdiction of the Court

- 1 The jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the protocols thereto which are referred to it as provided in Articles 33, 34, 46 and 47.
- 2 In the event of dispute as to whether the Court has jurisdiction, the Court shall decide.

Article 33 – Inter-State cases

Any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the protocols thereto by another High Contracting Party.

Article 34 – Individual applications

The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.

Article 35 – Admissibility criteria

- 1 The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.
- 2 The Court shall not deal with any application submitted under Article 34 that
 - a is anonymous; or
 - b is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information.

- 3 The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:
 - a the application is incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of individual application; or
 - b the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal.
- 4 The Court shall reject any application which it considers inadmissible under this Article. It may do so at any stage of the proceedings.

Article 36 – Third party intervention

- 1 In all cases before a Chamber or the Grand Chamber, a High Contracting Party one of whose nationals is an applicant shall have the right to submit written comments and to take part in hearings.
- 2 The President of the Court may, in the interest of the proper administration of justice, invite any High Contracting Party which is not a party to the proceedings or any person concerned who is not the applicant to submit written comments or take part in hearings.
- 3 In all cases before a Chamber or the Grand Chamber, the Council of Europe Commissioner for Human Rights may submit written comments and take part in hearings.

Article 37 – Striking out applications

- 1 The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that:
 - a the applicant does not intend to pursue his application; or
 - b the matter has been resolved; or
 - c for any other reason established by the Court, it is no longer justified to continue the examination of the application.

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the protocols thereto so requires.

- 2 The Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course.

Article 38 – Examination of the case

The Court shall examine the case together with the representatives of the parties and, if need be, undertake an investigation, for the effective conduct of which the High Contracting Parties concerned shall furnish all necessary facilities.

Article 39 – Friendly settlements

- 1 At any stage of the proceedings, the Court may place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention and the Protocols thereto.
- 2 Proceedings conducted under paragraph 1 shall be confidential.

- 3 If a friendly settlement is effected, the Court shall strike the case out of its list by means of a decision which shall be confined to a brief statement of the facts and of the solution reached.
- 4 This decision shall be transmitted to the Committee of Ministers, which shall supervise the execution of the terms of the friendly settlement as set out in the decision.

Article 40 – Public hearings and access to documents

- 1 Hearings shall be in public unless the Court in exceptional circumstances decides otherwise.
- 2 Documents deposited with the Registrar shall be accessible to the public unless the President of the Court decides otherwise.

Article 41 – Just satisfaction

If the Court finds that there has been a violation of the Convention or the protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.

Article 42 – Judgments of Chambers

Judgments of Chambers shall become final in accordance with the provisions of Article 44, paragraph 2.

Article 43 – Referral to the Grand Chamber

- 1 Within a period of three months from the date of the judgment of the Chamber, any party to the case may, in exceptional cases, request that the case be referred to the Grand Chamber.
- 2 A panel of five judges of the Grand Chamber shall accept the request if the case raises a serious question affecting the interpretation or application of the Convention or the protocols thereto, or a serious issue of general importance.
- 3 If the panel accepts the request, the Grand Chamber shall decide the case by means of a judgment.

Article 44 – Final judgments

- 1 The judgment of the Grand Chamber shall be final.
- 2 The judgment of a Chamber shall become final:
 - a when the parties declare that they will not request that the case be referred to the Grand Chamber; or
 - b three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or
 - c when the panel of the Grand Chamber rejects the request to refer under Article 43.
- 3 The final judgment shall be published.

Article 45 – Reasons for judgments and decisions

- 1 Reasons shall be given for judgments as well as for decisions declaring applications admissible or inadmissible.

- 2 If a judgment does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

Article 46 – Binding force and execution of judgments

- 1 The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
- 2 The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.
- 3 If the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two thirds of the representatives entitled to sit on the Committee.
- 4 If the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two thirds of the representatives entitled to sit on the Committee, refer to the Court the question whether that Party has failed to fulfil its obligation under paragraph 1.
- 5 If the Court finds a violation of paragraph 1, it shall refer the case to the Committee of Ministers for consideration of the measures to be taken. If the Court finds no violation of paragraph 1, it shall refer the case to the Committee of Ministers, which shall close its examination of the case.

Article 47 – Advisory opinions

- 1 The Court may, at the request of the Committee of Ministers, give advisory opinions on legal questions concerning the interpretation of the Convention and the protocols thereto.
- 2 Such opinions shall not deal with any question relating to the content or scope of the rights or freedoms defined in Section I of the Convention and the protocols thereto, or with any other question which the Court or the Committee of Ministers might have to consider in consequence of any such proceedings as could be instituted in accordance with the Convention.
- 3 Decisions of the Committee of Ministers to request an advisory opinion of the Court shall require a majority vote of the representatives entitled to sit on the Committee.

Article 48 – Advisory jurisdiction of the Court

The Court shall decide whether a request for an advisory opinion submitted by the Committee of Ministers is within its competence as defined in Article 47.

Article 49 – Reasons for advisory opinions

- 1 Reasons shall be given for advisory opinions of the Court.
- 2 If the advisory opinion does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.
- 3 Advisory opinions of the Court shall be communicated to the Committee of Ministers.

Article 50 – Expenditure on the Court

The expenditure on the Court shall be borne by the Council of Europe.

Article 51 – Privileges and immunities of judges

The judges shall be entitled, during the exercise of their functions, to the privileges and immunities provided for in Article 40 of the Statute of the Council of Europe and in the agreements made thereunder.

Section III – Miscellaneous provisions

Article 52 – Inquiries by the Secretary General

On receipt of a request from the Secretary General of the Council of Europe any High Contracting Party shall furnish an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of the Convention.

Article 53 – Safeguard for existing human rights

Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a Party.

Article 54 – Powers of the Committee of Ministers

Nothing in this Convention shall prejudice the powers conferred on the Committee of Ministers by the Statute of the Council of Europe.

Article 55 – Exclusion of other means of dispute settlement

The High Contracting Parties agree that, except by special agreement, they will not avail themselves of treaties, conventions or declarations in force between them for the purpose of submitting, by way of petition, a dispute arising out of the interpretation or application of this Convention to a means of settlement other than those provided for in this Convention.

Article 56 – Territorial application

- 1 Any State may at the time of its ratification or at any time thereafter declare by notification addressed to the Secretary General of the Council of Europe that the present Convention shall, subject to paragraph 4 of this Article, extend to all or any of the territories for whose international relations it is responsible.
- 2 The Convention shall extend to the territory or territories named in the notification as from the thirtieth day after the receipt of this notification by the Secretary General of the Council of Europe.
- 3 The provisions of this Convention shall be applied in such territories with due regard, however, to local requirements.
- 4 Any State which has made a declaration in accordance with paragraph 1 of this article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided by Article 34 of the Convention.

Article 57 – Reservations

- 1 Any State may, when signing this Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. Reservations of a general character shall not be permitted under this article.

- 2 Any reservation made under this article shall contain a brief statement of the law concerned.

Article 58 – Denunciation

- 1 A High Contracting Party may denounce the present Convention only after the expiry of five years from the date on which it became a party to it and after six months' notice contained in a notification addressed to the Secretary General of the Council of Europe, who shall inform the other High Contracting Parties.
- 2 Such a denunciation shall not have the effect of releasing the High Contracting Party concerned from its obligations under this Convention in respect of any act which, being capable of constituting a violation of such obligations, may have been performed by it before the date at which the denunciation became effective.
- 3 Any High Contracting Party which shall cease to be a member of the Council of Europe shall cease to be a Party to this Convention under the same conditions.
- 4 The Convention may be denounced in accordance with the provisions of the preceding paragraphs in respect of any territory to which it has been declared to extend under the terms of Article 56.

Article 59 – Signature and ratification

- 1 This Convention shall be open to the signature of the members of the Council of Europe. It shall be ratified. Ratifications shall be deposited with the Secretary General of the Council of Europe.
- 2 The European Union may accede to this Convention.
- 3 The present Convention shall come into force after the deposit of ten instruments of ratification.
- 4 As regards any signatory ratifying subsequently, the Convention shall come into force at the date of the deposit of its instrument of ratification.
- 5 The Secretary General of the Council of Europe shall notify all the members of the Council of Europe of the entry into force of the Convention, the names of the High Contracting Parties who have ratified it, and the deposit of all instruments of ratification which may be effected subsequently.

Done at Rome this 4th day of November 1950, in English and French, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatories.

(*) This page contains the text of the Convention as amended by its Protocol No. 14 (CETS No. 194) as from the date of its entry into force on 1 June 2010. The text of the Convention had been previously amended according to the provisions of Protocol No. 3 (ETS No. 45), which entered into force on 21 September 1970, of Protocol No. 5 (ETS No. 55), which entered into force on 20 December 1971 and of Protocol No. 8 (ETS No. 118), which entered into force on 1 January 1990, and comprised also the text of Protocol No. 2 (ETS No. 44) which, in accordance with Article 5, paragraph 3 thereof, had been an integral part of the Convention since its entry into force on 21 September 1970. All provisions which had been amended or added by these Protocols were replaced by Protocol No. 11 (ETS No. 155), as from the date of its entry into force on 1 November 1998. As from that date, Protocol No. 9 (ETS No. 140), which entered into force on 1 October 1994, was repealed and Protocol No. 10 (ETS no. 146) had lost its purpose.

CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

(2012/C 326/02)

The European Parliament, the Council and the Commission solemnly proclaim the following text as the Charter of Fundamental Rights of the European Union.

CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Preamble

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, services, goods and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

This Charter reaffirms, with due regard for the powers and tasks of the Union and for the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case-law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared under the authority of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights, freedoms and principles set out hereafter.

TITLE I**DIGNITY***Article 1***Human dignity**

Human dignity is inviolable. It must be respected and protected.

*Article 2***Right to life**

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

*Article 3***Right to the integrity of the person**

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:
 - (a) the free and informed consent of the person concerned, according to the procedures laid down by law;
 - (b) the prohibition of eugenic practices, in particular those aiming at the selection of persons;
 - (c) the prohibition on making the human body and its parts as such a source of financial gain;
 - (d) the prohibition of the reproductive cloning of human beings.

*Article 4***Prohibition of torture and inhuman or degrading treatment or punishment**

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

*Article 5***Prohibition of slavery and forced labour**

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

TITLE II

FREEDOMS

Article 6

Right to liberty and security

Everyone has the right to liberty and security of person.

Article 7

Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

Article 8

Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

Article 9

Right to marry and right to found a family

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

Article 10

Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

Article 11

Freedom of expression and information

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected.

Article 12

Freedom of assembly and of association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

Article 13

Freedom of the arts and sciences

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

Article 14

Right to education

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

Article 15

Freedom to choose an occupation and right to engage in work

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

*Article 16***Freedom to conduct a business**

The freedom to conduct a business in accordance with Union law and national laws and practices is recognised.

*Article 17***Right to property**

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.

2. Intellectual property shall be protected.

*Article 18***Right to asylum**

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union (hereinafter referred to as 'the Treaties').

*Article 19***Protection in the event of removal, expulsion or extradition**

1. Collective expulsions are prohibited.

2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

TITLE III

EQUALITY

*Article 20***Equality before the law**

Everyone is equal before the law.

Article 21

Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.

Article 22

Cultural, religious and linguistic diversity

The Union shall respect cultural, religious and linguistic diversity.

Article 23

Equality between women and men

Equality between women and men must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Article 24

The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Article 25

The rights of the elderly

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

*Article 26***Integration of persons with disabilities**

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

TITLE IV

SOLIDARITY*Article 27***Workers' right to information and consultation within the undertaking**

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices.

*Article 28***Right of collective bargaining and action**

Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

*Article 29***Right of access to placement services**

Everyone has the right of access to a free placement service.

*Article 30***Protection in the event of unjustified dismissal**

Every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices.

*Article 31***Fair and just working conditions**

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Article 32

Prohibition of child labour and protection of young people at work

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

Article 33

Family and professional life

1. The family shall enjoy legal, economic and social protection.
2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

Article 34

Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.
2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices.
3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.

Article 35

Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all the Union's policies and activities.

*Article 36***Access to services of general economic interest**

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaties, in order to promote the social and territorial cohesion of the Union.

*Article 37***Environmental protection**

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

*Article 38***Consumer protection**

Union policies shall ensure a high level of consumer protection.

TITLE V

CITIZENS' RIGHTS

*Article 39***Right to vote and to stand as a candidate at elections to the European Parliament**

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.

2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

*Article 40***Right to vote and to stand as a candidate at municipal elections**

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

*Article 41***Right to good administration**

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.

2. This right includes:
- (a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
 - (b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
 - (c) the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

Article 42

Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium.

Article 43

European Ombudsman

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the European Ombudsman cases of maladministration in the activities of the institutions, bodies, offices or agencies of the Union, with the exception of the Court of Justice of the European Union acting in its judicial role.

Article 44

Right to petition

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

Article 45

Freedom of movement and of residence

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the Treaties, to nationals of third countries legally resident in the territory of a Member State.

*Article 46***Diplomatic and consular protection**

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

TITLE VI

JUSTICE

*Article 47***Right to an effective remedy and to a fair trial**

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

*Article 48***Presumption of innocence and right of defence**

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

*Article 49***Principles of legality and proportionality of criminal offences and penalties**

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.
3. The severity of penalties must not be disproportionate to the criminal offence.

Article 50

Right not to be tried or punished twice in criminal proceedings for the same criminal offence

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

TITLE VII

GENERAL PROVISIONS GOVERNING THE INTERPRETATION AND APPLICATION OF THE CHARTER

Article 51

Field of application

1. The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties.
2. The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties.

Article 52

Scope and interpretation of rights and principles

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter for which provision is made in the Treaties shall be exercised under the conditions and within the limits defined by those Treaties.
3. In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.
4. In so far as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.

5. The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions, bodies, offices and agencies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.

6. Full account shall be taken of national laws and practices as specified in this Charter.

7. The explanations drawn up as a way of providing guidance in the interpretation of this Charter shall be given due regard by the courts of the Union and of the Member States.

Article 53

Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Article 54

Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

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The above text adapts the wording of the Charter proclaimed on 7 December 2000, and will replace it as from the date of entry into force of the Treaty of Lisbon.

DIRECTIVE 2013/33/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 26 June 2013
laying down standards for the reception of applicants for international protection (recast)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the ordinary legislative procedure ⁽³⁾,

Whereas:

- (1) A number of substantive changes are to be made to Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers ⁽⁴⁾. In the interests of clarity, that Directive should be recast.
- (2) A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of progressively establishing an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Union. Such a policy should be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States.
- (3) At its special meeting in Tampere on 15 and 16 October 1999, the European Council agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention Relating to the Status of Refugees

of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967 ('the Geneva Convention'), thus affirming the principle of *non-refoulement*. The first phase of a Common European Asylum System was achieved through the adoption of relevant legal instruments, including Directive 2003/9/EC, provided for in the Treaties.

- (4) The European Council, at its meeting of 4 November 2004, adopted The Hague Programme, which set 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 instruments and to submit the second-phase instruments and measures to the European Parliament and to the Council.
- (5) The European Council, at its meeting of 10-11 December 2009, adopted the Stockholm Programme, which reiterated the commitment to the objective of establishing by 2012 a common area of protection and solidarity based on a common asylum procedure and a uniform status for those granted international protection based on high protection standards and fair and effective procedures. The Stockholm Programme further provides that it is crucial that individuals, regardless of the Member State in which their application for international protection is made, are offered an equivalent level of treatment as regards reception conditions.
- (6) The resources of the European Refugee Fund and of the European Asylum Support Office should be mobilised to provide adequate support to Member States' efforts in implementing 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.
- (7) In the light of the results of the evaluations undertaken of the implementation of the first-phase instruments, it is appropriate, at this stage, to confirm the principles underlying Directive 2003/9/EC with a view to ensuring improved reception conditions for applicants for international protection ('applicants').

⁽¹⁾ OJ C 317, 23.12.2009, p. 110 and OJ C 24, 28.1.2012, p. 80.

⁽²⁾ OJ C 79, 27.3.2010, p. 58.

⁽³⁾ Position of the European Parliament of 7 May 2009 (OJ C 212 E, 5.8.2010, p. 348) and position of the Council at first reading of 6 June 2013 (not yet published in the Official Journal). Position of the European Parliament of 10 June 2013 (not yet published in the Official Journal).

⁽⁴⁾ OJ L 31, 6.2.2003, p. 18.

- (8) In order to ensure equal treatment of applicants throughout the Union, this Directive should apply during all stages and types of procedures concerning applications for international protection, in all locations and facilities hosting applicants and for as long as they are allowed to remain on the territory of the Member States as applicants.
- (9) In applying this Directive, Member States should seek to ensure full compliance with the principles of the best interests of the child and of family unity, in accordance with the Charter of Fundamental Rights of the European Union, the 1989 United Nations Convention on the Rights of the Child and the European Convention for the Protection of Human Rights and Fundamental Freedoms respectively.
- (10) 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.
- (11) Standards for the reception of applicants that will suffice to ensure them a dignified standard of living and comparable living conditions in all Member States should be laid down.
- (12) The harmonisation of conditions for the reception of applicants should help to limit the secondary movements of applicants influenced by the variety of conditions for their reception.
- (13) With a view to ensuring equal treatment amongst all applicants for international protection and guaranteeing consistency with current EU asylum *acquis*, in particular with Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted⁽¹⁾, it is appropriate to extend the scope of this Directive in order to include applicants for subsidiary protection.
- (14) The reception of persons with special reception needs should be a primary concern for national authorities in order to ensure that such reception is specifically designed to meet their special reception needs.
- (15) The detention of applicants should be applied in accordance with the underlying principle that a person should not be held in detention for the sole reason that he or she is seeking international protection, particularly in accordance with the international legal obligations of the Member States and with Article 31 of the Geneva Convention. Applicants may be detained only under very clearly defined exceptional circumstances laid down in this Directive and subject to the principle of necessity and proportionality with regard to both to the manner and the purpose of such detention. Where an applicant is held in detention he or she should have effective access to the necessary procedural guarantees, such as judicial remedy before a national judicial authority.
- (16) With regard to administrative procedures relating to the grounds for detention, the notion of 'due diligence' at least requires that Member States take concrete and meaningful steps to ensure that the time needed to verify the grounds for detention is as short as possible, and that there is a real prospect that such verification can be carried out successfully in the shortest possible time. Detention shall not exceed the time reasonably needed to complete the relevant procedures.
- (17) The grounds for detention set out in this Directive are without prejudice to other grounds for detention, including detention grounds within the framework of criminal proceedings, which are applicable under national law, unrelated to the third country national's or stateless person's application for international protection.
- (18) Applicants who are in detention should be treated with full respect for human dignity and their reception should be specifically designed to meet their needs in that situation. In particular, Member States should ensure that Article 37 of the 1989 United Nations Convention on the Rights of the Child is applied.
- (19) There may be cases where it is not possible in practice to immediately ensure certain reception guarantees in detention, for example due to the geographical location or the specific structure of the detention facility. However, any derogation from those guarantees should be temporary and should only be applied under the circumstances set out in this Directive. Derogations should only be applied in exceptional circumstances and should be duly justified, taking into consideration the circumstances of each case, including the level of severity of the derogation applied, its duration and its impact on the applicant concerned.

(¹) OJ L 337, 20.12.2011, p. 9.

- (20) In order to better ensure the physical and psychological integrity of the applicants, detention should be a measure of last resort and may only be applied after all non-custodial alternative measures to detention have been duly examined. Any alternative measure to detention must respect the fundamental human rights of applicants.
- (21) In order to ensure compliance with the procedural guarantees consisting in the opportunity to contact organisations or groups of persons that provide legal assistance, information should be provided on such organisations and groups of persons.
- (22) When deciding on housing arrangements, Member States should take due account of the best interests of the child, as well as of the particular circumstances of any applicant who is dependent on family members or other close relatives such as unmarried minor siblings already present in the Member State.
- (23) In order to promote the self-sufficiency of applicants and to limit wide discrepancies between Member States, it is essential to provide clear rules on the applicants' access to the labour market.
- (24) To ensure that the material support provided to applicants complies with the principles set out in this Directive, it is necessary that Member States determine the level of such support on the basis of relevant references. That does not mean that the amount granted should be the same as for nationals. Member States may grant less favourable treatment to applicants than to nationals as specified in this Directive.
- (25) The possibility of abuse of the reception system should be restricted by specifying the circumstances in which material reception conditions for applicants may be reduced or withdrawn while at the same time ensuring a dignified standard of living for all applicants.
- (26) The efficiency of national reception systems and cooperation among Member States in the field of reception of applicants should be secured.
- (27) Appropriate coordination should be encouraged between the competent authorities as regards the reception of applicants, and harmonious relationships between local communities and accommodation centres should therefore be promoted.
- (28) Member States should have the power to introduce or maintain more favourable provisions for third-country nationals and stateless persons who ask for international protection from a Member State.
- (29) In this spirit, Member States are also invited to apply the provisions of this Directive in connection with procedures for deciding on applications for forms of protection other than that provided for under Directive 2011/95/EU.
- (30) The implementation of this Directive should be evaluated at regular intervals.
- (31) Since the objective of this Directive, namely to establish standards for the reception of applicants in Member States, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Directive, be better achieved at the Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). 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 that objective.
- (32) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011 ⁽¹⁾, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (33) In accordance with Articles 1 and 2 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the TEU, and to the Treaty on the Functioning of the European Union (TFEU), and without prejudice to Article 4 of that Protocol, the United Kingdom and Ireland are not taking part in the adoption of this Directive and are not bound by it or subject to its application.
- (34) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.

⁽¹⁾ OJ C 369, 17.12.2011, p. 14.

(35) 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 ensure full respect for human dignity and to promote the application of Articles 1, 4, 6, 7, 18, 21, 24 and 47 of the Charter and has to be implemented accordingly.

(36) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with Directive 2003/9/EC. The obligation to transpose the provisions which are unchanged arises under that Directive.

(37) This Directive should be without prejudice to the obligations of the Member States relating to the time-limit for transposition into national law of Directive 2003/9/EC set out in Annex II, Part B,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

PURPOSE, DEFINITIONS AND SCOPE

Article 1

Purpose

The purpose of this Directive is to lay down standards for the reception of applicants for international protection ('applicants') in Member States.

Article 2

Definitions

For the purposes of this Directive:

(a) 'application for international protection': means an application for international protection as defined in Article 2(h) of Directive 2011/95/EU;

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

(c) 'family members': means, in so far as the family already existed in the country of origin, the following members of the applicant's family who are present in the same Member State in relation to the application for international protection:

— the spouse of the applicant or his or her unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats

unmarried couples in a way comparable to married couples under its law relating to third-country nationals;

— the minor children of couples referred to in the first indent or of the applicant, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under national law;

— the father, mother or another adult responsible for the applicant whether by law or by the practice of the Member State concerned, when that applicant is a minor and unmarried;

(d) 'minor': means a third-country national or stateless person below the age of 18 years;

(e) 'unaccompanied minor': means a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he or she has entered the territory of the Member States;

(f) 'reception conditions': means the full set of measures that Member States grant to applicants in accordance with this Directive;

(g) 'material reception conditions': means the reception conditions that include housing, food and clothing provided in kind, or as financial allowances or in vouchers, or a combination of the three, and a daily expenses allowance;

(h) 'detention': means confinement of an applicant by a Member State within a particular place, where the applicant is deprived of his or her freedom of movement;

(i) 'accommodation centre': means any place used for the collective housing of applicants;

(j) 'representative': means a person or an organisation appointed by the competent bodies in order to assist and represent an unaccompanied minor in procedures provided for in this Directive with a view to ensuring the best interests of the child and exercising legal capacity for the minor where necessary. Where an organisation is appointed as a representative, it shall designate a person responsible for carrying out the duties of representative in respect of the unaccompanied minor, in accordance with this Directive;

(k) 'applicant with special reception needs': means a vulnerable person, in accordance with Article 21, who is in need of special guarantees in order to benefit from the rights and comply with the obligations provided for in this Directive.

*Article 3***Scope**

1. This Directive shall apply to all third-country nationals and stateless persons who make an application for international protection on the territory, including at the border, in the territorial waters or in the transit zones of a Member State, as long as they are allowed to remain on the territory as applicants, as well as to family members, if they are covered by such application for international protection according to national law.

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

3. This Directive shall not apply when the provisions of Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof⁽¹⁾ are applied.

4. Member States may decide to apply this Directive in connection with procedures for deciding on applications for kinds of protection other than that emanating from Directive 2011/95/EU.

*Article 4***More favourable provisions**

Member States may introduce or retain more favourable provisions in the field of reception conditions for applicants and other close relatives of the applicant who are present in the same Member State when they are dependent on him or her, or for humanitarian reasons, insofar as these provisions are compatible with this Directive.

CHAPTER II

GENERAL PROVISIONS ON RECEPTION CONDITIONS*Article 5***Information**

1. Member States shall inform applicants, within a reasonable time not exceeding 15 days after they have lodged their application for international protection, of at least any established benefits and of the obligations with which they must comply relating to reception conditions.

Member States shall ensure that applicants are provided with information on organisations or groups of persons that provide specific legal assistance and organisations that might be able to help or inform them concerning the available reception conditions, including health care.

2. Member States shall ensure that the information referred to in paragraph 1 is in writing and, in a language that the applicant understands or is reasonably supposed to understand. Where appropriate, this information may also be supplied orally.

*Article 6***Documentation**

1. Member States shall ensure that, within three days of the lodging of an application for international protection, the applicant is provided with a document issued in his or her own name certifying his or her status as an applicant or testifying that he or she is allowed to stay on the territory of the Member State while his or her application is pending or being examined.

If the holder is not free to move within all or a part of the territory of the Member State, the document shall also certify that fact.

2. Member States may exclude application of this Article when the applicant is in detention and during the examination of an application for international protection made at the border or within the context of a procedure to decide on the right of the applicant to enter the territory of a Member State. In specific cases, during the examination of an application for international protection, Member States may provide applicants with other evidence equivalent to the document referred to in paragraph 1.

3. The document referred to in paragraph 1 need not certify the identity of the applicant.

4. Member States shall adopt the necessary measures to provide applicants with the document referred to in paragraph 1, which must be valid for as long as they are authorised to remain on the territory of the Member State concerned.

5. Member States may provide applicants with a travel document when serious humanitarian reasons arise that require their presence in another State.

⁽¹⁾ OJ L 212, 7.8.2001, p. 12.

6. Member States shall not impose unnecessary or disproportionate documentation or other administrative requirements on applicants before granting them the rights to which they are entitled under this Directive for the sole reason that they are applicants for international protection.

Article 7

Residence and freedom of movement

1. Applicants may move freely within the territory of the host Member State or within an area assigned to them by that Member State. The assigned area shall not affect the unalienable sphere of private life and shall allow sufficient scope for guaranteeing access to all benefits under this Directive.

2. Member States may decide on the residence of the applicant for reasons of public interest, public order or, when necessary, for the swift processing and effective monitoring of his or her application for international protection.

3. Member States may make provision of the material reception conditions subject to actual residence by the applicants in a specific place, to be determined by the Member States. Such a decision, which may be of a general nature, shall be taken individually and established by national law.

4. Member States shall provide for the possibility of granting applicants temporary permission to leave the place of residence mentioned in paragraphs 2 and 3 and/or the assigned area mentioned in paragraph 1. Decisions shall be taken individually, objectively and impartially and reasons shall be given if they are negative.

The applicant shall not require permission to keep appointments with authorities and courts if his or her appearance is necessary.

5. Member States shall require applicants to inform the competent authorities of their current address and notify any change of address to such authorities as soon as possible.

Article 8

Detention

1. Member States shall not hold a person in detention for the sole reason that he or she is an applicant in accordance with Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection ⁽¹⁾.

2. When it proves necessary and on the basis of an individual assessment of each case, Member States may detain an applicant, if other less coercive alternative measures cannot be applied effectively.

3. An applicant may be detained only:

(a) in order to determine or verify his or her identity or nationality;

(b) in order to determine those elements on which the application for international protection is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding of the applicant;

(c) in order to decide, in the context of a procedure, on the applicant's right to enter the territory;

(d) when he or she is detained subject to a return procedure under Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals ⁽²⁾, in order to prepare the return and/or carry out the removal process, and the Member State concerned can substantiate on the basis of objective criteria, including that he or she already had the opportunity to access the asylum procedure, that there are reasonable grounds to believe that he or she is making the application for international protection merely in order to delay or frustrate the enforcement of the return decision;

(e) when protection of national security or public order so requires;

(f) in accordance with Article 28 of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person ⁽³⁾.

The grounds for detention shall be laid down in national law.

4. Member States shall ensure that the rules concerning alternatives to detention, such as regular reporting to the authorities, the deposit of a financial guarantee, or an obligation to stay at an assigned place, are laid down in national law.

⁽¹⁾ See page 60 of this Official Journal.

⁽²⁾ OJ L 348, 24.12.2008, p. 98.

⁽³⁾ See page 31 of this Official Journal.

Article 9

Guarantees for detained applicants

1. An applicant shall be detained only for as short a period as possible and shall be kept in detention only for as long as the grounds set out in Article 8(3) are applicable.

Administrative procedures relevant to the grounds for detention set out in Article 8(3) shall be executed with due diligence. Delays in administrative procedures that cannot be attributed to the applicant shall not justify a continuation of detention.

2. Detention of applicants shall be ordered in writing by judicial or administrative authorities. The detention order shall state the reasons in fact and in law on which it is based.

3. Where detention is ordered by administrative authorities, Member States shall provide for a speedy judicial review of the lawfulness of detention to be conducted *ex officio* and/or at the request of the applicant. When conducted *ex officio*, such review shall be decided on as speedily as possible from the beginning of detention. When conducted at the request of the applicant, it shall be decided on as speedily as possible after the launch of the relevant proceedings. To this end, Member States shall define in national law the period within which the judicial review *ex officio* and/or the judicial review at the request of the applicant shall be conducted.

Where, as a result of the judicial review, detention is held to be unlawful, the applicant concerned shall be released immediately.

4. Detained applicants shall immediately be informed in writing, in a language which they understand or are reasonably supposed to understand, of the reasons for detention and the procedures laid down in national law for challenging the detention order, as well as of the possibility to request free legal assistance and representation.

5. Detention shall be reviewed by a judicial authority at reasonable intervals of time, *ex officio* and/or at the request of the applicant concerned, in particular whenever it is of a prolonged duration, relevant circumstances arise or new information becomes available which may affect the lawfulness of detention.

6. In cases of a judicial review of the detention order provided for in paragraph 3, Member States shall ensure that applicants have access to free legal assistance and representation. This shall include, at least, the preparation of the required procedural documents and participation in the hearing before the judicial authorities on behalf of the applicant.

Free legal assistance and representation shall be provided by suitably qualified persons as admitted or permitted under national law whose interests do not conflict or could not potentially conflict with those of the applicant.

7. Member States may also provide that free legal assistance and representation are granted:

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

(b) only through the services provided by legal advisers or other counsellors specifically designated by national law to assist and represent applicants.

8. Member States may also:

(a) impose monetary and/or time limits on the provision of free legal assistance and representation, provided that such limits do not arbitrarily restrict access to legal assistance and 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.

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

10. Procedures for access to legal assistance and representation shall be laid down in national law.

Article 10

Conditions of detention

1. Detention of applicants shall take place, as a rule, in specialised detention facilities. Where a Member State cannot provide accommodation in a specialised detention facility and is obliged to resort to prison accommodation, the detained applicant shall be kept separately from ordinary prisoners and the detention conditions provided for in this Directive shall apply.

As far as possible, detained applicants shall be kept separately from other third-country nationals who have not lodged an application for international protection.

When applicants cannot be detained separately from other third-country nationals, the Member State concerned shall ensure that the detention conditions provided for in this Directive are applied.

2. Detained applicants shall have access to open-air spaces.

3. Member States shall ensure that persons representing the United Nations High Commissioner for Refugees (UNHCR) have the possibility to communicate with and visit applicants in conditions that respect privacy. That possibility shall also apply to an organisation which is working on the territory of the Member State concerned on behalf of UNHCR pursuant to an agreement with that Member State.

4. Member States shall ensure that family members, legal advisers or counsellors and persons representing relevant non-governmental organisations recognised by the Member State concerned have the possibility to communicate with and visit applicants in conditions that respect privacy. Limits to access to the detention facility may be imposed only where, by virtue of national law, they are objectively necessary for the security, public order or administrative management of the detention facility, provided that access is not thereby severely restricted or rendered impossible.

5. Member States shall ensure that applicants in detention are systematically provided with information which explains the rules applied in the facility and sets out their rights and obligations in a language which they understand or are reasonably supposed to understand. Member States may derogate from this obligation in duly justified cases and for a reasonable period which shall be as short as possible, in the event that the applicant is detained at a border post or in a transit zone. This derogation shall not apply in cases referred to in Article 43 of Directive 2013/32/EU.

Article 11

Detention of vulnerable persons and of applicants with special reception needs

1. The health, including mental health, of applicants in detention who are vulnerable persons shall be of primary concern to national authorities.

Where vulnerable persons are detained, Member States shall ensure regular monitoring and adequate support taking into account their particular situation, including their health.

2. Minors shall be detained only as a measure of last resort and after it having been established that other less coercive alternative measures cannot be applied effectively. Such detention shall be for the shortest period of time and all efforts shall be made to release the detained minors and place them in accommodation suitable for minors.

The minor's best interests, as prescribed in Article 23(2), shall be a primary consideration for Member States.

Where minors are detained, they shall have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age.

3. Unaccompanied minors shall be detained only in exceptional circumstances. All efforts shall be made to release the detained unaccompanied minor as soon as possible.

Unaccompanied minors shall never be detained in prison accommodation.

As far as possible, unaccompanied minors shall be provided with accommodation in institutions provided with personnel and facilities which take into account the needs of persons of their age.

Where unaccompanied minors are detained, Member States shall ensure that they are accommodated separately from adults.

4. Detained families shall be provided with separate accommodation guaranteeing adequate privacy.

5. Where female applicants are detained, Member States shall ensure that they are accommodated separately from male applicants, unless the latter are family members and all individuals concerned consent thereto.

Exceptions to the first subparagraph may also apply to the use of common spaces designed for recreational or social activities, including the provision of meals.

6. In duly justified cases and for a reasonable period that shall be as short as possible Member States may derogate from the third subparagraph of paragraph 2, paragraph 4 and the first subparagraph of paragraph 5, when the applicant is detained at a border post or in a transit zone, with the exception of the cases referred to in Article 43 of Directive 2013/32/EU.

Article 12

Families

Member States shall take appropriate measures to maintain as far as possible family unity as present within their territory, if applicants are provided with housing by the Member State concerned. Such measures shall be implemented with the applicant's agreement.

Article 13

Medical screening

Member States may require medical screening for applicants on public health grounds.

Article 14

Schooling and education of minors

1. Member States shall grant to minor children of applicants and to applicants who are minors access to the education system under similar conditions as their own nationals for so long as an expulsion measure against them or their parents is not actually enforced. Such education may be provided in accommodation centres.

The Member State concerned may stipulate that such access must be confined to the State education system.

Member States shall not withdraw secondary education for the sole reason that the minor has reached the age of majority.

2. Access to the education system shall not be postponed for more than three months from the date on which the application for international protection was lodged by or on behalf of the minor.

Preparatory classes, including language classes, shall be provided to minors where it is necessary to facilitate their access to and participation in the education system as set out in paragraph 1.

3. Where access to the education system as set out in paragraph 1 is not possible due to the specific situation of the minor, the Member State concerned shall offer other

education arrangements in accordance with its national law and practice.

Article 15

Employment

1. Member States shall ensure that applicants have access to the labour market no later than 9 months from the date when the application for international protection was lodged if a first instance decision by the competent authority has not been taken and the delay cannot be attributed to the applicant.

2. Member States shall decide the conditions for granting access to the labour market for the applicant, in accordance with their national law, while ensuring that applicants have effective access to the labour market.

For reasons of labour market policies, Member States may give priority to Union citizens and nationals of States parties to the Agreement on the European Economic Area, and to legally resident third-country nationals.

3. Access to the labour market shall not be withdrawn during appeals procedures, where an appeal against a negative decision in a regular procedure has suspensive effect, until such time as a negative decision on the appeal is notified.

Article 16

Vocational training

Member States may allow applicants access to vocational training irrespective of whether they have access to the labour market.

Access to vocational training relating to an employment contract shall depend on the extent to which the applicant has access to the labour market in accordance with Article 15.

Article 17

General rules on material reception conditions and health care

1. Member States shall ensure that material reception conditions are available to applicants when they make their application for international protection.

2. Member States shall ensure that material reception conditions provide an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health.

Member States shall ensure that that standard of living is met in the specific situation of vulnerable persons, in accordance with Article 21, as well as in relation to the situation of persons who are in detention.

3. Member States may make the provision of all or some of the material reception conditions and health care subject to the condition that applicants do not have sufficient means to have a standard of living adequate for their health and to enable their subsistence.

4. Member States may require applicants to cover or contribute to the cost of the material reception conditions and of the health care provided for in this Directive, pursuant to the provision of paragraph 3, if the applicants have sufficient resources, for example if they have been working for a reasonable period of time.

If it transpires that an applicant had sufficient means to cover material reception conditions and health care at the time when those basic needs were being covered, Member States may ask the applicant for a refund.

5. Where Member States provide material reception conditions in the form of financial allowances or vouchers, the amount thereof shall be determined on the basis of the level(s) established by the Member State concerned either by law or by the practice to ensure adequate standards of living for nationals. Member States may grant less favourable treatment to applicants compared with nationals in this respect, in particular where material support is partially provided in kind or where those level(s), applied for nationals, aim to ensure a standard of living higher than that prescribed for applicants under this Directive.

Article 18

Modalities for material reception conditions

1. Where housing is provided in kind, it should take one or a combination of the following forms:

- (a) premises used for the purpose of housing applicants during the examination of an application for international protection made at the border or in transit zones;
- (b) accommodation centres which guarantee an adequate standard of living;
- (c) private houses, flats, hotels or other premises adapted for housing applicants.

2. Without prejudice to any specific conditions of detention as provided for in Articles 10 and 11, in relation to housing referred to in paragraph 1(a), (b) and (c) of this Article Member States shall ensure that:

- (a) applicants are guaranteed protection of their family life;
- (b) applicants have the possibility of communicating with relatives, legal advisers or counsellors, persons representing UNHCR and other relevant national, international and non-governmental organisations and bodies;
- (c) family members, legal advisers or counsellors, persons representing UNHCR and relevant non-governmental organisations recognised by the Member State concerned are granted access in order to assist the applicants. Limits on such access may be imposed only on grounds relating to the security of the premises and of the applicants.

3. Member States shall take into consideration gender and age-specific concerns and the situation of vulnerable persons in relation to applicants within the premises and accommodation centres referred to in paragraph 1(a) and (b).

4. Member States shall take appropriate measures to prevent assault and gender-based violence, including sexual assault and harassment, within the premises and accommodation centres referred to in paragraph 1(a) and (b).

5. Member States shall ensure, as far as possible, that dependent adult applicants with special reception needs are accommodated together with close adult relatives who are already present in the same Member State and who are responsible for them whether by law or by the practice of the Member State concerned.

6. Member States shall ensure that transfers of applicants from one housing facility to another take place only when necessary. Member States shall provide for the possibility for applicants to inform their legal advisers or counsellors of the transfer and of their new address.

7. Persons working in accommodation centres shall be adequately trained and shall be bound by the confidentiality rules provided for in national law in relation to any information they obtain in the course of their work.

8. Member States may involve applicants in managing the material resources and non-material aspects of life in the centre through an advisory board or council representing residents.

9. In duly justified cases, Member States may exceptionally set modalities for material reception conditions different from those provided for in this Article, for a reasonable period which shall be as short as possible, when:

- (a) an assessment of the specific needs of the applicant is required, in accordance with Article 22;
- (b) housing capacities normally available are temporarily exhausted.

Such different conditions shall in any event cover basic needs.

Article 19

Health care

1. Member States shall ensure that applicants receive the necessary health care which shall include, at least, emergency care and essential treatment of illnesses and of serious mental disorders.

2. Member States shall provide necessary medical or other assistance to applicants who have special reception needs, including appropriate mental health care where needed.

CHAPTER III

REDUCTION OR WITHDRAWAL OF MATERIAL RECEPTION CONDITIONS

Article 20

Reduction or withdrawal of material reception conditions

1. Member States may reduce or, in exceptional and duly justified cases, withdraw material reception conditions where an applicant:

- (a) abandons the place of residence determined by the competent authority without informing it or, if requested, without permission; or
- (b) does not comply with reporting duties or with requests to provide information or to appear for personal interviews concerning the asylum procedure during a reasonable period laid down in national law; or
- (c) has lodged a subsequent application as defined in Article 2(q) of Directive 2013/32/EU.

In relation to cases (a) and (b), when the applicant is traced or voluntarily reports to the competent authority, a duly motivated decision, based on the reasons for the disappearance, shall be taken on the reinstallation of the grant of some or all of the material reception conditions withdrawn or reduced.

2. Member States may also reduce material reception conditions when they can establish that the applicant, for no justifiable reason, has not lodged an application for international protection as soon as reasonably practicable after arrival in that Member State.

3. Member States may reduce or withdraw material reception conditions where an applicant has concealed financial resources, and has therefore unduly benefited from material reception conditions.

4. Member States may determine sanctions applicable to serious breaches of the rules of the accommodation centres as well as to seriously violent behaviour.

5. Decisions for reduction or withdrawal of material reception conditions or sanctions referred to in paragraphs 1, 2, 3 and 4 of this Article shall be taken individually, objectively and impartially and reasons shall be given. Decisions shall be based on the particular situation of the person concerned, especially with regard to persons covered by Article 21, taking into account the principle of proportionality. Member States shall under all circumstances ensure access to health care in accordance with Article 19 and shall ensure a dignified standard of living for all applicants.

6. Member States shall ensure that material reception conditions are not withdrawn or reduced before a decision is taken in accordance with paragraph 5.

CHAPTER IV

PROVISIONS FOR VULNERABLE PERSONS

Article 21

General principle

Member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation, in the national law implementing this Directive.

*Article 22***Assessment of the special reception needs of vulnerable persons**

1. In order to effectively implement Article 21, Member States shall assess whether the applicant is an applicant with special reception needs. Member States shall also indicate the nature of such needs.

That assessment shall be initiated within a reasonable period of time after an application for international protection is made and may be integrated into existing national procedures. Member States shall ensure that those special reception needs are also addressed, in accordance with the provisions of this Directive, if they become apparent at a later stage in the asylum procedure.

Member States shall ensure that the support provided to applicants with special reception needs in accordance with this Directive takes into account their special reception needs throughout the duration of the asylum procedure and shall provide for appropriate monitoring of their situation.

2. The assessment referred to in paragraph 1 need not take the form of an administrative procedure.

3. Only vulnerable persons in accordance with Article 21 may be considered to have special reception needs and thus benefit from the specific support provided in accordance with this Directive.

4. The assessment provided for in paragraph 1 shall be without prejudice to the assessment of international protection needs pursuant to Directive 2011/95/EU.

*Article 23***Minors**

1. The best interests of the child shall be a primary consideration for Member States when implementing the provisions of this Directive that involve minors. Member States shall ensure a standard of living adequate for the minor's physical, mental, spiritual, moral and social development.

2. In assessing the best interests of the child, Member States shall in particular take due account of the following factors:

- (a) family reunification possibilities;
- (b) the minor's well-being and social development, taking into particular consideration the minor's background;
- (c) safety and security considerations, in particular where there is a risk of the minor being a victim of human trafficking;

(d) the views of the minor in accordance with his or her age and maturity.

3. Member States shall ensure that minors have access to leisure activities, including play and recreational activities appropriate to their age within the premises and accommodation centres referred to in Article 18(1)(a) and (b) and to open-air activities.

4. Member States shall ensure access to rehabilitation services for minors who have been victims of any form of abuse, neglect, exploitation, torture or cruel, inhuman and degrading treatment, or who have suffered from armed conflicts, and ensure that appropriate mental health care is developed and qualified counselling is provided when needed.

5. Member States shall ensure that minor children of applicants or applicants who are minors are lodged with their parents, their unmarried minor siblings or with the adult responsible for them whether by law or by the practice of the Member State concerned, provided it is in the best interests of the minors concerned.

*Article 24***Unaccompanied minors**

1. Member States shall as soon as possible take measures to ensure that a representative represents and assists the unaccompanied minor to enable him or her to benefit from the rights and comply with the obligations provided for in this Directive. The unaccompanied minor shall be informed immediately of the appointment of the representative. The representative shall perform his or her duties in accordance with the principle of the best interests of the child, as prescribed in Article 23(2), and shall have the necessary expertise to that end. In order to ensure the minor's well-being and social development referred to in Article 23(2)(b), the person acting as representative shall be changed only when necessary. Organisations or individuals whose interests conflict or could potentially conflict with those of the unaccompanied minor shall not be eligible to become representatives.

Regular assessments shall be made by the appropriate authorities, including as regards the availability of the necessary means for representing the unaccompanied minor.

2. Unaccompanied minors who make an application for international protection shall, from the moment they are admitted to the territory until the moment when they are obliged to leave the Member State in which the application for international protection was made or is being examined, be placed:

- (a) with adult relatives;

(b) with a foster family;

(c) in accommodation centres with special provisions for minors;

(d) in other accommodation suitable for minors.

Member States may place unaccompanied minors aged 16 or over in accommodation centres for adult applicants, if it is in their best interests, as prescribed in Article 23(2).

As far as possible, siblings shall be kept together, taking into account the best interests of the minor concerned and, in particular, his or her age and degree of maturity. Changes of residence of unaccompanied minors shall be limited to a minimum.

3. Member States shall start tracing the members of the unaccompanied minor's family, where necessary with the assistance of international or other relevant organisations, as soon as possible after an application for international protection is made, whilst protecting his or her best interests. In cases where there may be a threat to the life or integrity of the minor or his or her close relatives, particularly if they have remained in the country of origin, care must be taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis, so as to avoid jeopardising their safety.

4. Those working with unaccompanied minors shall have had and shall continue to receive appropriate training concerning their needs, and shall be bound by the confidentiality rules provided for in national law, in relation to any information they obtain in the course of their work.

Article 25

Victims of torture and violence

1. Member States shall ensure that persons who have been subjected to torture, rape or other serious acts of violence receive the necessary treatment for the damage caused by such acts, in particular access to appropriate medical and psychological treatment or care.

2. Those working with victims of torture, rape or other serious acts of violence shall have had and shall continue to receive appropriate training concerning their needs, and shall be bound by the confidentiality rules provided for in national law, in relation to any information they obtain in the course of their work.

CHAPTER V

APPEALS

Article 26

Appeals

1. Member States shall ensure that decisions relating to the granting, withdrawal or reduction of benefits under this Directive or decisions taken under Article 7 which affect applicants individually may be the subject of an appeal within the procedures laid down in national law. At least in the last instance the possibility of an appeal or a review, in fact and in law, before a judicial authority shall be granted.

2. In cases of an appeal or a review before a judicial authority referred to in paragraph 1, Member States shall ensure that free legal assistance and representation is made available on request in so far as such aid is necessary to ensure effective access to justice. This shall include, at least, the preparation of the required procedural documents and participation in the hearing before the judicial authorities on behalf of the applicant.

Free legal assistance and representation shall be provided by suitably qualified persons, as admitted or permitted under national law, whose interests do not conflict or could not potentially conflict with those of the applicant.

3. Member States may also provide that free legal assistance and representation are granted:

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

(b) only through the services provided by legal advisers or other counsellors specifically designated by national law to assist and represent applicants.

Member States may provide that free legal assistance and representation not be made available if the appeal or review is considered by a competent authority to have no tangible prospect of success. In such a case, Member States shall ensure that legal assistance and representation is not arbitrarily restricted and that the applicant's effective access to justice is not hindered.

4. Member States may also:

(a) impose monetary and/or time limits on the provision of free legal assistance and representation, provided that such limits do not arbitrarily restrict access to legal assistance and representation;

- (b) provide that, as regards fees and other costs, the treatment of applicants shall not be more favorable than the treatment generally accorded to their nationals in matters pertaining to legal assistance.

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

6. Procedures for access to legal assistance and representation shall be laid down in national law.

CHAPTER VI

ACTIONS TO IMPROVE THE EFFICIENCY OF THE RECEPTION SYSTEM

Article 27

Competent authorities

Each Member State shall notify the Commission of the authorities responsible for fulfilling the obligations arising under this Directive. Member States shall inform the Commission of any changes in the identity of such authorities.

Article 28

Guidance, monitoring and control system

1. Member States shall, with due respect to their constitutional structure, put in place relevant mechanisms in order to ensure that appropriate guidance, monitoring and control of the level of reception conditions are established.

2. Member States shall submit relevant information to the Commission in the form set out in Annex I, by 20 July 2016 at the latest.

Article 29

Staff and resources

1. Member States shall take appropriate measures to ensure that authorities and other organisations implementing this Directive have received the necessary basic training with respect to the needs of both male and female applicants.

2. Member States shall allocate the necessary resources in connection with the national law implementing this Directive.

CHAPTER VII

FINAL PROVISIONS

Article 30

Reports

By 20 July 2017 at the latest, the Commission shall report to the European Parliament and the Council on the application of this Directive and shall propose any amendments that are necessary.

Member States shall send the Commission all the information that is appropriate for drawing up the report by 20 July 2016.

After presenting the first report, the Commission shall report to the European Parliament and the Council on the application of this Directive at least every five years.

Article 31

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 1 to 12, 14 to 28 and 30 and Annex I by 20 July 2015 at the latest. They shall forthwith communicate to the Commission the text of those measures.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the directive repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

2. 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.

Article 32

Repeal

Directive 2003/9/EC is repealed for the Member States bound by this Directive with effect from 21 July 2015, without prejudice to the obligations of the Member States relating to the time-limit for transposition into national law of the Directive set out in Annex II, Part B.

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

*Article 33***Entry into force**

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

Articles 13 and 29 shall apply from 21 July 2015.

*Article 34***Addressees**

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

Done at Brussels, 26 June 2013.

For the European Parliament
The President
M. SCHULZ

For the Council
The President
A. SHATTER

ANNEX I

Reporting form on the information to be submitted by Member States, as required under Article 28(2)

After the date referred to in Article 28(2), the information to be submitted by Member States shall be re-submitted to the Commission when there is a substantial change in the national law or practice that supersedes the information provided.

1. On the basis of Articles 2(k) and 22, please explain the different steps for the identification of persons with special reception needs, including the moment when it is triggered and its consequences in relation to addressing such needs, in particular for unaccompanied minors, victims of torture, rape or other serious forms of psychological, physical or sexual violence and victims of human trafficking.
 2. Provide full information on the type, name and format of the documents provided for in Article 6.
 3. With reference to Article 15, please indicate the extent to which any particular conditions are attached to labour market access for applicants, and describe such restrictions in detail.
 4. With reference to Article 2(g), please describe how material reception conditions are provided (i.e. which material reception conditions are provided in kind, in money, in vouchers or in a combination of those elements) and indicate the level of the daily expenses allowance provided to applicants.
 5. Where applicable, with reference to Article 17(5), please explain the point(s) of reference applied by national law or practice with a view to determining the level of financial assistance provided to applicants. To the extent that there is less favourable treatment of applicants compared with nationals, explain the reasons for it.
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ANNEX II

PART A

Repealed Directive

(referred to in Article 32)

Council Directive 2003/9/EC

(OJ L 31, 6.2.2003, p. 18).

PART B

Time-limit for transposition into national law

(referred to in Article 32)

Directive	Time-limit for transposition
2003/9/EC	6 February 2005

ANNEX III

Correlation Table

Directive 2003/9/EC	This Directive
Article 1	Article 1
Article 2, introductory wording	Article 2, introductory wording
Article 2(a)	—
Article 2(b)	—
—	Article 2(a)
Article 2(c)	Article 2(b)
Article 2(d), introductory wording	Article 2(c), introductory wording
Article 2(d)(i)	Article 2(c), first indent
Article 2(d)(ii)	Article 2(c), second indent
—	Article 2(c), third indent
Article 2(e), (f) and (g)	—
—	Article 2(d)
Article 2(h)	Article 2(e)
Article 2(i)	Article 2(f)
Article 2(j)	Article 2(g)
Article 2(k)	Article 2(h)
Article 2(l)	Article 2(i)
—	Article 2(j)
—	Article 2(k)
Article 3	Article 3
Article 4	Article 4
Article 5	Article 5
Article 6(1) to (5)	Article 6(1) to (5)
—	Article 6(6)
Article 7(1) and (2)	Article 7(1) and (2)
Article 7(3)	—
Article 7(4) to (6)	Article 7(3) to (5)

Directive 2003/9/EC	This Directive
—	Article 8
—	Article 9
—	Article 10
—	Article 11
Article 8	Article 12
Article 9	Article 13
Article 10(1)	Article 14(1)
Article 10(2)	Article 14(2), first subparagraph
—	Article 14(2), second subparagraph
Article 10(3)	Article 14(3)
Article 11(1)	—
—	Article 15(1)
Article 11(2)	Article 15(2)
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Article 12	Article 16
Article 13(1) to (4)	Article 17(1) to (4)
Article 13(5)	—
—	Article 17(5)
Article 14(1)	Article 18(1)
Article 14(2), first subparagraph, introductory wording, points (a) and (b)	Article 18(2), introductory wording, points (a) and (b)
Article 14(7)	Article 18(2)(c)
—	Article 18(3)
Article 14(2), second subparagraph	Article 18(4)
Article 14(3)	—
—	Article 18(5)

Directive 2003/9/EC	This Directive
Article 14(4)	Article 18(6)
Article 14(5)	Article 18(7)
Article 14(6)	Article 18(8)
Article 14(8), first subparagraph, introductory wording, first indent	Article 18(9), first subparagraph, introductory wording, point (a)
Article 14(8), first subparagraph, second indent	—
Article 14(8), first subparagraph, third indent	Article 18(9), first subparagraph, point (b)
Article 14(8), first subparagraph, fourth indent	—
Article 14(8), second subparagraph	Article 18(9), second subparagraph
Article 15	Article 19
Article 16(1), introductory wording	Article 20(1), introductory wording
Article 16(1)(a), first subparagraph, first, second and third indents	Article 20(1), first subparagraph, points (a), (b) and (c)
Article 16(1)(a), second subparagraph	Article 20(1), second subparagraph
Article 16(1)(b)	—
Article 16(2)	—
—	Article 20(2) and (3)
Article 16(3) to (5)	Article 20(4) to (6)
Article 17(1)	Article 21
Article 17(2)	—
—	Article 22
Article 18(1)	Article 23(1)
—	Article 23(2) and (3)
Article 18(2)	Article 23(4)
—	Article 23(5)
Article 19	Article 24
Article 20	Article 25(1)
—	Article 25(2)
Article 21(1)	Article 26(1)

Directive 2003/9/EC	This Directive
—	Article 26(2) to (5)
Article 21(2)	Article 26(6)
Article 22	—
—	Article 27
Article 23	Article 28(1)
—	Article 28(2)
Article 24	Article 29
Article 25	Article 30
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REGULATION (EU) No 604/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 26 June 2013

establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the ordinary legislative procedure ⁽³⁾,

Whereas:

(1) A number of substantive changes are to be made to Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national ⁽⁴⁾. In the interests of clarity, that Regulation should be recast.

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

(3) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, agreed to work towards establishing the CEAS, based on the full and inclusive application of the Geneva Convention Relating to the Status of Refugees of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967 ('the Geneva Convention'), thus ensuring that nobody is sent back to persecution, i.e. maintaining the principle of *non-refoulement*. In this respect, and without the responsibility criteria laid down in this Regulation being affected, Member States, all respecting the principle of *non-refoulement*, are considered as safe countries for third-country nationals.

(4) The Tampere conclusions also stated that the CEAS should include, in the short-term, a clear and workable method for determining the Member State responsible for the examination of an asylum application.

(5) Such a method should be based on objective, fair criteria both for the Member States and for the persons concerned. It should, in particular, make it possible to determine rapidly the Member State responsible, so as to guarantee effective access to the procedures for granting international protection and not to compromise the objective of the rapid processing of applications for international protection.

(6) The first phase in the creation of a CEAS that should lead, in the longer term, to a common procedure and a uniform status, valid throughout the Union, for those granted international protection, has now been completed. The European Council of 4 November 2004 adopted The Hague Programme which set 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 European Parliament and to the Council with a view to their adoption before 2010.

(7) In the Stockholm Programme, the European Council reiterated its commitment to the objective of establishing a common area of protection and solidarity in accordance with Article 78 of the Treaty on the Functioning of the European Union (TFEU), for those granted

⁽¹⁾ OJ C 317, 23.12.2009, p. 115.

⁽²⁾ OJ C 79, 27.3.2010, p. 58.

⁽³⁾ Position of the European Parliament of 7 May 2009 (OJ C 212 E, 5.8.2010, p. 370) and position of the Council at first reading of 6 June 2013 (not yet published in the Official Journal). Position of the European Parliament of 10 June 2013 (not yet published in the Official Journal).

⁽⁴⁾ OJ L 50, 25.2.2003, p. 1.

international protection, by 2012 at the latest. Furthermore it emphasised that the Dublin system remains a cornerstone in building the CEAS, as it clearly allocates responsibility among Member States for the examination of applications for international protection.

- (8) The resources of the European Asylum Support Office (EASO), established by Regulation (EU) No 439/2010 of the European Parliament and of the Council⁽¹⁾, should be available to provide adequate support to the relevant services of the Member States responsible for implementing this Regulation. In particular, EASO should provide solidarity measures, such as the Asylum Intervention Pool with asylum support teams, to assist those Member States which are faced with particular pressure and where applicants for international protection ('applicants') cannot benefit from adequate standards, in particular as regards reception and protection.
- (9) In the light of the results of the evaluations undertaken of the implementation of the first-phase instruments, it is appropriate, at this stage, to confirm the principles underlying Regulation (EC) No 343/2003, while making the necessary improvements, in the light of experience, to the effectiveness of the Dublin system and the protection granted to applicants under that system. Given that a well-functioning Dublin system is essential for the CEAS, its principles and functioning should be reviewed as other components of the CEAS and Union solidarity tools are built up. A comprehensive 'fitness check' should be foreseen by conducting an evidence-based review covering the legal, economic and social effects of the Dublin system, including its effects on fundamental rights.
- (10) In order to ensure equal treatment for all applicants and beneficiaries of international protection, and consistency with the current Union asylum *acquis*, in particular with Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted⁽²⁾, the scope of this Regulation encompasses applicants for subsidiary protection and persons eligible for subsidiary protection.
- (11) Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection⁽³⁾

should apply to the procedure for the determination of the Member State responsible as regulated under this Regulation, subject to the limitations in the application of that Directive.

- (12) Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection⁽⁴⁾ should apply in addition and without prejudice to the provisions concerning the procedural safeguards regulated under this Regulation, subject to the limitations in the application of that Directive.
- (13) In accordance with the 1989 United Nations Convention on the Rights of the Child and with the Charter of Fundamental Rights of the European Union, the best interests of the child should be a primary consideration of Member States when applying this Regulation. In assessing the best interests of the child, Member States should, in particular, take due account of the minor's well-being and social development, safety and security considerations and the views of the minor in accordance with his or her age and maturity, including his or her background. In addition, specific procedural guarantees for unaccompanied minors should be laid down on account of their particular vulnerability.
- (14) In accordance with the European Convention for the Protection of Human Rights and Fundamental Freedoms and with the Charter of Fundamental Rights of the European Union, respect for family life should be a primary consideration of Member States when applying this Regulation.
- (15) The processing together of the applications for international protection of the members of one family by a single Member State makes it possible to ensure that the applications are examined thoroughly, the decisions taken in respect of them are consistent and the members of one family are not separated.
- (16) In order to ensure full respect for the principle of family unity and for the best interests of the child, the existence of a relationship of dependency between an applicant and his or her child, sibling or parent on account of the applicant's pregnancy or maternity, state of health or old age, should become a binding responsibility criterion. When the applicant is an unaccompanied minor, the presence of a family member or relative on the territory of another Member State who can take care of him or her should also become a binding responsibility criterion.

⁽¹⁾ OJ L 132, 29.5.2010, p. 11.

⁽²⁾ OJ L 337, 20.12.2011, p. 9.

⁽³⁾ See page 96 of this Official Journal.

⁽⁴⁾ See page 60 of this Official Journal.

- (17) Any Member State should be able to derogate from the responsibility criteria, in particular on humanitarian and compassionate grounds, in order to bring together family members, relatives or any other family relations and examine an application for international protection lodged with it or with another Member State, even if such examination is not its responsibility under the binding criteria laid down in this Regulation.
- (18) A personal interview with the applicant should be organised in order to facilitate the determination of the Member State responsible for examining an application for international protection. As soon as the application for international protection is lodged, the applicant should be informed of the application of this Regulation and of the possibility, during the interview, of providing information regarding the presence of family members, relatives or any other family relations in the Member States, in order to facilitate the procedure for determining the Member State responsible.
- (19) In order to guarantee effective protection of the rights of the persons concerned, legal safeguards and the right to an effective remedy in respect of decisions regarding transfers to the Member State responsible should be established, in accordance, in particular, with Article 47 of the Charter of Fundamental Rights of the European Union. In order to ensure that international law is respected, an effective remedy against such decisions should cover both the examination of the application of this Regulation and of the legal and factual situation in the Member State to which the applicant is transferred.
- (20) The detention of applicants should be applied in accordance with the underlying principle that a person should not be held in detention for the sole reason that he or she is seeking international protection. Detention should be for as short a period as possible and subject to the principles of necessity and proportionality. In particular, the detention of applicants must be in accordance with Article 31 of the Geneva Convention. The procedures provided for under this Regulation in respect of a detained person should be applied as a matter of priority, within the shortest possible deadlines. As regards the general guarantees governing detention, as well as detention conditions, where appropriate, Member States should apply the provisions of Directive 2013/33/EU also to persons detained on the basis of this Regulation.
- (21) Deficiencies in, or the collapse of, asylum systems, often aggravated or contributed to by particular pressures on them, can jeopardise the smooth functioning of the system put in place under this Regulation, which could lead to a risk of a violation of the rights of applicants as set out in the Union asylum *acquis* and the Charter of Fundamental Rights of the European Union, other international human rights and refugee rights.
- (22) A process for early warning, preparedness and management of asylum crises serving to prevent a deterioration in, or the collapse of, asylum systems, with EASO playing a key role using its powers under Regulation (EU) No 439/2010, should be established in order to ensure robust cooperation within the framework of this Regulation and to develop mutual trust among Member States with respect to asylum policy. Such a process should ensure that the Union is alerted as soon as possible when there is a concern that the smooth functioning of the system set up by this Regulation is being jeopardised as a result of particular pressure on, and/or deficiencies in, the asylum systems of one or more Member States. Such a process would allow the Union to promote preventive measures at an early stage and pay the appropriate political attention to such situations. Solidarity, which is a pivotal element in the CEAS, goes hand in hand with mutual trust. By enhancing such trust, the process for early warning, preparedness and management of asylum crises could improve the steering of concrete measures of genuine and practical solidarity towards Member States, in order to assist the affected Member States in general and the applicants in particular. In accordance with Article 80 TFEU, Union acts should, whenever necessary, contain appropriate measures to give effect to the principle of solidarity, and the process should be accompanied by such measures. The conclusions on a Common Framework for genuine and practical solidarity towards Member States facing particular pressures on their asylum systems, including through mixed migration flows, adopted by the Council on 8 March 2012, provide for a 'tool box' of existing and potential new measures, which should be taken into account in the context of a mechanism for early warning, preparedness and crisis management.
- (23) Member States should collaborate with EASO in the gathering of information concerning their ability to manage particular pressure on their asylum and reception systems, in particular within the framework of the application of this Regulation. EASO should regularly report on the information gathered in accordance with Regulation (EU) No 439/2010.
- (24) In accordance with Commission Regulation (EC) No 1560/2003 ⁽¹⁾, transfers to the Member State responsible for examining an application for international protection may be carried out on a voluntary basis, by supervised departure or under escort. Member States should promote voluntary transfers by providing adequate information to the applicant and should ensure that supervised or escorted transfers are undertaken in a humane manner, in full compliance with fundamental rights and respect for human dignity, as well as the

⁽¹⁾ OJ L 222, 5.9.2003, p. 3.

best interests of the child and taking utmost account of developments in the relevant case law, in particular as regards transfers on humanitarian grounds.

person and on requests for the comparisons with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes ⁽²⁾.

- (25) The progressive creation of an area without internal frontiers in which free movement of persons is guaranteed in accordance with the TFEU and the establishment of Union policies regarding the conditions of entry and stay of third-country nationals, including common efforts towards the management of external borders, makes it necessary to strike a balance between responsibility criteria in a spirit of solidarity.
- (26) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ⁽¹⁾ applies to the processing of personal data by the Member States under this Regulation.
- (27) The exchange of an applicant's personal data, including sensitive data on his or her health, prior to a transfer, will ensure that the competent asylum authorities are in a position to provide applicants with adequate assistance and to ensure continuity in the protection and rights afforded to them. Special provisions should be made to ensure the protection of data relating to applicants involved in that situation, in accordance with Directive 95/46/EC.
- (28) The application of this Regulation can be facilitated, and its effectiveness increased, by bilateral arrangements between Member States for improving communication between competent departments, reducing time limits for procedures or simplifying the processing of requests to take charge or take back, or establishing procedures for the performance of transfers.
- (29) Continuity between the system for determining the Member State responsible established by Regulation (EC) No 343/2003 and the system established by this Regulation should be ensured. Similarly, consistency should be ensured between this Regulation and Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless
- (30) The operation of the Eurodac system, as established by Regulation (EU) No 603/2013, should facilitate the application of this Regulation.
- (31) The operation of the Visa Information System, as established by Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas ⁽³⁾, and in particular the implementation of Articles 21 and 22 thereof, should facilitate the application of this Regulation.
- (32) With respect to the treatment of persons falling within the scope of this Regulation, Member States are bound by their obligations under instruments of international law, including the relevant case-law of the European Court of Human Rights.
- (33) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers ⁽⁴⁾.
- (34) The examination procedure should be used for the adoption of a common leaflet on Dublin/Eurodac, as well as a specific leaflet for unaccompanied minors; of a standard form for the exchange of relevant information on unaccompanied minors; of uniform conditions for the consultation and exchange of information on minors and dependent persons; of uniform conditions on the preparation and submission of take charge and take back requests; of two lists of relevant elements of proof and circumstantial evidence, and the periodical revision thereof; of a *laissez passer*; of uniform conditions for the consultation and exchange of information regarding transfers; of a standard form for the exchange of data before a transfer; of a common health certificate; of uniform conditions and practical arrangements for the exchange of information on a person's health data before a transfer, and of secure electronic transmission channels for the transmission of requests.

⁽²⁾ See page 1 of this Official Journal.

⁽³⁾ OJ L 218, 13.8.2008, p. 60.

⁽⁴⁾ OJ L 55, 28.2.2011, p. 13.

⁽¹⁾ OJ L 281, 23.11.1995, p. 31.

- (35) In order to provide for supplementary rules, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the identification of family members, siblings or relatives of an unaccompanied minor; the criteria for establishing the existence of proven family links; the criteria for assessing the capacity of a relative to take care of an unaccompanied minor, including where family members, siblings or relatives of the unaccompanied minor stay in more than one Member State; the elements for assessing a dependency link; the criteria for assessing the capacity of a person to take care of a dependent person and the elements to be taken into account in order to assess the inability to travel for a significant period of time. In exercising its powers to adopt delegated acts, the Commission shall not exceed the scope of the best interests of the child as provided for under Article 6(3) of this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (36) In the application of this Regulation, including the preparation of delegated acts, the Commission should consult experts from, among others, all relevant national authorities.
- (37) Detailed rules for the application of Regulation (EC) No 343/2003 have been laid down by Regulation (EC) No 1560/2003. Certain provisions of Regulation (EC) No 1560/2003 should be incorporated into this Regulation, either for reasons of clarity or because they can serve a general objective. In particular, it is important, both for the Member States and the applicants concerned, that there should be a general mechanism for finding a solution in cases where Member States differ over the application of a provision of this Regulation. It is therefore justified to incorporate the mechanism provided for in Regulation (EC) No 1560/2003 for the settling of disputes on the humanitarian clause into this Regulation and to extend its scope to the entirety of this Regulation.
- (38) The effective monitoring of the application of this Regulation requires that it be evaluated at regular intervals.
- (39) This Regulation respects the fundamental rights and observes the principles which are acknowledged, in particular, in the Charter of Fundamental Rights of the European Union. In particular, this Regulation seeks to ensure full observance of the right to asylum guaranteed by Article 18 of the Charter as well as the rights recognised under Articles 1, 4, 7, 24 and 47 thereof. This Regulation should therefore be applied accordingly.
- (40) Since the objective of this Regulation, namely the establishment of criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Regulation, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (41) In accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the TEU and to the TFEU, those Member States have notified their wish to take part in the adoption and application of this Regulation.
- (42) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER AND DEFINITIONS

Article 1

Subject matter

This Regulation lays down the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person ('the Member State responsible').

Article 2

Definitions

For the purposes of this Regulation:

- (a) 'third-country national' means any person who is not a citizen of the Union within the meaning of Article 20(1) TFEU and who is not national of a State which participates in this Regulation by virtue of an agreement with the European Union;

- (b) 'application for international protection' means an application for international protection as defined in Article 2(h) of Directive 2011/95/EU;
- (c) 'applicant' means a third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken;
- (d) 'examination of an application for international protection' means any examination of, or decision or ruling concerning, an application for international protection by the competent authorities in accordance with Directive 2013/32/EU and Directive 2011/95/EU, except for procedures for determining the Member State responsible in accordance with this Regulation;
- (e) 'withdrawal of an application for international protection' means the actions by which the applicant terminates the procedures initiated by the submission of his or her application for international protection, in accordance with Directive 2013/32/EU, either explicitly or tacitly;
- (f) 'beneficiary of international protection' means a third-country national or a stateless person who has been granted international protection as defined in Article 2(a) of Directive 2011/95/EU;
- (g) 'family members' means, insofar as the family already existed in the country of origin, the following members of the applicant's family who are present on the territory of the Member States:
- the spouse of the applicant or his or her unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to third-country nationals,
 - the minor children of couples referred to in the first indent or of the applicant, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under national law,
 - when the applicant is a minor and unmarried, the father, mother or another adult responsible for the applicant, whether by law or by the practice of the Member State where the adult is present,
 - when the beneficiary of international protection is a minor and unmarried, the father, mother or another adult responsible for him or her whether by law or
- by the practice of the Member State where the beneficiary is present;
- (h) 'relative' means the applicant's adult aunt or uncle or grandparent who is present in the territory of a Member State, regardless of whether the applicant was born in or out of wedlock or adopted as defined under national law;
- (i) 'minor' means a third-country national or a stateless person below the age of 18 years;
- (j) 'unaccompanied minor' means a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her, whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such an adult; it includes a minor who is left unaccompanied after he or she has entered the territory of Member States;
- (k) 'representative' means a person or an organisation appointed by the competent bodies in order to assist and represent an unaccompanied minor in procedures provided for in this Regulation with a view to ensuring the best interests of the child and exercising legal capacity for the minor where necessary. Where an organisation is appointed as a representative, it shall designate a person responsible for carrying out its duties in respect of the minor, in accordance with this Regulation;
- (l) 'residence document' means any authorisation issued by the authorities of a Member State authorising a third-country national or a stateless person to stay on its territory, including the documents substantiating the authorisation to remain on the territory under temporary protection arrangements or until the circumstances preventing a removal order from being carried out no longer apply, with the exception of visas and residence authorisations issued during the period required to determine the Member State responsible as established in this Regulation or during the examination of an application for international protection or an application for a residence permit;
- (m) 'visa' means the authorisation or decision of a Member State required for transit or entry for an intended stay in that Member State or in several Member States. The nature of the visa shall be determined in accordance with the following definitions:
- 'long-stay visa' means an authorisation or decision issued by one of the Member States in accordance with its national law or Union law required for entry for an intended stay in that Member State of more than three months,

- ‘short-stay visa’ means an authorisation or decision of a Member State with a view to transit through or an intended stay on the territory of one or more of all the Member States of a duration of no more than three months in any six-month period beginning on the date of first entry on the territory of the Member States,
 - ‘airport transit visa’ means a visa valid for transit through the international transit areas of one or more airports of the Member States;
- (n) ‘risk of absconding’ means the existence of reasons in an individual case, which are based on objective criteria defined by law, to believe that an applicant or a third-country national or a stateless person who is subject to a transfer procedure may abscond.

CHAPTER II

GENERAL PRINCIPLES AND SAFEGUARDS

Article 3

Access to the procedure for examining an application for international protection

1. Member States shall examine any application for international protection by a third-country national or a stateless person who applies on the territory of any one of them, including at the border or in the transit zones. The application shall be examined by a single Member State, which shall be the one which the criteria set out in Chapter III indicate is responsible.

2. Where no Member State responsible can be designated on the basis of the criteria listed in this Regulation, the first Member State in which the application for international protection was lodged shall be responsible for examining it.

Where it is impossible to transfer an applicant to the Member State primarily designated as responsible because there are substantial grounds for believing that there are systemic flaws in the asylum procedure and in the reception conditions for applicants in that Member State, resulting in a risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union, the determining Member State shall continue to examine the criteria set out in Chapter III in order to establish whether another Member State can be designated as responsible.

Where the transfer cannot be made pursuant to this paragraph to any Member State designated on the basis of the criteria set out in Chapter III or to the first Member State with which the application was lodged, the determining Member State shall become the Member State responsible.

3. Any Member State shall retain the right to send an applicant to a safe third country, subject to the rules and safeguards laid down in Directive 2013/32/EU.

Article 4

Right to information

1. As soon as an application for international protection is lodged within the meaning of Article 20(2) in a Member State, its competent authorities shall inform the applicant of the application of this Regulation, and in particular of:

- (a) the objectives of this Regulation and the consequences of making another application in a different Member State as well as the consequences of moving from one Member State to another during the phases in which the Member State responsible under this Regulation is being determined and the application for international protection is being examined;
- (b) the criteria for determining the Member State responsible, the hierarchy of such criteria in the different steps of the procedure and their duration, including the fact that an application for international protection lodged in one Member State can result in that Member State becoming responsible under this Regulation even if such responsibility is not based on those criteria;
- (c) the personal interview pursuant to Article 5 and the possibility of submitting information regarding the presence of family members, relatives or any other family relations in the Member States, including the means by which the applicant can submit such information;
- (d) the possibility to challenge a transfer decision and, where applicable, to apply for a suspension of the transfer;
- (e) the fact that the competent authorities of Member States can exchange data on him or her for the sole purpose of implementing their obligations arising under this Regulation;
- (f) the right of access to data relating to him or her and the right to request that such data be corrected if inaccurate or be deleted if unlawfully processed, as well as the procedures for exercising those rights, including the contact details of the authorities referred to in Article 35 and of the national data protection authorities responsible for hearing claims concerning the protection of personal data.

2. The information referred to in paragraph 1 shall be provided in writing in a language that the applicant understands or is reasonably supposed to understand. Member States shall use the common leaflet drawn up pursuant to paragraph 3 for that purpose.

Where necessary for the proper understanding of the applicant, the information shall also be supplied orally, for example in connection with the personal interview as referred to in Article 5.

3. The Commission shall, by means of implementing acts, draw up a common leaflet, as well as a specific leaflet for unaccompanied minors, containing at least the information referred to in paragraph 1 of this Article. This common leaflet shall also include information regarding the application of Regulation (EU) No 603/2013 and, in particular, the purpose for which the data of an applicant may be processed within Eurodac. The common leaflet shall be established in such a manner as to enable Member States to complete it with additional Member State-specific information. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2) of this Regulation.

Article 5

Personal interview

1. In order to facilitate the process of determining the Member State responsible, the determining Member State shall conduct a personal interview with the applicant. The interview shall also allow the proper understanding of the information supplied to the applicant in accordance with Article 4.

2. The personal interview may be omitted if:

- (a) the applicant has absconded; or
- (b) after having received the information referred to in Article 4, the applicant has already provided the information relevant to determine the Member State responsible by other means. The Member State omitting the interview shall give the applicant the opportunity to present all further information which is relevant to correctly determine the Member State responsible before a decision is taken to transfer the applicant to the Member State responsible pursuant to Article 26(1).

3. The personal interview shall take place in a timely manner and, in any event, before any decision is taken to transfer the applicant to the Member State responsible pursuant to Article 26(1).

4. The personal interview shall be conducted in a language that the applicant understands or is reasonably supposed to understand and in which he or she is able to communicate. Where necessary, Member States shall have recourse to an interpreter who is able to ensure appropriate communication between the applicant and the person conducting the personal interview.

5. The personal interview shall take place under conditions which ensure appropriate confidentiality. It shall be conducted by a qualified person under national law.

6. The Member State conducting the personal interview shall make a written summary thereof which shall contain at least the

main information supplied by the applicant at the interview. This summary may either take the form of a report or a standard form. The Member State shall ensure that the applicant and/or the legal advisor or other counsellor who is representing the applicant have timely access to the summary.

Article 6

Guarantees for minors

1. The best interests of the child shall be a primary consideration for Member States with respect to all procedures provided for in this Regulation.

2. Member States shall ensure that a representative represents and/or assists an unaccompanied minor with respect to all procedures provided for in this Regulation. The representative shall have the qualifications and expertise to ensure that the best interests of the minor are taken into consideration during the procedures carried out under this Regulation. Such representative shall have access to the content of the relevant documents in the applicant's file including the specific leaflet for unaccompanied minors.

This paragraph shall be without prejudice to the relevant provisions in Article 25 of Directive 2013/32/EU.

3. In assessing the best interests of the child, Member States shall closely cooperate with each other and shall, in particular, take due account of the following factors:

- (a) family reunification possibilities;
- (b) the minor's well-being and social development;
- (c) safety and security considerations, in particular where there is a risk of the minor being a victim of human trafficking;
- (d) the views of the minor, in accordance with his or her age and maturity.

4. For the purpose of applying Article 8, the Member State where the unaccompanied minor lodged an application for international protection shall, as soon as possible, take appropriate action to identify the family members, siblings or relatives of the unaccompanied minor on the territory of Member States, whilst protecting the best interests of the child.

To that end, that Member State may call for the assistance of international or other relevant organisations, and may facilitate the minor's access to the tracing services of such organisations.

The staff of the competent authorities referred to in Article 35 who deal with requests concerning unaccompanied minors shall have received, and shall continue to receive, appropriate training concerning the specific needs of minors.

5. With a view to facilitating the appropriate action to identify the family members, siblings or relatives of the unaccompanied minor living in the territory of another Member State pursuant to paragraph 4 of this Article, the Commission shall adopt implementing acts including a standard form for the exchange of relevant information between Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

CHAPTER III

CRITERIA FOR DETERMINING THE MEMBER STATE RESPONSIBLE

Article 7

Hierarchy of criteria

1. The criteria for determining the Member State responsible shall be applied in the order in which they are set out in this Chapter.

2. The Member State responsible in accordance with the criteria set out in this Chapter shall be determined on the basis of the situation obtaining when the applicant first lodged his or her application for international protection with a Member State.

3. In view of the application of the criteria referred to in Articles 8, 10 and 16, Member States shall take into consideration any available evidence regarding the presence, on the territory of a Member State, of family members, relatives or any other family relations of the applicant, on condition that such evidence is produced before another Member State accepts the request to take charge or take back the person concerned, pursuant to Articles 22 and 25 respectively, and that the previous applications for international protection of the applicant have not yet been the subject of a first decision regarding the substance.

Article 8

Minors

1. Where the applicant is an unaccompanied minor, the Member State responsible shall be that where a family member or a sibling of the unaccompanied minor is legally present, provided that it is in the best interests of the minor. Where the applicant is a married minor whose spouse is not legally present on the territory of the Member States, the Member State responsible shall be the Member State where the father, mother or other adult responsible for the minor, whether by law or by the practice of that Member State, or sibling is legally present.

2. Where the applicant is an unaccompanied minor who has a relative who is legally present in another Member State and where it is established, based on an individual examination, that

the relative can take care of him or her, that Member State shall unite the minor with his or her relative and shall be the Member State responsible, provided that it is in the best interests of the minor.

3. Where family members, siblings or relatives as referred to in paragraphs 1 and 2, stay in more than one Member State, the Member State responsible shall be decided on the basis of what is in the best interests of the unaccompanied minor.

4. In the absence of a family member, a sibling or a relative as referred to in paragraphs 1 and 2, the Member State responsible shall be that where the unaccompanied minor has lodged his or her application for international protection, provided that it is in the best interests of the minor.

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 45 concerning the identification of family members, siblings or relatives of the unaccompanied minor; the criteria for establishing the existence of proven family links; the criteria for assessing the capacity of a relative to take care of the unaccompanied minor, including where family members, siblings or relatives of the unaccompanied minor stay in more than one Member State. In exercising its powers to adopt delegated acts, the Commission shall not exceed the scope of the best interests of the child as provided for under Article 6(3).

6. The Commission shall, by means of implementing acts, establish uniform conditions for the consultation and the exchange of information between Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

Article 9

Family members who are beneficiaries of international protection

Where the applicant has a family member, regardless of whether the family was previously formed in the country of origin, who has been allowed to reside as a beneficiary of international protection in a Member State, that Member State shall be responsible for examining the application for international protection, provided that the persons concerned expressed their desire in writing.

Article 10

Family members who are applicants for international protection

If the applicant has a family member in a Member State whose application for international protection in that Member State has not yet been the subject of a first decision regarding the substance, that Member State shall be responsible for examining the application for international protection, provided that the persons concerned expressed their desire in writing.

Article 11

Family procedure

Where several family members and/or minor unmarried siblings submit applications for international protection in the same Member State simultaneously, or on dates close enough for the procedures for determining the Member State responsible to be conducted together, and where the application of the criteria set out in this Regulation would lead to their being separated, the Member State responsible shall be determined on the basis of the following provisions:

- (a) responsibility for examining the applications for international protection of all the family members and/or minor unmarried siblings shall lie with the Member State which the criteria indicate is responsible for taking charge of the largest number of them;
- (b) failing this, responsibility shall lie with the Member State which the criteria indicate is responsible for examining the application of the oldest of them.

Article 12

Issue of residence documents or visas

1. Where the applicant is in possession of a valid residence document, the Member State which issued the document shall be responsible for examining the application for international protection.

2. Where the applicant is in possession of a valid visa, the Member State which issued the visa shall be responsible for examining the application for international protection, unless the visa was issued on behalf of another Member State under a representation arrangement as provided for in Article 8 of Regulation (EC) No 810/2009 of the European Parliament and of the Council, of 13 July 2009, establishing a Community Code on Visas⁽¹⁾. In such a case, the represented Member State shall be responsible for examining the application for international protection.

3. Where the applicant is in possession of more than one valid residence document or visa issued by different Member States, the responsibility for examining the application for international protection shall be assumed by the Member States in the following order:

- (a) the Member State which issued the residence document conferring the right to the longest period of residency or, where the periods of validity are identical, the Member State which issued the residence document having the latest expiry date;
- (b) the Member State which issued the visa having the latest expiry date where the various visas are of the same type;

- (c) where visas are of different kinds, the Member State which issued the visa having the longest period of validity or, where the periods of validity are identical, the Member State which issued the visa having the latest expiry date.

4. Where the applicant is in possession only of one or more residence documents which have expired less than two years previously or one or more visas which have expired less than six months previously and which enabled him or her actually to enter the territory of a Member State, paragraphs 1, 2 and 3 shall apply for such time as the applicant has not left the territories of the Member States.

Where the applicant is in possession of one or more residence documents which have expired more than two years previously or one or more visas which have expired more than six months previously and enabled him or her actually to enter the territory of a Member State and where he has not left the territories of the Member States, the Member State in which the application for international protection is lodged shall be responsible.

5. The fact that the residence document or visa was issued on the basis of a false or assumed identity or on submission of forged, counterfeit or invalid documents shall not prevent responsibility being allocated to the Member State which issued it. However, the Member State issuing the residence document or visa shall not be responsible if it can establish that a fraud was committed after the document or visa had been issued.

Article 13

Entry and/or stay

1. Where it is established, on the basis of proof or circumstantial evidence as described in the two lists mentioned in Article 22(3) of this Regulation, including the data referred to in Regulation (EU) No 603/2013, that an applicant has irregularly crossed the border into a Member State by land, sea or air having come from a third country, the Member State thus entered shall be responsible for examining the application for international protection. That responsibility shall cease 12 months after the date on which the irregular border crossing took place.

2. When a Member State cannot or can no longer be held responsible in accordance with paragraph 1 of this Article and where it is established, on the basis of proof or circumstantial evidence as described in the two lists mentioned in Article 22(3), that the applicant — who has entered the territories of the Member States irregularly or whose circumstances of entry cannot be established — has been living for a continuous period of at least five months in a Member State before lodging the application for international protection, that Member State shall be responsible for examining the application for international protection.

If the applicant has been living for periods of time of at least five months in several Member States, the Member State where he or she has been living most recently shall be responsible for examining the application for international protection.

⁽¹⁾ OJ L 243, 15.9.2009, p. 1.

*Article 14***Visa waived entry**

1. If a third-country national or a stateless person enters into the territory of a Member State in which the need for him or her to have a visa is waived, that Member State shall be responsible for examining his or her application for international protection.

2. The principle set out in paragraph 1 shall not apply if the third-country national or the stateless person lodges his or her application for international protection in another Member State in which the need for him or her to have a visa for entry into the territory is also waived. In that case, that other Member State shall be responsible for examining the application for international protection.

*Article 15***Application in an international transit area of an airport**

Where the application for international protection is made in the international transit area of an airport of a Member State by a third-country national or a stateless person, that Member State shall be responsible for examining the application.

CHAPTER IV

DEPENDENT PERSONS AND DISCRETIONARY CLAUSES*Article 16***Dependent persons**

1. Where, on account of pregnancy, a new-born child, serious illness, severe disability or old age, an applicant is dependent on the assistance of his or her child, sibling or parent legally resident in one of the Member States, or his or her child, sibling or parent legally resident in one of the Member States is dependent on the assistance of the applicant, Member States shall normally keep or bring together the applicant with that child, sibling or parent, provided that family ties existed in the country of origin, that the child, sibling or parent or the applicant is able to take care of the dependent person and that the persons concerned expressed their desire in writing.

2. Where the child, sibling or parent referred to in paragraph 1 is legally resident in a Member State other than the one where the applicant is present, the Member State responsible shall be the one where the child, sibling or parent is legally resident unless the applicant's health prevents him or her from travelling to that Member State for a significant period of time. In such a case, the Member State responsible shall be the one where the applicant is present. Such Member State shall not be subject to the obligation to bring the child, sibling or parent of the applicant to its territory.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 45 concerning the elements to be taken into account in order to assess the dependency link, the criteria for establishing the existence of proven family links, the criteria for assessing the capacity of the person concerned to take care of the dependent person and the elements to be taken into account in order to assess the inability to travel for a significant period of time.

4. The Commission shall, by means of implementing acts, establish uniform conditions for the consultation and exchange of information between Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

*Article 17***Discretionary clauses**

1. By way of derogation from Article 3(1), each Member State may decide to examine an application for international protection lodged with it by a third-country national or a stateless person, even if such examination is not its responsibility under the criteria laid down in this Regulation.

The Member State which decides to examine an application for international protection pursuant to this paragraph shall become the Member State responsible and shall assume the obligations associated with that responsibility. Where applicable, it shall inform, using the 'DubliNet' electronic communication network set up under Article 18 of Regulation (EC) No 1560/2003, the Member State previously responsible, the Member State conducting a procedure for determining the Member State responsible or the Member State which has been requested to take charge of, or to take back, the applicant.

The Member State which becomes responsible pursuant to this paragraph shall forthwith indicate it in Eurodac in accordance with Regulation (EU) No 603/2013 by adding the date when the decision to examine the application was taken.

2. The Member State in which an application for international protection is made and which is carrying out the process of determining the Member State responsible, or the Member State responsible, may, at any time before a first decision regarding the substance is taken, request another Member State to take charge of an applicant in order to bring together any family relations, on humanitarian grounds based in particular on family or cultural considerations, even where that other Member State is not responsible under the criteria laid down in Articles 8 to 11 and 16. The persons concerned must express their consent in writing.

The request to take charge shall contain all the material in the possession of the requesting Member State to allow the requested Member State to assess the situation.

The requested Member State shall carry out any necessary checks to examine the humanitarian grounds cited, and shall reply to the requesting Member State within two months of receipt of the request using the 'DubliNet' electronic communication network set up under Article 18 of Regulation (EC) No 1560/2003. A reply refusing the request shall state the reasons on which the refusal is based.

Where the requested Member State accepts the request, responsibility for examining the application shall be transferred to it.

CHAPTER V

OBLIGATIONS OF THE MEMBER STATE RESPONSIBLE

Article 18

Obligations of the Member State responsible

1. The Member State responsible under this Regulation shall be obliged to:

- (a) take charge, under the conditions laid down in Articles 21, 22 and 29, of an applicant who has lodged an application in a different Member State;
- (b) take back, under the conditions laid down in Articles 23, 24, 25 and 29, an applicant whose application is under examination and who made an application in another Member State or who is on the territory of another Member State without a residence document;
- (c) take back, under the conditions laid down in Articles 23, 24, 25 and 29, a third-country national or a stateless person who has withdrawn the application under examination and made an application in another Member State or who is on the territory of another Member State without a residence document;
- (d) take back, under the conditions laid down in Articles 23, 24, 25 and 29, a third-country national or a stateless person whose application has been rejected and who made an application in another Member State or who is on the territory of another Member State without a residence document.

2. In the cases falling within the scope of paragraph 1(a) and (b), the Member State responsible shall examine or complete the examination of the application for international protection made by the applicant.

In the cases falling within the scope of paragraph 1(c), when the Member State responsible had discontinued the examination of an application following its withdrawal by the applicant before a decision on the substance has been taken at first instance, that Member State shall ensure that the applicant is entitled to request that the examination of his or her application be

completed or to lodge a new application for international protection, which shall not be treated as a subsequent application as provided for in Directive 2013/32/EU. In such cases, Member States shall ensure that the examination of the application is completed.

In the cases falling within the scope of paragraph 1(d), where the application has been rejected at first instance only, the Member State responsible shall ensure that the person concerned has or has had the opportunity to seek an effective remedy pursuant to Article 46 of Directive 2013/32/EU.

Article 19

Cessation of responsibilities

1. Where a Member State issues a residence document to the applicant, the obligations specified in Article 18(1) shall be transferred to that Member State.

2. The obligations specified in Article 18(1) shall cease where the Member State responsible can establish, when requested to take charge or take back an applicant or another person as referred to in Article 18(1)(c) or (d), that the person concerned has left the territory of the Member States for at least three months, unless the person concerned is in possession of a valid residence document issued by the Member State responsible.

An application lodged after the period of absence referred to in the first subparagraph shall be regarded as a new application giving rise to a new procedure for determining the Member State responsible.

3. The obligations specified in Article 18(1)(c) and (d) shall cease where the Member State responsible can establish, when requested to take back an applicant or another person as referred to in Article 18(1)(c) or (d), that the person concerned has left the territory of the Member States in compliance with a return decision or removal order issued following the withdrawal or rejection of the application.

An application lodged after an effective removal has taken place shall be regarded as a new application giving rise to a new procedure for determining the Member State responsible.

CHAPTER VI

PROCEDURES FOR TAKING CHARGE AND TAKING BACK

SECTION I

Start of the procedure

Article 20

Start of the procedure

1. The process of determining the Member State responsible shall start as soon as an application for international protection is first lodged with a Member State.

2. An application for international protection shall be deemed to have been lodged once a form submitted by the applicant or a report prepared by the authorities has reached the competent authorities of the Member State concerned. Where an application is not made in writing, the time elapsing between the statement of intention and the preparation of a report should be as short as possible.

3. For the purposes of this Regulation, the situation of a minor who is accompanying the applicant and meets the definition of family member shall be indissociable from that of his or her family member and shall be a matter for the Member State responsible for examining the application for international protection of that family member, even if the minor is not individually an applicant, provided that it is in the minor's best interests. The same treatment shall be applied to children born after the applicant arrives on the territory of the Member States, without the need to initiate a new procedure for taking charge of them.

4. Where an application for international protection is lodged with the competent authorities of a Member State by an applicant who is on the territory of another Member State, the determination of the Member State responsible shall be made by the Member State in whose territory the applicant is present. The latter Member State shall be informed without delay by the Member State which received the application and shall then, for the purposes of this Regulation, be regarded as the Member State with which the application for international protection was lodged.

The applicant shall be informed in writing of this change in the determining Member State and of the date on which it took place.

5. An applicant who is present in another Member State without a residence document or who there lodges an application for international protection after withdrawing his or her first application made in a different Member State during the process of determining the Member State responsible shall be taken back, under the conditions laid down in Articles 23, 24, 25 and 29, by the Member State with which that application for international protection was first lodged, with a view to completing the process of determining the Member State responsible.

That obligation shall cease where the Member State requested to complete the process of determining the Member State responsible can establish that the applicant has in the meantime left the territory of the Member States for a period of at least three months or has obtained a residence document from another Member State.

An application lodged after the period of absence referred to in the second subparagraph shall be regarded as a new application giving rise to a new procedure for determining the Member State responsible.

SECTION II

Procedures for take charge requests

Article 21

Submitting a take charge request

1. Where a Member State with which an application for international protection has been lodged considers that another Member State is responsible for examining the application, it may, as quickly as possible and in any event within three months of the date on which the application was lodged within the meaning of Article 20(2), request that other Member State to take charge of the applicant.

Notwithstanding the first subparagraph, in the case of a Eurodac hit with data recorded pursuant to Article 14 of Regulation (EU) No 603/2013, the request shall be sent within two months of receiving that hit pursuant to Article 15(2) of that Regulation.

Where the request to take charge of an applicant is not made within the periods laid down in the first and second subparagraphs, responsibility for examining the application for international protection shall lie with the Member State in which the application was lodged.

2. The requesting Member State may ask for an urgent reply in cases where the application for international protection was lodged after leave to enter or remain was refused, after an arrest for an unlawful stay or after the service or execution of a removal order.

The request shall state the reasons warranting an urgent reply and the period within which a reply is expected. That period shall be at least one week.

3. In the cases referred to in paragraphs 1 and 2, the request that charge be taken by another Member State shall be made using a standard form and including proof or circumstantial evidence as described in the two lists mentioned in Article 22(3) and/or relevant elements from the applicant's statement, enabling the authorities of the requested Member State to check whether it is responsible on the basis of the criteria laid down in this Regulation.

The Commission shall, by means of implementing acts, adopt uniform conditions on the preparation and submission of take charge requests. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

Article 22

Replying to a take charge request

1. The requested Member State shall make the necessary checks, and shall give a decision on the request to take charge of an applicant within two months of receipt of the request.

2. In the procedure for determining the Member State responsible elements of proof and circumstantial evidence shall be used.

3. The Commission shall, by means of implementing acts, establish, and review periodically, two lists, indicating the relevant elements of proof and circumstantial evidence in accordance with the criteria set out in points (a) and (b) of this paragraph. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

(a) Proof:

(i) this refers to formal proof which determines responsibility pursuant to this Regulation, as long as it is not refuted by proof to the contrary;

(ii) the Member States shall provide the Committee provided for in Article 44 with models of the different types of administrative documents, in accordance with the typology established in the list of formal proofs;

(b) Circumstantial evidence:

(i) this refers to indicative elements which while being refutable may be sufficient, in certain cases, according to the evidentiary value attributed to them;

(ii) their evidentiary value, in relation to the responsibility for examining the application for international protection shall be assessed on a case-by-case basis.

4. The requirement of proof should not exceed what is necessary for the proper application of this Regulation.

5. If there is no formal proof, the requested Member State shall acknowledge its responsibility if the circumstantial evidence is coherent, verifiable and sufficiently detailed to establish responsibility.

6. Where the requesting Member State has pleaded urgency in accordance with the provisions of Article 21(2), the requested Member State shall make every effort to comply with the time limit requested. In exceptional cases, where it can be demonstrated that the examination of a request for taking charge of an applicant is particularly complex, the requested Member State may give its reply after the time limit requested, but in any event within one month. In such situations the requested Member State must communicate its decision to postpone a reply to the requesting Member State within the time limit originally requested.

7. Failure to act within the two-month period mentioned in paragraph 1 and the one-month period mentioned in paragraph 6 shall be tantamount to accepting the request, and entail the obligation to take charge of the person, including the obligation to provide for proper arrangements for arrival.

SECTION III

Procedures for take back requests

Article 23

Submitting a take back request when a new application has been lodged in the requesting Member State

1. Where a Member State with which a person as referred to in Article 18(1)(b), (c) or (d) has lodged a new application for

international protection considers that another Member State is responsible in accordance with Article 20(5) and Article 18(1)(b), (c) or (d), it may request that other Member State to take back that person.

2. A take back request shall be made as quickly as possible and in any event within two months of receiving the Eurodac hit, pursuant to Article 9(5) of Regulation (EU) No 603/2013.

If the take back request is based on evidence other than data obtained from the Eurodac system, it shall be sent to the requested Member State within three months of the date on which the application for international protection was lodged within the meaning of Article 20(2).

3. Where the take back request is not made within the periods laid down in paragraph 2, responsibility for examining the application for international protection shall lie with the Member State in which the new application was lodged.

4. A take back request shall be made using a standard form and shall include proof or circumstantial evidence as described in the two lists mentioned in Article 22(3) and/or relevant elements from the statements of the person concerned, enabling the authorities of the requested Member State to check whether it is responsible on the basis of the criteria laid down in this Regulation.

The Commission shall, by means of implementing acts, adopt uniform conditions for the preparation and submission of take back requests. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

Article 24

Submitting a take back request when no new application has been lodged in the requesting Member State

1. Where a Member State on whose territory a person as referred to in Article 18(1)(b), (c) or (d) is staying without a residence document and with which no new application for international protection has been lodged considers that another Member State is responsible in accordance with Article 20(5) and Article 18(1)(b), (c) or (d), it may request that other Member State to take back that person.

2. By way of derogation from Article 6(2) of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country

nationals⁽¹⁾, where a Member State on whose territory a person is staying without a residence document decides to search the Eurodac system in accordance with Article 17 of Regulation (EU) No 603/2013, the request to take back a person as referred to in Article 18(1)(b) or (c) of this Regulation, or a person as referred to in its Article 18(1)(d) whose application for international protection has not been rejected by a final decision, shall be made as quickly as possible and in any event within two months of receipt of the Eurodac hit, pursuant to Article 17(5) of Regulation (EU) No 603/2013.

If the take back request is based on evidence other than data obtained from the Eurodac system, it shall be sent to the requested Member State within three months of the date on which the requesting Member State becomes aware that another Member State may be responsible for the person concerned.

3. Where the take back request is not made within the periods laid down in paragraph 2, the Member State on whose territory the person concerned is staying without a residence document shall give that person the opportunity to lodge a new application.

4. Where a person as referred to in Article 18(1)(d) of this Regulation whose application for international protection has been rejected by a final decision in one Member State is on the territory of another Member State without a residence document, the latter Member State may either request the former Member State to take back the person concerned or carry out a return procedure in accordance with Directive 2008/115/EC.

When the latter Member State decides to request the former Member State to take back the person concerned, the rules laid down in Directive 2008/115/EC shall not apply.

5. The request for the person referred to in Article 18(1)(b), (c) or (d) to be taken back shall be made using a standard form and shall include proof or circumstantial evidence as described in the two lists mentioned in Article 22(3) and/or relevant elements from the person's statements, enabling the authorities of the requested Member State to check whether it is responsible on the basis of the criteria laid down in this Regulation.

The Commission shall, by means of implementing acts, establish and review periodically two lists indicating the relevant elements of proof and circumstantial evidence in accordance with the criteria set out in Article 22(3)(a) and (b), and shall adopt uniform conditions for the preparation and submission of take back requests. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

Article 25

Replying to a take back request

1. The requested Member State shall make the necessary checks and shall give a decision on the request to take back the person concerned as quickly as possible and in any event no later than one month from the date on which the request was

received. When the request is based on data obtained from the Eurodac system, that time limit shall be reduced to two weeks.

2. Failure to act within the one month period or the two weeks period mentioned in paragraph 1 shall be tantamount to accepting the request, and shall entail the obligation to take back the person concerned, including the obligation to provide for proper arrangements for arrival.

SECTION IV

Procedural safeguards

Article 26

Notification of a transfer decision

1. Where the requested Member State accepts to take charge of or to take back an applicant or other person as referred to in Article 18(1)(c) or (d), the requesting Member State shall notify the person concerned of the decision to transfer him or her to the Member State responsible and, where applicable, of not examining his or her application for international protection. If a legal advisor or other counsellor is representing the person concerned, Member States may choose to notify the decision to such legal advisor or counsellor instead of to the person concerned and, where applicable, communicate the decision to the person concerned.

2. The decision referred to in paragraph 1 shall contain information on the legal remedies available, including on the right to apply for suspensive effect, where applicable, and on the time limits applicable for seeking such remedies and for carrying out the transfer, and shall, if necessary, contain information on the place where, and the date on which, the person concerned should appear, if that person is travelling to the Member State responsible by his or her own means.

Member States shall ensure that information on persons or entities that may provide legal assistance to the person concerned is communicated to the person concerned together with the decision referred to in paragraph 1, when that information has not been already communicated.

3. When the person concerned is not assisted or represented by a legal advisor or other counsellor, Member States shall inform him or her of the main elements of the decision, which shall always include information on the legal remedies available and the time limits applicable for seeking such remedies, in a language that the person concerned understands or is reasonably supposed to understand.

Article 27

Remedies

1. The applicant or another person as referred to in Article 18(1)(c) or (d) shall have the right to an effective remedy, in the form of an appeal or a review, in fact and in law, against a transfer decision, before a court or tribunal.

2. Member States shall provide for a reasonable period of time within which the person concerned may exercise his or her right to an effective remedy pursuant to paragraph 1.

⁽¹⁾ OJ L 348, 24.12.2008, p. 98.

3. For the purposes of appeals against, or reviews of, transfer decisions, Member States shall provide in their national law that:

- (a) the appeal or review confers upon the person concerned the right to remain in the Member State concerned pending the outcome of the appeal or review; or
- (b) the transfer is automatically suspended and such suspension lapses after a certain reasonable period of time, during which a court or a tribunal, after a close and rigorous scrutiny, shall have taken a decision whether to grant suspensive effect to an appeal or review; or
- (c) the person concerned has the opportunity to request within a reasonable period of time a court or tribunal to suspend the implementation of the transfer decision pending the outcome of his or her appeal or review. Member States shall ensure that an effective remedy is in place by suspending the transfer until the decision on the first suspension request is taken. Any decision on whether to suspend the implementation of the transfer decision shall be taken within a reasonable period of time, while permitting a close and rigorous scrutiny of the suspension request. A decision not to suspend the implementation of the transfer decision shall state the reasons on which it is based.

4. Member States may provide that the competent authorities may decide, acting *ex officio*, to suspend the implementation of the transfer decision pending the outcome of the appeal or review.

5. Member States shall ensure that the person concerned has access to legal assistance and, where necessary, to linguistic assistance.

6. Member States shall ensure that legal assistance is granted on request free of charge where the person concerned cannot afford the costs involved. Member States may 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.

Without arbitrarily restricting access to legal assistance, Member States may provide that free legal assistance and representation not be granted where the appeal or review is considered by the competent authority or a court or tribunal to have no tangible prospect of success.

Where a decision not to grant free legal assistance and representation pursuant to this paragraph is taken by an authority other than a court or tribunal, Member States shall provide the right to an effective remedy before a court or tribunal to challenge that decision.

In complying with the requirements set out in this paragraph, Member States shall ensure that legal assistance and

representation is not arbitrarily restricted and that the applicant's effective access to justice is not hindered.

Legal assistance shall include at least the preparation of the required procedural documents and representation before a court or tribunal and may be restricted to legal advisors or counsellors specifically designated by national law to provide assistance and representation.

Procedures for access to legal assistance shall be laid down in national law.

SECTION V

Detention for the purpose of transfer

Article 28

Detention

1. Member States shall not hold a person in detention for the sole reason that he or she is subject to the procedure established by this Regulation.

2. When there is a significant risk of absconding, Member States may detain the person concerned in order to secure transfer procedures in accordance with this Regulation, on the basis of an individual assessment and only in so far as detention is proportional and other less coercive alternative measures cannot be applied effectively.

3. Detention shall be for as short a period as possible and shall be for no longer than the time reasonably necessary to fulfil the required administrative procedures with due diligence until the transfer under this Regulation is carried out.

Where a person is detained pursuant to this Article, the period for submitting a take charge or take back request shall not exceed one month from the lodging of the application. The Member State carrying out the procedure in accordance with this Regulation shall ask for an urgent reply in such cases. Such reply shall be given within two weeks of receipt of the request. Failure to reply within the two-week period shall be tantamount to accepting the request and shall entail the obligation to take charge or take back the person, including the obligation to provide for proper arrangements for arrival.

Where a person is detained pursuant to this Article, the transfer of that person from the requesting Member State to the Member State responsible shall be carried out as soon as practically possible, and at the latest within six weeks of the implicit or explicit acceptance of the request by another Member State to take charge or to take back the person concerned or of the moment when the appeal or review no longer has a suspensive effect in accordance with Article 27(3).

When the requesting Member State fails to comply with the deadlines for submitting a take charge or take back request or where the transfer does not take place within the period of six weeks referred to in the third subparagraph, the person shall no longer be detained. Articles 21, 23, 24 and 29 shall continue to apply accordingly.

4. As regards the detention conditions and the guarantees applicable to persons detained, in order to secure the transfer procedures to the Member State responsible, Articles 9, 10 and 11 of Directive 2013/33/EU shall apply.

SECTION VI

Transfers

Article 29

Modalities and time limits

1. The transfer of the applicant or of another person as referred to in Article 18(1)(c) or (d) from the requesting Member State to the Member State responsible shall be carried out in accordance with the national law of the requesting Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within six months of acceptance of the request by another Member State to take charge or to take back the person concerned or of the final decision on an appeal or review where there is a suspensive effect in accordance with Article 27(3).

If transfers to the Member State responsible are carried out by supervised departure or under escort, Member States shall ensure that they are carried out in a humane manner and with full respect for fundamental rights and human dignity.

If necessary, the applicant shall be supplied by the requesting Member State with a *laissez passer*. The Commission shall, by means of implementing acts, establish the design of the *laissez passer*. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

The Member State responsible shall inform the requesting Member State, as appropriate, of the safe arrival of the person concerned or of the fact that he or she did not appear within the set time limit.

2. Where the transfer does not take place within the six months' time limit, the Member State responsible shall be relieved of its obligations to take charge or to take back the person concerned and responsibility shall then be transferred to the requesting Member State. This time limit may be extended up to a maximum of one year if the transfer could not be carried out due to imprisonment of the person concerned or up to a maximum of eighteen months if the person concerned absconds.

3. If a person has been transferred erroneously or a decision to transfer is overturned on appeal or review after the transfer has been carried out, the Member State which carried out the transfer shall promptly accept that person back.

4. The Commission shall, by means of implementing acts, establish uniform conditions for the consultation and exchange of information between Member States, in particular in the event of postponed or delayed transfers, transfers following acceptance by default, transfers of minors or dependent persons, and supervised transfers. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

Article 30

Costs of transfer

1. The costs necessary to transfer an applicant or another person as referred to in Article 18(1)(c) or (d) to the Member State responsible shall be met by the transferring Member State.

2. Where the person concerned has to be transferred back to a Member State as a result of an erroneous transfer or of a transfer decision that has been overturned on appeal or review after the transfer has been carried out, the Member State which initially carried out the transfer shall be responsible for the costs of transferring the person concerned back to its territory.

3. Persons to be transferred pursuant to this Regulation shall not be required to meet the costs of such transfers.

Article 31

Exchange of relevant information before a transfer is carried out

1. The Member State carrying out the transfer of an applicant or of another person as referred to in Article 18(1)(c) or (d) shall communicate to the Member State responsible such personal data concerning the person to be transferred as is appropriate, relevant and non-excessive for the sole purposes of ensuring that the competent authorities, in accordance with national law in the Member State responsible, are in a position to provide that person with adequate assistance, including the provision of immediate health care required in order to protect his or her vital interests, and to ensure continuity in the protection and rights afforded by this Regulation and by other relevant asylum legal instruments. Those data shall be communicated to the Member State responsible within a reasonable period of time before a transfer is carried out, in order to ensure that its competent authorities in accordance with national law have sufficient time to take the necessary measures.

2. The transferring Member State shall, in so far as such information is available to the competent authority in accordance with national law, transmit to the Member State responsible any information that is essential in order to safeguard the rights and immediate special needs of the person to be transferred, and in particular:

- (a) any immediate measures which the Member State responsible is required to take in order to ensure that the special needs of the person to be transferred are adequately addressed, including any immediate health care that may be required;
- (b) contact details of family members, relatives or any other family relations in the receiving Member State, where applicable;
- (c) in the case of minors, information on their education;
- (d) an assessment of the age of an applicant.

3. The exchange of information under this Article shall only take place between the authorities notified to the Commission in accordance with Article 35 of this Regulation using the 'DubliNet' electronic communication network set-up under Article 18 of Regulation (EC) No 1560/2003. The information exchanged shall only be used for the purposes set out in paragraph 1 of this Article and shall not be further processed.

4. With a view to facilitating the exchange of information between Member States, the Commission shall, by means of implementing acts, draw up a standard form for the transfer of the data required pursuant to this Article. Those implementing acts shall be adopted in accordance with the examination procedure laid down in Article 44(2).

5. The rules laid down in Article 34(8) to (12) shall apply to the exchange of information pursuant to this Article.

Article 32

Exchange of health data before a transfer is carried out

1. For the sole purpose of the provision of medical care or treatment, in particular concerning disabled persons, elderly people, pregnant women, minors and persons who have been subject to torture, rape or other serious forms of psychological, physical and sexual violence, the transferring Member State shall, in so far as it is available to the competent authority in accordance with national law, transmit to the Member State responsible information on any special needs of the person to be transferred, which in specific cases may include information on that person's physical or mental health. That information shall be transferred in a common health certificate with the necessary documents attached. The Member State responsible shall ensure that those special needs are adequately addressed, including in particular any essential medical care that may be required.

The Commission shall, by means of implementing acts, draw up the common health certificate. Those implementing acts shall be adopted in accordance with the examination procedure laid down in Article 44(2).

2. The transferring Member State shall only transmit the information referred to in paragraph 1 to the Member State responsible after having obtained the explicit consent of the applicant and/or of his or her representative or, if the applicant is physically or legally incapable of giving his or her consent, when such transmission is necessary to protect the vital interests of the applicant or of another person. The lack of consent, including a refusal to consent, shall not constitute an obstacle to the transfer.

3. The processing of personal health data referred to in paragraph 1 shall only be carried out by a health professional who is subject, under national law or rules established by national competent bodies, to the obligation of professional secrecy or by another person subject to an equivalent obligation of professional secrecy.

4. The exchange of information under this Article shall only take place between the health professionals or other persons referred to in paragraph 3. The information exchanged shall only be used for the purposes set out in paragraph 1 and shall not be further processed.

5. The Commission shall, by means of implementing acts, adopt uniform conditions and practical arrangements for exchanging the information referred to in paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure laid down in Article 44(2).

6. The rules laid down in Article 34(8) to (12) shall apply to the exchange of information pursuant to this Article.

Article 33

A mechanism for early warning, preparedness and crisis management

1. Where, on the basis of, in particular, the information gathered by EASO pursuant to Regulation (EU) No 439/2010, the Commission establishes that the application of this Regulation may be jeopardised due either to a substantiated risk of particular pressure being placed on a Member State's asylum system and/or to problems in the functioning of the asylum system of a Member State, it shall, in cooperation with EASO, make recommendations to that Member State, inviting it to draw up a preventive action plan.

The Member State concerned shall inform the Council and the Commission whether it intends to present a preventive action plan in order to overcome the pressure and/or problems in the functioning of its asylum system whilst ensuring the protection of the fundamental rights of applicants for international protection.

A Member State may, at its own discretion and initiative, draw up a preventive action plan and subsequent revisions thereof. When drawing up a preventive action plan, the Member State may call for the assistance of the Commission, other Member States, EASO and other relevant Union agencies.

2. Where a preventive action plan is drawn up, the Member State concerned shall submit it and shall regularly report on its implementation to the Council and to the Commission. The Commission shall subsequently inform the European Parliament of the key elements of the preventive action plan. The Commission shall submit reports on its implementation to the Council and transmit reports on its implementation to the European Parliament.

The Member State concerned shall take all appropriate measures to deal with the situation of particular pressure on its asylum system or to ensure that the deficiencies identified are addressed before the situation deteriorates. Where the preventive action plan includes measures aimed at addressing particular pressure on a Member State's asylum system which may jeopardise the application of this Regulation, the Commission shall seek the advice of EASO before reporting to the European Parliament and to the Council.

3. Where the Commission establishes, on the basis of EASO's analysis, that the implementation of the preventive action plan has not remedied the deficiencies identified or where there is a serious risk that the asylum situation in the Member State concerned develops into a crisis which is unlikely to be remedied by a preventive action plan, the Commission, in cooperation with EASO as applicable, may request the Member State concerned to draw up a crisis management action plan and, where necessary, revisions thereof. The crisis management action plan shall ensure, throughout the entire process, compliance with the asylum *acquis* of the Union, in particular with the fundamental rights of applicants for international protection.

Following the request to draw up a crisis management action plan, the Member State concerned shall, in cooperation with the Commission and EASO, do so promptly, and at the latest within three months of the request.

The Member State concerned shall submit its crisis management action plan and shall report, at least every three months, on its implementation to the Commission and other relevant stakeholders, such as EASO, as appropriate.

The Commission shall inform the European Parliament and the Council of the crisis management action plan, possible revisions and the implementation thereof. In those reports, the Member State concerned shall report on data to monitor compliance with the crisis management action plan, such as the length of the procedure, the detention conditions and the reception capacity in relation to the inflow of applicants.

4. Throughout the entire process for early warning, preparedness and crisis management established in this Article, the Council shall closely monitor the situation and may request further information and provide political guidance, in particular as regards the urgency and severity of the situation and thus the need for a Member State to draw up either a preventive action plan or, if necessary, a crisis management action plan. The European Parliament and the Council may, throughout the entire process, discuss and provide guidance on any solidarity measures as they deem appropriate.

CHAPTER VII

ADMINISTRATIVE COOPERATION

Article 34

Information sharing

1. Each Member State shall communicate to any Member State that so requests such personal data concerning the applicant as is appropriate, relevant and non-excessive for:

- (a) determining the Member State responsible;
- (b) examining the application for international protection;
- (c) implementing any obligation arising under this Regulation.

2. The information referred to in paragraph 1 may only cover:

- (a) personal details of the applicant, and, where appropriate, his or her family members, relatives or any other family relations (full name and where appropriate, former name; nicknames or pseudonyms; nationality, present and former; date and place of birth);
- (b) identity and travel papers (references, validity, date of issue, issuing authority, place of issue, etc.);
- (c) other information necessary for establishing the identity of the applicant, including fingerprints processed in accordance with Regulation (EU) No 603/2013;

- (d) places of residence and routes travelled;
- (e) residence documents or visas issued by a Member State;
- (f) the place where the application was lodged;
- (g) the date on which any previous application for international protection was lodged, the date on which the present application was lodged, the stage reached in the proceedings and the decision taken, if any.

3. Furthermore, provided it is necessary for the examination of the application for international protection, the Member State responsible may request another Member State to let it know on what grounds the applicant bases his or her application and, where applicable, the grounds for any decisions taken concerning the applicant. The other Member State may refuse to respond to the request submitted to it, if the communication of such information is likely to harm its essential interests or the protection of the liberties and fundamental rights of the person concerned or of others. In any event, communication of the information requested shall be subject to the written approval of the applicant for international protection, obtained by the requesting Member State. In that case, the applicant must know for what specific information he or she is giving his or her approval.

4. Any request for information shall only be sent in the context of an individual application for international protection. It shall set out the grounds on which it is based and, where its purpose is to check whether there is a criterion that is likely to entail the responsibility of the requested Member State, shall state on what evidence, including relevant information from reliable sources on the ways and means by which applicants enter the territories of the Member States, or on what specific and verifiable part of the applicant's statements it is based. It is understood that such relevant information from reliable sources is not in itself sufficient to determine the responsibility and the competence of a Member State under this Regulation, but it may contribute to the evaluation of other indications relating to an individual applicant.

5. The requested Member State shall be obliged to reply within five weeks. Any delays in the reply shall be duly justified. Non-compliance with the five week time limit shall not relieve the requested Member State of the obligation to reply. If the research carried out by the requested Member State which did not respect the maximum time limit withholds information which shows that it is responsible, that Member State may not invoke the expiry of the time limits provided for in Articles 21, 23 and 24 as a reason for refusing to comply with a request to take charge or take back. In that case, the time limits provided for in Articles 21, 23 and 24 for submitting a request to take charge or take back shall be extended by a period of time which shall be equivalent to the delay in the reply by the requested Member State.

6. The exchange of information shall be effected at the request of a Member State and may only take place between authorities whose designation by each Member State has been communicated to the Commission in accordance with Article 35(1).

7. The information exchanged may only be used for the purposes set out in paragraph 1. In each Member State such information may, depending on its type and the powers of the recipient authority, only be communicated to the authorities and courts and tribunals entrusted with:

- (a) determining the Member State responsible;
- (b) examining the application for international protection;
- (c) implementing any obligation arising under this Regulation.

8. The Member State which forwards the information shall ensure that it is accurate and up-to-date. If it transpires that it has forwarded information which is inaccurate or which should not have been forwarded, the recipient Member States shall be informed thereof immediately. They shall be obliged to correct such information or to have it erased.

9. The applicant shall have the right to be informed, on request, of any data that is processed concerning him or her.

If the applicant finds that the data have been processed in breach of this Regulation or of Directive 95/46/EC, in particular because they are incomplete or inaccurate, he or she shall be entitled to have them corrected or erased.

The authority correcting or erasing the data shall inform, as appropriate, the Member State transmitting or receiving the information.

The applicant shall have the right to bring an action or a complaint before the competent authorities or courts or tribunals of the Member State which refused the right of access to or the right of correction or erasure of data relating to him or her.

10. In each Member State concerned, a record shall be kept, in the individual file for the person concerned and/or in a register, of the transmission and receipt of information exchanged.

11. The data exchanged shall be kept for a period not exceeding that which is necessary for the purposes for which they are exchanged.

12. Where the data are not processed automatically or are not contained, or intended to be entered, in a file, each Member State shall take appropriate measures to ensure compliance with this Article through effective checks.

Article 35

Competent authorities and resources

1. Each Member State shall notify the Commission without delay of the specific authorities responsible for fulfilling the obligations arising under this Regulation, and any amendments thereto. The Member States shall ensure that those authorities have the necessary resources for carrying out their tasks and in particular for replying within the prescribed time limits to requests for information, requests to take charge of and requests to take back applicants.

2. The Commission shall publish a consolidated list of the authorities referred to in paragraph 1 in the *Official Journal of the European Union*. Where there are amendments thereto, the Commission shall publish once a year an updated consolidated list.

3. The authorities referred to in paragraph 1 shall receive the necessary training with respect to the application of this Regulation.

4. The Commission shall, by means of implementing acts, establish secure electronic transmission channels between the authorities referred to in paragraph 1 for transmitting requests, replies and all written correspondence and for ensuring that senders automatically receive an electronic proof of delivery. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

Article 36

Administrative arrangements

1. Member States may, on a bilateral basis, establish administrative arrangements between themselves concerning the practical details of the implementation of this Regulation, in order to facilitate its application and increase its effectiveness. Such arrangements may relate to:

- (a) exchanges of liaison officers;
- (b) simplification of the procedures and shortening of the time limits relating to transmission and the examination of requests to take charge of or take back applicants.

2. Member States may also maintain the administrative arrangements concluded under Regulation (EC) No 343/2003.

To the extent that such arrangements are not compatible with this Regulation, the Member States concerned shall amend the arrangements in such a way as to eliminate any incompatibilities observed.

3. Before concluding or amending any arrangement referred to in paragraph 1(b), the Member States concerned shall consult the Commission as to the compatibility of the arrangement with this Regulation.

4. If the Commission considers the arrangements referred to in paragraph 1(b) to be incompatible with this Regulation, it shall, within a reasonable period, notify the Member States concerned. The Member States shall take all appropriate steps to amend the arrangement concerned within a reasonable time in such a way as to eliminate any incompatibilities observed.

5. Member States shall notify the Commission of all arrangements referred to in paragraph 1, and of any denunciation thereof, or amendment thereto.

CHAPTER VIII

CONCILIATION

Article 37

Conciliation

1. Where the Member States cannot resolve a dispute on any matter related to the application of this Regulation, they may have recourse to the conciliation procedure provided for in paragraph 2.

2. The conciliation procedure shall be initiated by a request from one of the Member States in dispute to the Chairman of the Committee set up by Article 44. By agreeing to use the conciliation procedure, the Member States concerned undertake to take the utmost account of the solution proposed.

The Chairman of the Committee shall appoint three members of the Committee representing three Member States not connected with the matter. They shall receive the arguments of the parties either in writing or orally and, after deliberation, shall propose a solution within one month, where necessary after a vote.

The Chairman of the Committee, or his or her deputy, shall chair the discussion. He or she may put forward his or her point of view but may not vote.

Whether it is adopted or rejected by the parties, the solution proposed shall be final and irrevocable.

CHAPTER IX

TRANSITIONAL PROVISIONS AND FINAL PROVISIONS

Article 38

Data security and data protection

Member States shall take all appropriate measures to ensure the security of transmitted personal data and in particular to avoid unlawful or unauthorised access or disclosure, alteration or loss of personal data processed.

Each Member State shall provide that the national supervisory authority or authorities designated pursuant to Article 28(1) of Directive 95/46/EC shall monitor independently, in accordance with its respective national law, the lawfulness of the processing, in accordance with this Regulation, of personal data by the Member State in question.

Article 39

Confidentiality

Member States shall ensure that the authorities referred to in Article 35 are bound by the confidentiality rules provided for in national law, in relation to any information they obtain in the course of their work.

Article 40

Penalties

Member States shall take the necessary measures to ensure that any misuse of data processed in accordance with this Regulation is punishable by penalties, including administrative and/or criminal penalties in accordance with national law, that are effective, proportionate and dissuasive.

Article 41

Transitional measures

Where an application has been lodged after the date mentioned in the second paragraph of Article 49, the events that are likely to entail the responsibility of a Member State under this Regulation shall be taken into consideration, even if they precede that date, with the exception of the events mentioned in Article 13(2).

Article 42

Calculation of time limits

Any period of time prescribed in this Regulation shall be calculated as follows:

- (a) where a period expressed in days, weeks or months is to be calculated from the moment at which an event occurs or an action takes place, the day during which that event occurs or that action takes place shall not be counted as falling within the period in question;

- (b) a period expressed in weeks or months shall end with the expiry of whichever day in the last week or month is the same day of the week or falls on the same date as the day during which the event or action from which the period is to be calculated occurred or took place. If, in a period expressed in months, the day on which it should expire does not occur in the last month, the period shall end with the expiry of the last day of that month;

- (c) time limits shall include Saturdays, Sundays and official holidays in any of the Member States concerned.

Article 43

Territorial scope

As far as the French Republic is concerned, this Regulation shall apply only to its European territory.

Article 44

Committee

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

Article 45

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Articles 8(5) and 16(3) shall be conferred on the Commission for a period of 5 years from the date of entry into force of this Regulation. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the 5-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Articles 8(5) and 16(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Articles 8(5) and 16(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of four months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 46

Monitoring and evaluation

By 21 July 2016, the Commission shall report to the European Parliament and to the Council on the application of this Regulation and, where appropriate, shall propose the necessary amendments. Member States shall forward to the Commission all information appropriate for the preparation of that report, at the latest six months before that time limit expires.

After having submitted that report, the Commission shall report to the European Parliament and to the Council on the application of this Regulation at the same time as it submits reports on the implementation of the Eurodac system provided for by Article 40 of Regulation (EU) No 603/2013.

Article 47

Statistics

In accordance with Article 4(4) of Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection ⁽¹⁾, Member States shall communicate to the

Commission (Eurostat), statistics concerning the application of this Regulation and of Regulation (EC) No 1560/2003.

Article 48

Repeal

Regulation (EC) No 343/2003 is repealed.

Articles 11(1), 13, 14 and 17 of Regulation (EC) No 1560/2003 are repealed.

References to the repealed Regulation or Articles shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex II.

Article 49

Entry into force and applicability

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

It shall apply to applications for international protection lodged as from the first day of the sixth month following its entry into force and, from that date, it will apply to any request to take charge of or take back applicants, irrespective of the date on which the application was made. The Member State responsible for the examination of an application for international protection submitted before that date shall be determined in accordance with the criteria set out in Regulation (EC) No 343/2003.

References in this Regulation to Regulation (EU) No 603/2013, Directive 2013/32/EU and Directive 2013/33/EU shall be construed, until the dates of their application, as references to Regulation (EC) No 2725/2000 ⁽²⁾, Directive 2003/9/EC ⁽³⁾ and Directive 2005/85/EC ⁽⁴⁾ respectively.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels, 26 June 2013.

For the European Parliament
The President
M. SCHULZ

For the Council
The President
A. SHATTER

⁽¹⁾ OJ L 199, 31.7.2007, p. 23.

⁽²⁾ Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention (OJ L 316, 15.12.2000, p. 1).

⁽³⁾ Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (OJ L 31, 6.2.2003, p. 18).

⁽⁴⁾ Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures for granting and withdrawing refugee status (OJ L 326, 13.12.2005, p. 13).

ANNEX I

Repealed Regulations (referred to in Article 48)

Council Regulation (EC) No 343/2003

(OJ L 50, 25.2.2003, p. 1)

Commission Regulation (EC) No 1560/2003 only Articles 11(1), 13, 14 and 17

(OJ L 222, 5.9.2003, p. 3)

ANNEX II

Correlation table

Regulation (EC) No 343/2003	This Regulation
Article 1	Article 1
Article 2(a)	Article 2(a)
Article 2(b)	—
Article 2(c)	Article 2(b)
Article 2(d)	Article 2(c)
Article 2(e)	Article 2(d)
Article 2(f)	Article 2(e)
Article 2(g)	Article 2(f)
—	Article 2(h)
—	Article 2(i)
Article 2(h)	Article 2(j)
Article 2(i)	Article 2(g)
—	Article 2(k)
Article 2(j) and (k)	Article 2(l) and (m)
—	Article 2(n)
Article 3(1)	Article 3(1)
Article 3(2)	Article 17(1)
Article 3(3)	Article 3(3)
Article 3(4)	Article 4(1), introductory wording
—	Article 4(1)(a) to (f)
—	Article 4(2) and (3)
Article 4(1) to (5)	Article 20(1) to (5)
—	Article 20(5), third subparagraph
—	Article 5
—	Article 6
Article 5(1)	Article 7(1)
Article 5(2)	Article 7(2)
—	Article 7(3)
Article 6, first paragraph	Article 8(1)
—	Article 8(3)
Article 6, second paragraph	Article 8(4)
Article 7	Article 9

Regulation (EC) No 343/2003	This Regulation
Article 8	Article 10
Article 9	Article 12
Article 10	Article 13
Article 11	Article 14
Article 12	Article 15
—	Article 16
Article 13	Article 3(2)
Article 14	Article 11
Article 15(1)	Article 17(2), first subparagraph
Article 15(2)	Article 16(1)
Article 15(3)	Article 8(2)
Article 15(4)	Article 17(2), fourth subparagraph
Article 15(5)	Articles 8(5) and (6) and Article 16(2)
Article 16(1)(a)	Article 18(1)(a)
Article 16(1)(b)	Article 18(2)
Article 16(1)(c)	Article 18(1)(b)
Article 16(1)(d)	Article 18(1)(c)
Article 16(1)(e)	Article 18(1)(d)
Article 16(2)	Article 19(1)
Article 16(3)	Article 19(2), first subparagraph
—	Article 19(2), second subparagraph
Article 16(4)	Article 19(3)
—	Article 19(3), second subparagraph
Article 17	Article 21
Article 18	Article 22
Article 19(1)	Article 26(1)
Article 19(2)	Article 26(2) and Article 27(1)
—	Article 27(2) to (6)
Article 19(3)	Article 29(1)
Article 19(4)	Article 29(2)
—	Article 29(3)
Article 19(5)	Article 29(4)
Article 20(1), introductory wording	Article 23(1)
—	Article 23(2)
—	Article 23(3)

Regulation (EC) No 343/2003	This Regulation
—	Article 23(4)
Article 20(1)(a)	Article 23(5), first subparagraph
—	Article 24
Article 20(1)(b)	Article 25(1)
Article 20(1)(c)	Article 25(2)
Article 20(1)(d)	Article 29(1), first subparagraph
Article 20(1)(e)	Article 26(1), (2), Article 27(1), Article 29(1), second and third subparagraphs
Article 20(2)	Article 29(2)
Article 20(3)	Article 23(5), second subparagraph
Article 20(4)	Article 29(4)
—	Article 28
—	Article 30
—	Article 31
—	Article 32
—	Article 33
Article 21(1) to (9)	Article 34(1) to (9), first to third subparagraphs
—	Article 34(9), fourth subparagraph
Article 21(10) to (12)	Article 34(10) to (12)
Article 22(1)	Article 35(1)
—	Article 35(2)
—	Article 35(3)
Article 22(2)	Article 35(4)
Article 23	Article 36
—	Article 37
—	Article 40
Article 24(1)	—
Article 24(2)	Article 41
Article 24(3)	—
Article 25(1)	Article 42
Article 25(2)	—
Article 26	Article 43

Regulation (EC) No 343/2003	This Regulation
Article 27(1), (2)	Article 44(1), (2)
Article 27(3)	—
—	Article 45
Article 28	Article 46
—	Article 47
—	Article 48
Article 29	Article 49

Regulation (EC) No 1560/2003	This Regulation
Article 11(1)	—
Article 13(1)	Article 17(2), first subparagraph
Article 13(2)	Article 17(2), second subparagraph
Article 13(3)	Article 17(2), third subparagraph
Article 13(4)	Article 17(2), first subparagraph
Article 14	Article 37
Article 17(1)	Articles 9, 10, 17(2), first subparagraph
Article 17(2)	Article 34(3)

STATEMENT BY THE COUNCIL, THE EUROPEAN PARLIAMENT AND THE COMMISSION

The Council and the European Parliament invite the Commission to consider, without prejudice to its right of initiative, a revision of Article 8(4) of the Recast of the Dublin Regulation once the Court of Justice rules on case C-648/11 MA and Others vs. Secretary of State for the Home Department and at the latest by the time limits set in Article 46 of the Dublin Regulation. The European Parliament and the Council will then both exercise their legislative competences, taking into account the best interests of the child.

The Commission, in a spirit of compromise and in order to ensure the immediate adoption of the proposal, accepts to consider this invitation, which it understands as being limited to these specific circumstances and not creating a precedent.

DIRECTIVES

DIRECTIVE 2013/32/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 26 June 2013

on common procedures for granting and withdrawing international protection (recast)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

After consulting the Committee of the Regions,

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

Whereas:

(1) A number of substantive changes are to be made to Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures for granting and withdrawing refugee status ⁽³⁾. In the interest of clarity, that Directive should be recast.

(2) A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of establishing progressively an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Union. Such a policy should be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States.

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

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

(5) The first phase of a Common European Asylum System was achieved through the adoption of relevant legal instruments provided for in the Treaties, including Directive 2005/85/EC, which was a first measure on asylum procedures.

(6) The European Council, at its meeting of 4 November 2004, adopted The Hague Programme, which set the objectives to be implemented in the area of freedom, security and justice in the period 2005-10. 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 European Parliament and to the Council. 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 remained 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.

⁽¹⁾ OJ C 24, 28.1.2012, p. 79.

⁽²⁾ Position of the European Parliament of 6 April 2011 (OJ C 296 E, 2.10.2012, p. 184) and position of the Council at first reading of 6 June 2013 (not yet published in the Official Journal). Position of the European Parliament of 10 June 2013 (not yet published in the Official Journal).

⁽³⁾ OJ L 326, 13.12.2005, p. 13.

- (8) The European Council, at its meeting of 10-11 December 2009, adopted the Stockholm Programme which reiterated the commitment to the objective of establishing by 2012 a common area of protection and solidarity based on a common asylum procedure and a uniform status for those granted international protection based on high protection standards and fair and effective procedures. The Stockholm Programme affirmed that people in need of international protection must be ensured access to legally safe and efficient asylum procedures. In accordance with the Stockholm Programme, individuals should be offered the same level of treatment as regards procedural arrangements and status determination, regardless of the Member State in which their application for international protection is lodged. The objective is that similar cases should be treated alike and result in the same outcome.
- (9) The resources of the European Refugee Fund and of the European Asylum Support Office (EASO) should be mobilised to provide adequate support to Member States' efforts in implementing 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.
- (10) When implementing this Directive, Member States should take into account relevant guidelines developed by EASO.
- (11) In order to ensure a comprehensive and efficient assessment of the international protection needs of applicants within the meaning of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted⁽¹⁾, the Union framework on procedures for granting and withdrawing international protection should be based on the concept of a single procedure.
- (12) The main objective of this Directive is to further develop the standards for procedures in Member States for granting and withdrawing international protection with a view to establishing a common asylum procedure in the Union.
- (13) The approximation of rules on the procedures for granting and withdrawing international protection should help to limit the secondary movements of applicants for international protection between Member States, where such movements would be caused by differences in legal frameworks, and to create equivalent conditions for the application of Directive 2011/95/EU in Member States.
- (14) Member States should have the power to introduce or maintain more favourable provisions for third-country nationals or stateless persons who ask for international protection from a Member State, where such a request is understood to be on the grounds that the person concerned is in need of international protection within the meaning of Directive 2011/95/EU.
- (15) 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.
- (16) It is essential that decisions on all applications for international protection be taken on the basis of the facts and, in the first instance, by authorities whose personnel has the appropriate knowledge or has received the necessary training in the field of international protection.
- (17) In order to ensure that applications for international protection are examined and decisions thereon are taken objectively and impartially, it is necessary that professionals acting in the framework of the procedures provided for in this Directive perform their activities with due respect for the applicable deontological principles.
- (18) It is in the interests of both Member States and applicants for international protection that a decision is made as soon as possible on applications for international protection, without prejudice to an adequate and complete examination being carried out.
- (19) In order to shorten the overall duration of the procedure in certain cases, Member States should have the flexibility, in accordance with their national needs, to prioritise the examination of any application by examining it before other, previously made applications, without derogating from normally applicable procedural time limits, principles and guarantees.
- (20) In well-defined circumstances where an application is likely to be unfounded or where there are serious national security or public order concerns, Member States should be able to accelerate the examination procedure, in particular by introducing shorter, but reasonable, time limits for certain procedural steps, without prejudice to an adequate and complete examination being carried out and to the applicant's effective access to basic principles and guarantees provided for in this Directive.

⁽¹⁾ OJ L 337, 20.12.2011, p. 9.

- (21) As long as an applicant can show good cause, the lack of documents on entry or the use of forged documents should not *per se* entail an automatic recourse to border or accelerated procedures.
- (22) It is also in the interests of both Member States and applicants to ensure a correct recognition of international protection needs already at first instance. To that end, applicants should be provided at first instance, free of charge, with legal and procedural information, taking into account their particular circumstances. The provision of such information should, *inter alia*, enable the applicants to better understand the procedure, thus helping them to comply with the relevant obligations. It would be disproportionate to require Member States to provide such information only through the services of qualified lawyers. Member States should therefore have the possibility to use the most appropriate means to provide such information, such as through non-governmental organisations or professionals from government authorities or specialised services of the State.
- (23) In appeals procedures, subject to certain conditions, applicants should be granted free legal assistance and representation provided by persons competent to provide them under national law. Furthermore, at all stages of the procedure, applicants should have the right to consult, at their own cost, legal advisers or counsellors admitted or permitted as such under national law.
- (24) The notion of public order may, *inter alia*, cover a conviction for having committed a serious crime.
- (25) In the interests of a correct recognition of those persons in need of protection as refugees within the meaning of Article 1 of the Geneva Convention or as persons eligible for subsidiary protection, every applicant should have an effective access to procedures, the opportunity to cooperate and properly communicate with the competent authorities so as to present the relevant facts of his or her case and sufficient procedural guarantees to pursue his or her case throughout all stages of the procedure. Moreover, the procedure in which an application for international protection is examined should normally provide an applicant at least with: the right to stay pending a decision by the determining authority; access to the services of an interpreter for submitting his or 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 organisations providing advice or counselling to applicants for international protection; the right to appropriate notification of a decision and of the reasons for that decision in fact and in law; the opportunity to consult a legal adviser or other counsellor; the right to be informed of his or her legal position at decisive moments in the course of the procedure, in a language which he or she understands or is reasonably supposed to understand; and, in the case of a negative decision, the right to an effective remedy before a court or a tribunal.
- (26) With a view to ensuring effective access to the examination procedure, officials who first come into contact with persons seeking international protection, in particular officials carrying out the surveillance of land or maritime borders or conducting border checks, should receive relevant information and necessary training on how to recognise and deal with applications for international protection, *inter alia*, taking due account of relevant guidelines developed by EASO. 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 who make an application for international protection, with 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 on land and have their applications examined in accordance with this Directive.
- (27) Given that third-country nationals and stateless persons who have expressed their wish to apply for international protection are applicants for international protection, they should comply with the obligations, and benefit from the rights, under this Directive and Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection⁽¹⁾. To that end, Member States should register the fact that those persons are applicants for international protection as soon as possible.
- (28) In order to facilitate access to the examination procedure at border crossing points and in detention facilities, information should be made available on the possibility to apply for international protection. Basic communication necessary to enable the competent authorities to understand if persons declare their wish to apply for international protection should be ensured through interpretation arrangements.
- (29) Certain applicants may be in need of special procedural guarantees due, *inter alia*, to their age, gender, sexual orientation, gender identity, disability, serious illness, mental disorders or as a consequence of torture, rape or

⁽¹⁾ See page 96 of this Official Journal.

other serious forms of psychological, physical or sexual violence. Member States should endeavour to identify applicants in need of special procedural guarantees before a first instance decision is taken. Those applicants should be provided with adequate support, including sufficient time, in order to create the conditions necessary for their effective access to procedures and for presenting the elements needed to substantiate their application for international protection.

- (30) Where adequate support cannot be provided to an applicant in need of special procedural guarantees in the framework of accelerated or border procedures, such an applicant should be exempted from those procedures. The need for special procedural guarantees of a nature that could prevent the application of accelerated or border procedures should also mean that the applicant is provided with additional guarantees in cases where his or her appeal does not have automatic suspensive effect, with a view to making the remedy effective in his or her particular circumstances.
- (31) National measures dealing with identification and documentation of symptoms and signs of torture or other serious acts of physical or psychological violence, including acts of sexual violence, in procedures covered by this Directive may, 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).
- (32) 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 concept of safe third country, the concept of safe country of origin or the notion of subsequent applications.
- (33) The best interests of the child should be a primary consideration of Member States when applying this Directive, in accordance with the Charter of Fundamental Rights of the European Union (the Charter) and the 1989 United Nations Convention on the Rights of the Child. In assessing the best interest of the child, Member States should in particular take due account of the minor's well-being and social development, including his or her background.
- (34) Procedures for examining international protection needs should be such as to enable the competent authorities to conduct a rigorous examination of applications for international protection.
- (35) When, in the framework of an application being processed, the applicant is searched, that search should be carried by a person of the same sex. This should be without prejudice to a search carried out, for security reasons, on the basis of national law.
- (36) 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 those cases, Member States should be able to dismiss an application as inadmissible in accordance with the *res judicata* principle.
- (37) With respect to the involvement of the personnel of an authority other than the determining authority in conducting timely interviews on the substance of an application, the notion of 'timely' should be assessed against the time limits provided for in Article 31.
- (38) Many applications for international protection are made at the border or in a transit zone of a Member State prior to a decision on the entry of the applicant. Member States should be able to provide for admissibility and/or substantive examination procedures which would make it possible for such applications to be decided upon at those locations in well-defined circumstances.
- (39) In determining whether a situation of uncertainty prevails in the country of origin of an applicant, Member States should ensure that they obtain precise and up-to-date information from relevant sources such as EASO, UNHCR, the Council of Europe and other relevant international organisations. Member States should ensure that any postponement of conclusion of the procedure fully complies with their obligations under Directive 2011/95/EU and Article 41 of the Charter, without prejudice to the efficiency and fairness of the procedures under this Directive.
- (40) A key consideration for the well-foundedness of an application for international protection is the safety of the applicant in his or 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 or she presents counter-indications.

- (41) Given the level of harmonisation achieved on the qualification of third-country nationals and stateless persons as beneficiaries of international protection, common criteria should be established for designating third countries as safe countries of origin.
- (42) 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 that country. For this reason, it is important that, where an applicant shows that there are valid reasons to consider the country not to be safe in his or her particular circumstances, the designation of the country as safe can no longer be considered relevant for him or her.
- (43) Member States should examine all applications on the substance, i.e. assess whether the applicant in question qualifies for international protection in accordance with Directive 2011/95/EU, except where this Directive provides otherwise, in particular where it can reasonably be 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 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 that country.
- (44) Member States should not be obliged to assess the substance of an application for international protection where the applicant, due to a sufficient connection to a third country as defined by national law, can reasonably be expected to seek protection in that third country, and there are grounds for considering that the applicant will be admitted or readmitted to that country. Member States should only proceed on that basis where that particular applicant would be safe in the third country concerned. In order to avoid secondary movements of applicants, common principles should be established for the consideration or designation by Member States of third countries as safe.
- (45) 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, applications for international protection regarding applicants who enter their territory from such European third countries.
- (46) Where Member States apply safe country concepts on a case-by-case basis or designate countries as safe by adopting lists to that effect, they should take into account, inter alia, the guidelines and operating manuals and the information on countries of origin and activities, including EASO Country of Origin Information report methodology, referred to in Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office ⁽¹⁾, as well as relevant UNHCR guidelines.
- (47) In order to facilitate the regular exchange of information about the national application of the concepts of safe country of origin, safe third country and European safe third country as well as a regular review by the Commission of the use of those concepts by Member States, and to prepare for a potential further harmonisation in the future, Member States should notify or periodically inform the Commission about the third countries to which the concepts are applied. The Commission should regularly inform the European Parliament on the result of its reviews.
- (48) In order to ensure the correct application of the safe country concepts based on up-to-date information, Member States should conduct regular reviews of the situation in those countries based on a range of sources of information, including in particular information from other Member States, EASO, UNHCR, the Council of Europe and other relevant international organisations. When Member States become aware of a significant change in the human rights situation in a country designated by them as safe, they should ensure that a review of that situation is conducted as soon as possible and, where necessary, review the designation of that country as safe.
- (49) With respect to the withdrawal of refugee or subsidiary protection status, Member States should ensure that persons benefiting from international protection are duly informed of a possible reconsideration of their status and have the opportunity to submit their point of view before the authorities can take a reasoned decision to withdraw their status.
- (50) It reflects a basic principle of Union law that the decisions taken on an application for international protection, the decisions concerning a refusal to reopen the examination of an application after its discontinuation, and the decisions on the withdrawal of refugee or subsidiary protection status are subject to an effective remedy before a court or tribunal.

⁽¹⁾ OJ L 132, 29.5.2010, p. 11.

- (51) In accordance with Article 72 of the Treaty on the Functioning of the European Union (TFEU), 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.
- (52) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ⁽¹⁾ governs the processing of personal data carried out in the Member States pursuant to this Directive.
- (53) This Directive does not deal with procedures between Member States governed by Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person ⁽²⁾.
- (54) This Directive should apply to applicants to whom Regulation (EU) No 604/2013 applies, in addition and without prejudice to the provisions of that Regulation.
- (55) The implementation of this Directive should be evaluated at regular intervals.
- (56) Since the objective of this Directive, namely to establish common procedures for granting and withdrawing international protection, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Directive, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). 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 that objective.
- (57) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011 ⁽³⁾, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (58) In accordance with Articles 1, 2 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the TEU and the TFEU, and without prejudice to Article 4 of that Protocol, the United Kingdom and Ireland are not taking part in the adoption of this Directive and are not bound by it or subject to its application.
- (59) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.
- (60) This Directive respects the fundamental rights and observes the principles recognised by the Charter. In particular, this Directive seeks to ensure full respect for human dignity and to promote the application of Articles 1, 4, 18, 19, 21, 23, 24, and 47 of the Charter and has to be implemented accordingly.
- (61) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with Directive 2005/85/EC. The obligation to transpose the provisions which are unchanged arises under that Directive.
- (62) This Directive should be without prejudice to the obligations of the Member States relating to the time limit for transposition into national law of Directive 2005/85/EC set out in Annex II, Part B,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Purpose

The purpose of this Directive is to establish common procedures for granting and withdrawing international protection pursuant to Directive 2011/95/EU.

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;

⁽¹⁾ OJ L 281, 23.11.1995, p. 31.

⁽²⁾ See page 31 of this Official Journal.

⁽³⁾ OJ C 369, 17.12.2011, p. 14.

- (b) 'application for international protection' or 'application' means a request made by a third-country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status, and who does not explicitly request another kind of protection outside the scope of Directive 2011/95/EU, that can be applied for separately;
- (c) 'applicant' means a third-country national or stateless person who has made an application for international protection in respect of which a final decision has not yet been taken;
- (d) 'applicant in need of special procedural guarantees' means an applicant whose ability to benefit from the rights and comply with the obligations provided for in this Directive is limited due to individual circumstances;
- (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 2011/95/EU and which is no longer subject to a remedy within the framework of Chapter V of this Directive, irrespective of whether such remedy has the effect of allowing applicants to remain in the Member States concerned pending its outcome;
- (f) 'determining authority' means any quasi-judicial or administrative body in a Member State responsible for examining applications for international protection competent to take decisions at first instance in such cases;
- (g) 'refugee' means a third-country national or a stateless person who fulfils the requirements of Article 2(d) of Directive 2011/95/EU;
- (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 2011/95/EU;
- (i) 'international protection' means refugee status and subsidiary protection status as defined in points (j) and (k);
- (j) 'refugee status' means the recognition by a Member State of a third-country national or a stateless person as a refugee;
- (k) 'subsidiary protection status' means the recognition by a Member State of a third-country national or a stateless person as a person eligible for subsidiary protection;
- (l) 'minor' means a third-country national or a stateless person below the age of 18 years;
- (m) 'unaccompanied minor' means an unaccompanied minor as defined in Article 2(l) of Directive 2011/95/EU;
- (n) 'representative' means a person or an organisation appointed by the competent bodies in order to assist and represent an unaccompanied minor in procedures provided for in this Directive with a view to ensuring the best interests of the child and exercising legal capacity for the minor where necessary. Where an organisation is appointed as a representative, it shall designate a person responsible for carrying out the duties of representative in respect of the unaccompanied minor, in accordance with this Directive;
- (o) 'withdrawal of international protection' 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 2011/95/EU;
- (p) 'remain in the Member State' means to remain in the territory, including at the border or in transit zones, of the Member State in which the application for international protection has been made or is being examined;
- (q) 'subsequent application' means a further application for international protection made after a final decision has been taken on a previous application, including cases where the applicant has explicitly withdrawn his or her application and cases where the determining authority has rejected an application following its implicit withdrawal in accordance with Article 28(1).

Article 3

Scope

1. This Directive shall apply to all applications for international protection made in the territory, including at the border, in the territorial waters or in the transit zones of the Member States, and to the withdrawal of international protection.

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

3. Member States may decide to apply this Directive in procedures for deciding on applications for any kind of protection falling outside of the scope of Directive 2011/95/EU.

*Article 4***Responsible authorities**

1. Member States shall designate for all procedures a determining authority which will be responsible for an appropriate examination of applications in accordance with this Directive. Member States shall ensure that such authority is provided with appropriate means, including sufficient competent personnel, to carry out its tasks in accordance with this Directive.

2. Member States may provide that an authority other than that referred to in paragraph 1 shall be responsible for the purposes of:

- (a) processing cases pursuant to Regulation (EU) No 604/2013; and
- (b) granting or refusing permission to enter in the framework of the procedure provided for in Article 43, subject to the conditions as set out therein and on the basis of the reasoned opinion of the determining authority.

3. Member States shall ensure that the personnel of the determining authority referred to in paragraph 1 are properly trained. To that end, Member States shall provide for relevant training which shall include the elements listed in Article 6(4)(a) to (e) of Regulation (EU) No 439/2010. Member States shall also take into account the relevant training established and developed by the European Asylum Support Office (EASO). Persons interviewing applicants pursuant to this Directive shall also have acquired general knowledge of problems which could adversely affect the applicants' ability to be interviewed, such as indications that the applicant may have been tortured in the past.

4. Where an authority is designated in accordance with paragraph 2, Member States shall ensure that the personnel of that authority have the appropriate knowledge or receive the necessary training to fulfil their obligations when implementing this Directive.

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

*Article 5***More favourable provisions**

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

CHAPTER II

BASIC PRINCIPLES AND GUARANTEES*Article 6***Access to the procedure**

1. When a person makes an application for international protection to an authority competent under national law for registering such applications, the registration shall take place no later than three working days after the application is made.

If the application for international protection is made to other authorities which are likely to receive such applications, but not competent for the registration under national law, Member States shall ensure that the registration shall take place no later than six working days after the application is made.

Member States shall ensure that those other authorities which are likely to receive applications for international protection such as the police, border guards, immigration authorities and personnel of detention facilities have the relevant information and that their personnel receive the necessary level of training which is appropriate to their tasks and responsibilities and instructions to inform applicants as to where and how applications for international protection may be lodged.

2. Member States shall ensure that a person who has made an application for international protection has an effective opportunity to lodge it as soon as possible. Where the applicant does not lodge his or her application, Member States may apply Article 28 accordingly.

3. Without prejudice to paragraph 2, Member States may require that applications for international protection be lodged in person and/or at a designated place.

4. Notwithstanding paragraph 3, an application for international protection shall be deemed to have been lodged once a form submitted by the applicant or, where provided for in national law, an official report, has reached the competent authorities of the Member State concerned.

5. Where simultaneous applications for international protection by a large number of third-country nationals or stateless persons make it very difficult in practice to respect the time limit laid down in paragraph 1, Member States may provide for that time limit to be extended to 10 working days.

*Article 7***Applications made on behalf of dependants or minors**

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

2. Member States may provide that an application may be made by an applicant on behalf of his or her dependants. In such cases, Member States shall ensure that dependent 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 dependent adult is conducted. Before consent is requested, each dependent adult shall be informed in private of the relevant procedural consequences of the lodging of the application on his or her behalf and of his or her right to make a separate application for international protection.

3. Member States shall ensure that a minor has the right to make an application for international protection either on his or her own behalf, if he or she has the legal capacity to act in procedures according to the law of the Member State concerned, or through his or her parents or other adult family members, or an adult responsible for him or her, whether by law or by the practice of the Member State concerned, or through a representative.

4. Member States shall ensure that the appropriate bodies referred to in Article 10 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals⁽¹⁾ have the right to lodge an application for international protection on behalf of an unaccompanied minor if, on the basis of an individual assessment of his or her personal situation, those bodies are of the opinion that the minor may have protection needs pursuant to Directive 2011/95/EU.

5. Member States may determine in national legislation:

- (a) the cases in which a minor can make an application on his or 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 25(1)(a);
- (c) the cases in which the lodging of an application for international protection is deemed to constitute also the lodging of an application for international protection for any unmarried minor.

Article 8

Information and counselling in detention facilities and at border crossing points

1. Where there are indications that third-country nationals or stateless persons held in detention facilities or present at border crossing points, including transit zones, at external borders, may wish to make an application for international protection, Member States shall provide them with information on the possibility to do so. In those detention facilities and crossing points, Member States shall make arrangements for interpretation to the extent necessary to facilitate access to the asylum procedure.

2. Member States shall ensure that organisations and persons providing advice and counselling to applicants have effective access to applicants present at border crossing points, including transit zones, at external borders. Member States may provide for rules covering the presence of such organisations and persons in those crossing points and in particular that access is subject to an agreement with the competent authorities of the Member States. Limits on such access may be imposed only where, by virtue of national law, they are objectively necessary for the security, public order or administrative management of the crossing points concerned, provided that access is not thereby severely restricted or rendered impossible.

Article 9

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. That right to remain shall not constitute an entitlement to a residence permit.

2. Member States may make an exception only where a person makes a subsequent application referred to in Article 41 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 warrant⁽²⁾ or otherwise, or to a third country or to international criminal courts or tribunals.

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

⁽¹⁾ OJ L 348, 24.12.2008, p. 98.

⁽²⁾ 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).

*Article 10***Requirements for the examination of applications**

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

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

3. Member States shall ensure that decisions by the determining authority on applications for international protection are taken after an appropriate examination. To that end, Member States shall ensure that:

- (a) applications are examined and decisions are taken individually, objectively and impartially;
- (b) precise and up-to-date information is obtained from various sources, such as EASO and UNHCR and relevant international human rights organisations, as to the general situation prevailing in the countries of origin of applicants and, where necessary, in countries through which they have transited, and that such information is made available to the personnel responsible for examining applications and taking decisions;
- (c) the personnel examining applications and taking decisions know the relevant standards applicable in the field of asylum and refugee law;
- (d) the personnel examining applications and taking decisions have the possibility to seek advice, whenever necessary, from experts on particular issues, such as medical, cultural, religious, child-related or gender issues.

4. 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 3(b), necessary for the fulfilment of their task.

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

*Article 11***Requirements for a decision by the determining authority**

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

2. Member States shall also ensure that, where an application is rejected 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 provide information on how to challenge a negative decision in writing in conjunction with a decision where the applicant has been provided with such information at an earlier stage either in writing or by electronic means accessible to the applicant.

3. For the purposes of Article 7(2), and whenever the application is based on the same grounds, Member States may take a single decision, covering all dependants, unless to do so would lead to the disclosure of particular circumstances of an applicant which could jeopardise his or her interests, in particular in cases involving gender, sexual orientation, gender identity and/or age-based persecution. In such cases, a separate decision shall be issued to the person concerned.

*Article 12***Guarantees for applicants**

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

- (a) they shall be informed in a language which they understand or are reasonably 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, the means at their disposal for fulfilling the obligation to submit the elements as referred to in Article 4 of Directive 2011/95/EU, as well as of the consequences of an explicit or implicit withdrawal of the application. That 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 13;
- (b) they shall receive the services of an interpreter for submitting their case to the competent authorities whenever necessary. Member States shall consider it necessary to provide those services at least when the applicant is to be interviewed as referred to in Articles 14 to 17 and 34 and appropriate communication cannot be ensured without such services. In that case and in other cases where the competent authorities call upon the applicant, those services shall be paid for out of public funds;
- (c) they shall not be denied the opportunity to communicate with UNHCR or with any other organisation providing legal advice or other counselling to applicants in accordance with the law of the Member State concerned;

- (d) they and, if applicable, their legal advisers or other counsellors in accordance with Article 23(1), shall have access to the information referred to in Article 10(3)(b) and to the information provided by the experts referred to in Article 10(3)(d), where the determining authority has taken that information into consideration for the purpose of taking a decision on their application;
- (e) they shall be given notice in reasonable time of the decision by the determining authority on their application. If a legal adviser or other counsellor is legally representing the applicant, Member States may choose to give notice of the decision to him or her instead of to the applicant;
- (f) they shall be informed of the result of the decision by the determining authority in a language that they understand or are reasonably supposed to understand when they are not assisted or represented by a legal adviser or other counsellor. The information provided shall include information on how to challenge a negative decision in accordance with the provisions of Article 11(2).

2. With respect to the procedures provided for in Chapter V, Member States shall ensure that all applicants enjoy guarantees equivalent to the ones referred to in paragraph 1(b) to (e).

Article 13

Obligations of the applicants

1. Member States shall impose upon applicants the obligation to cooperate with the competent authorities with a view to establishing their identity and other elements referred to in Article 4(2) of Directive 2011/95/EU. Member States may impose upon applicants other obligations to cooperate with the competent authorities insofar as such obligations are necessary for the processing of the application.
2. In particular, Member States may provide that:
 - (a) applicants are required to report to the competent authorities or to appear before them in person, either without delay or at a specified time;
 - (b) applicants have to hand over documents in their possession relevant to the examination of the application, such as their passports;
 - (c) applicants are required to inform the competent authorities of their current place of residence or address and of any changes thereof as soon as possible. Member States may provide that the applicant shall have to accept any communication at the most recent place of residence or address which he or she indicated accordingly;

- (d) the competent authorities may search the applicant and the items which he or she is carrying. Without prejudice to any search carried out for security reasons, a search of the applicant's person under this Directive shall be carried out by a person of the same sex with full respect for the principles of human dignity and of physical and psychological integrity;
- (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 or she has previously been informed thereof.

Article 14

Personal interview

1. Before a decision is taken by the determining authority, the applicant shall be given the opportunity of a personal interview on his or her application for international protection with a person competent under national law to conduct such an interview. Personal interviews on the substance of the application for international protection shall be conducted by the personnel of the determining authority. This subparagraph shall be without prejudice to Article 42(2)(b).

Where simultaneous applications for international protection by a large number of third-country nationals or stateless persons make it impossible in practice for the determining authority to conduct timely interviews on the substance of each application, Member States may provide that the personnel of another authority be temporarily involved in conducting such interviews. In such cases, the personnel of that other authority shall receive in advance the relevant training which shall include the elements listed in Article 6(4)(a) to (e) of Regulation (EU) No 439/2010. Persons conducting personal interviews of applicants pursuant to this Directive shall also have acquired general knowledge of problems which could adversely affect an applicant's ability to be interviewed, such as indications that the applicant may have been tortured in the past.

Where a person has lodged an application for international protection on behalf of his or her dependants, each dependent adult shall be given the opportunity of a personal interview.

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 determining authority is of the opinion that the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond his or her control. When in doubt, the determining authority shall consult a medical professional to establish whether the condition that makes the applicant unfit or unable to be interviewed is of a temporary or enduring nature.

Where a personal interview is not conducted pursuant to point (b) or, where applicable, with the dependant, reasonable efforts shall be made to allow the applicant or the dependant to submit further information.

3. 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 international protection.

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

5. Irrespective of Article 28(1), Member States, when deciding on an application for international protection, may take into account the fact that the applicant failed to appear for the personal interview, unless he or she had good reasons for the failure to appear.

Article 15

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 competent to take account of the personal and general circumstances surrounding the application, including the applicant's cultural origin, gender, sexual orientation, gender identity or vulnerability;

- (b) wherever possible, provide for the interview with the applicant to be conducted by a person of the same sex if the applicant so requests, unless the determining authority has reason to believe that such a request is based on grounds which are not related to difficulties on the part of the applicant to present the grounds of his or her application in a comprehensive manner;
- (c) select an interpreter who is able to ensure appropriate communication between the applicant and the person who conducts the interview. The communication shall take place in the language preferred by the applicant unless there is another language which he or she understands and in which he or she is able to communicate clearly. Wherever possible, Member States shall provide an interpreter of the same sex if the applicant so requests, unless the determining authority has reasons to believe that such a request is based on grounds which are not related to difficulties on the part of the applicant to present the grounds of his or her application in a comprehensive manner;
- (d) ensure that the person who conducts the 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 manner.

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

Article 16

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 an adequate opportunity to present elements needed to substantiate the application in accordance with Article 4 of Directive 2011/95/EU 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 the applicant's statements.

Article 17

Report and recording of personal interviews

1. Member States shall ensure that either a thorough and factual report containing all substantive elements or a transcript is made of every personal interview.
2. Member States may provide for audio or audiovisual recording of the personal interview. Where such a recording is made, Member States shall ensure that the recording or a transcript thereof is available in connection with the applicant's file.

3. Member States shall ensure that the applicant has the opportunity to make comments and/or provide clarification orally and/or in writing with regard to any mistranslations or misconceptions appearing in the report or in the transcript, at the end of the personal interview or within a specified time limit before the determining authority takes a decision. To that end, Member States shall ensure that the applicant is fully informed of the content of the report or of the substantive elements of the transcript, with the assistance of an interpreter if necessary. Member States shall then request the applicant to confirm that the content of the report or the transcript correctly reflects the interview.

When the personal interview is recorded in accordance with paragraph 2 and the recording is admissible as evidence in the appeals procedures referred to in Chapter V, Member States need not request the applicant to confirm that the content of the report or the transcript correctly reflects the interview. Without prejudice to Article 16, where Member States provide for both a transcript and a recording of the personal interview, Member States need not allow the applicant to make comments on and/or provide clarification of the transcript.

4. Where an applicant refuses to confirm that the content of the report or the transcript correctly reflects the personal interview, the reasons for his or her refusal shall be entered in the applicant's file.

Such refusal shall not prevent the determining authority from taking a decision on the application.

5. Applicants and their legal advisers or other counsellors, as defined in Article 23, shall have access to the report or the transcript and, where applicable, the recording, before the determining authority takes a decision.

Where Member States provide for both a transcript and a recording of the personal interview, Member States need not provide access to the recording in the procedures at first instance referred to in Chapter III. In such cases, they shall nevertheless provide access to the recording in the appeals procedures referred to in Chapter V.

Without prejudice to paragraph 3 of this Article, where the application is examined in accordance with Article 31(8), Member States may provide that access to the report or the transcript, and where applicable, the recording, is granted at the same time as the decision is made.

Article 18

Medical examination

1. Where the determining authority deems it relevant for the assessment of an application for international protection in accordance with Article 4 of Directive 2011/95/EU, Member States shall, subject to the applicant's consent, arrange for a medical examination of the applicant concerning signs that might indicate past persecution or serious harm. Alternatively, Member States may provide that the applicant arranges for such a medical examination.

The medical examinations referred to in the first subparagraph shall be carried out by qualified medical professionals and the result thereof shall be submitted to the determining authority as soon as possible. Member States may designate the medical professionals who may carry out such medical examinations. An applicant's refusal to undergo such a medical examination shall not prevent the determining authority from taking a decision on the application for international protection.

Medical examinations carried out in accordance with this paragraph shall be paid for out of public funds.

2. When no medical examination is carried out in accordance with paragraph 1, Member States shall inform applicants that they may, on their own initiative and at their own cost, arrange for a medical examination concerning signs that might indicate past persecution or serious harm.

3. The results of the medical examinations referred to in paragraphs 1 and 2 shall be assessed by the determining authority along with the other elements of the application.

Article 19

Provision of legal and procedural information free of charge in procedures at first instance

1. In the procedures at first instance provided for in Chapter III, Member States shall ensure that, on request, applicants are provided with legal and procedural information free of charge, including, at least, information on the procedure in the light of the applicant's particular circumstances. In the event of a negative decision on an application at first instance, Member States shall also, on request, provide applicants with information — in addition to that given in accordance with Article 11(2) and Article 12(1)(f) — in order to clarify the reasons for such decision and explain how it can be challenged.

2. The provision of legal and procedural information free of charge shall be subject to the conditions laid down in Article 21.

Article 20

Free legal assistance and representation in appeals procedures

1. Member States shall ensure that free legal assistance and representation is granted on request in the appeals procedures provided for in Chapter V. It 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.

2. Member States may also provide free legal assistance and/or representation in the procedures at first instance provided for in Chapter III. In such cases, Article 19 shall not apply.

3. Member States may provide that free legal assistance and representation not be granted where the applicant's appeal is considered by a court or tribunal or other competent authority to have no tangible prospect of success.

Where a decision not to grant free legal assistance and representation pursuant to this paragraph is taken by an authority which is not a court or tribunal, Member States shall ensure that the applicant has the right to an effective remedy before a court or tribunal against that decision.

In the application of this paragraph, Member States shall ensure that legal assistance and representation is not arbitrarily restricted and that the applicant's effective access to justice is not hindered.

4. Free legal assistance and representation shall be subject to the conditions laid down in Article 21.

Article 21

Conditions for the provision of legal and procedural information free of charge and free legal assistance and representation

1. Member States may provide that the legal and procedural information free of charge referred to in Article 19 is provided by non-governmental organisations, or by professionals from government authorities or from specialised services of the State.

The free legal assistance and representation referred to in Article 20 shall be provided by such persons as admitted or permitted under national law.

2. Member States may provide that legal and procedural information free of charge referred to in Article 19 and free legal assistance and representation referred to in Article 20 are granted:

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

(b) only through the services provided by legal advisers or other counsellors specifically designated by national law to assist and represent applicants.

Member States may provide that the free legal assistance and representation referred to in Article 20 is granted only for appeals procedures in accordance with Chapter V before a court or tribunal of first instance and not for any further appeals or reviews provided for under national law, including rehearings or reviews of appeals.

Member States may also provide that the free legal assistance and representation referred to in Article 20 is not granted to applicants who are no longer present on their territory in application of Article 41(2)(c).

3. Member States may lay down rules concerning the modalities for filing and processing requests for legal and procedural information free of charge under Article 19 and for free legal assistance and representation under Article 20.

4. Member States may also:

(a) impose monetary and/or time limits on the provision of legal and procedural information free of charge referred to in Article 19 and on the provision of free legal assistance and representation referred to in Article 20, provided that such limits do not arbitrarily restrict access to the provision of legal and procedural information and legal assistance and 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.

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

Article 22

Right to legal assistance and representation at all stages of the procedure

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

2. Member States may allow non-governmental organisations to provide legal assistance and/or representation to applicants in the procedures provided for in Chapter III and Chapter V in accordance with national law.

Article 23

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, who assists or represents an applicant under the terms of national law, shall enjoy access to the information in the applicant's file upon the basis of which a decision is or will be made.

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

- (a) make access to such information or sources available to the authorities referred to in Chapter V; and
- (b) establish in national law procedures guaranteeing that the applicant's rights of defence are respected.

In respect of point (b), Member States may, in particular, grant access to such information or sources to a legal adviser or other counsellor who has undergone a security check, insofar as the information is relevant for examining the application or for taking a decision to withdraw international protection.

2. Member States shall ensure that the legal adviser or other counsellor who assists or represents an applicant has access to closed areas, such as detention facilities and transit zones, for the purpose of consulting that applicant, in accordance with Article 10(4) and Article 18(2)(b) and (c) of Directive 2013/33/EU.

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

Member States may stipulate that the legal adviser or other counsellor may only intervene at the end of the personal interview.

4. Without prejudice to this Article or to Article 25(1)(b), Member States may provide rules covering the presence of legal advisers or other counsellors at all interviews in the procedure.

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

Without prejudice to Article 25(1)(b), the absence of a legal adviser or other counsellor shall not prevent the competent authority from conducting a personal interview with the applicant.

Article 24

Applicants in need of special procedural guarantees

1. Member States shall assess within a reasonable period of time after an application for international protection is made whether the applicant is an applicant in need of special procedural guarantees.

2. The assessment referred to in paragraph 1 may be integrated into existing national procedures and/or into the assessment referred to in Article 22 of Directive 2013/33/EU and need not take the form of an administrative procedure.

3. Member States shall ensure that where applicants have been identified as applicants in need of special procedural guarantees, they are provided with adequate support in order to allow them to benefit from the rights and comply with the obligations of this Directive throughout the duration of the asylum procedure.

Where such adequate support cannot be provided within the framework of the procedures referred to in Article 31(8) and Article 43, in particular where Member States consider that the applicant is in need of special procedural guarantees as a result of torture, rape or other serious forms of psychological, physical or sexual violence, Member States shall not apply, or shall cease to apply, Article 31(8) and Article 43. Where Member States apply Article 46(6) to applicants to whom Article 31(8) and Article 43 cannot be applied pursuant to this subparagraph, Member States shall provide at least the guarantees provided for in Article 46(7).

4. Member States shall ensure that the need for special procedural guarantees is also addressed, in accordance with this Directive, where such a need becomes apparent at a later stage of the procedure, without necessarily restarting the procedure.

Article 25

Guarantees for unaccompanied minors

1. With respect to all procedures provided for in this Directive and without prejudice to the provisions of Articles 14 to 17, Member States shall:

- (a) take measures as soon as possible to ensure that a representative represents and assists the unaccompanied minor to enable him or her to benefit from the rights and comply with the obligations provided for in this Directive. The unaccompanied minor shall be informed immediately of the appointment of a representative. The representative shall perform his or her duties in accordance with the principle of the best interests of the child and shall have the necessary expertise to that end. The person acting as representative shall be changed only when necessary. Organisations or individuals whose interests conflict or could potentially conflict with those of the unaccompanied minor shall not be eligible to become representatives. The representative may also be the representative referred to in Directive 2013/33/EU;
- (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 or herself for the personal interview. Member States shall ensure that a representative and/or a legal adviser or other counsellor admitted or permitted as such under national law are present at that interview and have an opportunity to ask questions or make comments, within the framework set by the person who conducts the interview.

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 will in all likelihood reach the age of 18 before a decision at first instance is taken.

3. Member States shall ensure that:

- (a) if an unaccompanied minor has a personal interview on his or her application for international protection as referred to in Articles 14 to 17 and 34, 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.

4. Unaccompanied minors and their representatives shall be provided, free of charge, with legal and procedural information

as referred to in Article 19 also in the procedures for the withdrawal of international protection provided for in Chapter IV.

5. Member States may use medical examinations to determine the age of unaccompanied minors within the framework of the examination of an application for international protection where, following general statements or other relevant indications, Member States have doubts concerning the applicant's age. If, thereafter, Member States are still in doubt concerning the applicant's age, they shall assume that the applicant is a minor.

Any medical examination shall be performed with full respect for the individual's dignity, shall be the least invasive examination and shall be carried out by qualified medical professionals allowing, to the extent possible, for a reliable result.

Where medical examinations are used, Member States shall ensure that:

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

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

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

Where Member States, in the course of the asylum procedure, identify a person as an unaccompanied minor, they may:

- (a) apply or continue to apply Article 31(8) only if:
 - (i) the applicant comes from a country which satisfies the criteria to be considered a safe country of origin within the meaning of this Directive; or

- (ii) the applicant has introduced a subsequent application for international protection that is not inadmissible in accordance with Article 40(5); or
 - (iii) the applicant may for serious reasons be considered 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 or public order under national law;
- (b) apply or continue to apply Article 43, in accordance with Articles 8 to 11 of Directive 2013/33/EU, only if:
- (i) the applicant comes from a country which satisfies the criteria to be considered a safe country of origin within the meaning of this Directive; or
 - (ii) the applicant has introduced a subsequent application; or
 - (iii) the applicant may for serious reasons be considered 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 or public order under national law; or
 - (iv) there are reasonable grounds to consider that a country which is not a Member State is a safe third country for the applicant, pursuant to Article 38; or
 - (v) the applicant has misled the authorities by presenting false documents; or
 - (vi) in bad faith, the applicant has destroyed or disposed of an identity or travel document that would have helped establish his or her identity or nationality.

Member States may apply points (v) and (vi) only in individual cases where there are serious grounds for considering that the applicant is attempting to conceal relevant elements which would likely lead to a negative decision and provided that the applicant has been given full opportunity, taking into account the special procedural needs of unaccompanied minors, to show good cause for the actions referred to in points (v) and (vi), including by consulting with his or her representative;

- (c) consider the application to be inadmissible in accordance with Article 33(2)(c) if a country which is not a Member State is considered as a safe third country for the applicant pursuant to Article 38, provided that to do so is in the minor's best interests;
- (d) apply the procedure referred to in Article 20(3) where the minor's representative has legal qualifications in accordance with national law.

Without prejudice to Article 41, in applying Article 46(6) to unaccompanied minors, Member States shall provide at least the guarantees provided for in Article 46(7) in all cases.

Article 26

Detention

1. Member States shall not hold a person in detention for the sole reason that he or she is an applicant. The grounds for and conditions of detention and the guarantees available to detained applicants shall be in accordance with Directive 2013/33/EU.

2. Where an applicant is held in detention, Member States shall ensure that there is a possibility of speedy judicial review in accordance with Directive 2013/33/EU.

Article 27

Procedure in the event of withdrawal of the application

1. Insofar as Member States provide for the possibility of explicit withdrawal of the application under national law, when an applicant explicitly withdraws his or her application for international protection, Member States shall ensure that the determining authority takes a decision either to discontinue the examination or to reject the application.

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

Article 28

Procedure in the event of implicit withdrawal or abandonment of the application

1. When there is reasonable cause to consider that an applicant has implicitly withdrawn or abandoned his or her application, Member States shall ensure that the determining authority takes a decision either to discontinue the examination or, provided that the determining authority considers the application to be unfounded on the basis of an adequate examination of its substance in line with Article 4 of Directive 2011/95/EU, to reject the application.

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

- (a) he or she has failed to respond to requests to provide information essential to his or her application in terms of Article 4 of Directive 2011/95/EU or has not appeared for a personal interview as provided for in Articles 14 to 17 of this Directive, unless the applicant demonstrates within a reasonable time that his or her failure was due to circumstances beyond his or her control;

(b) he or she has absconded or left without authorisation the place where he or she lived or was held, without contacting the competent authority within a reasonable time, or he or she has not within a reasonable time complied with reporting duties or other obligations to communicate, unless the applicant demonstrates that this was due to circumstances beyond his or her control.

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

2. Member States shall ensure that an 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 or her case be reopened or to make a new application which shall not be subject to the procedure referred to in Articles 40 and 41.

Member States may provide for a time limit of at least nine months after which the applicant's case can no longer be reopened or the new application may be treated as a subsequent application and subject to the procedure referred to in Articles 40 and 41. Member States may provide that the applicant's case may be reopened only once.

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 resume the examination at the stage where it was discontinued.

3. This Article shall be without prejudice to Regulation (EU) No 604/2013.

Article 29

The role of UNHCR

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

Article 30

Collection of information on individual cases

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

- (a) disclose information regarding individual applications for international protection, or the fact that an application has been made, to the alleged actor(s) of persecution or serious harm;
- (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 or his or her dependants, or the liberty and security of his or her family members still living in the country of origin.

CHAPTER III

PROCEDURES AT FIRST INSTANCE

SECTION I

Article 31

Examination procedure

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

Where an application is subject to the procedure laid down in Regulation (EU) No 604/2013, the time limit of six months shall start to run from the moment the Member State responsible for its examination is determined in accordance with that Regulation, the applicant is on the territory of that Member State and has been taken in charge by the competent authority.

Member States may extend the time limit of six months set out in this paragraph for a period not exceeding a further nine months, where:

- (a) complex issues of fact and/or law are involved;

- (b) a large number of third-country nationals or stateless persons simultaneously apply for international protection, making it very difficult in practice to conclude the procedure within the six-month time limit;
- (c) where the delay can clearly be attributed to the failure of the applicant to comply with his or her obligations under Article 13.

By way of exception, Member States may, in duly justified circumstances, exceed the time limits laid down in this paragraph by a maximum of three months where necessary in order to ensure an adequate and complete examination of the application for international protection.

4. Without prejudice to Articles 13 and 18 of Directive 2011/95/EU, Member States may postpone concluding the examination procedure where the determining authority cannot reasonably be expected to decide within the time-limits laid down in paragraph 3 due to an uncertain situation in the country of origin which is expected to be temporary. In such a case, Member States shall:

- (a) conduct reviews of the situation in that country of origin at least every six months;
- (b) inform the applicants concerned within a reasonable time of the reasons for the postponement;
- (c) inform the Commission within a reasonable time of the postponement of procedures for that country of origin.

5. In any event, Member States shall conclude the examination procedure within a maximum time limit of 21 months from the lodging of the application.

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

- (a) be informed of the delay; and
- (b) receive, upon his or her request, information on the reasons for the delay and the time-frame within which the decision on his or her application is to be expected.

7. Member States may prioritise an examination of an application for international protection in accordance with the basic principles and guarantees of Chapter II in particular:

- (a) where the application is likely to be well-founded;
- (b) where the applicant is vulnerable, within the meaning of Article 22 of Directive 2013/33/EU, or is in need of

special procedural guarantees, in particular unaccompanied minors.

8. Member States may provide that an examination procedure in accordance with the basic principles and guarantees of Chapter II be accelerated and/or conducted at the border or in transit zones in accordance with Article 43 if:

- (a) the applicant, in submitting his or her application and presenting the facts, has only raised issues that are not relevant to the examination of whether he or she qualifies as a beneficiary of international protection by virtue of Directive 2011/95/EU; or
- (b) the applicant is from a safe country of origin within the meaning of this Directive; or
- (c) the applicant has misled the authorities by presenting false information or documents or by withholding relevant information or documents with respect to his or her identity and/or nationality that could have had a negative impact on the decision; or
- (d) it is likely that, in bad faith, the applicant has destroyed or disposed of an identity or travel document that would have helped establish his or her identity or nationality; or
- (e) the applicant has made clearly inconsistent and contradictory, clearly false or obviously improbable representations which contradict sufficiently verified country-of-origin information, thus making his or her claim clearly unconvincing in relation to whether he or she qualifies as a beneficiary of international protection by virtue of Directive 2011/95/EU; or
- (f) the applicant has introduced a subsequent application for international protection that is not inadmissible in accordance with Article 40(5); or
- (g) 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 or her removal; or
- (h) the applicant entered the territory of the Member State unlawfully or prolonged his or her stay unlawfully and, without good reason, has either not presented himself or herself to the authorities or not made an application for international protection as soon as possible, given the circumstances of his or her entry; or

- (i) the applicant refuses to comply with an obligation to have his or her fingerprints taken in accordance with Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of Eurodac for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes ⁽¹⁾; or
- (j) the applicant may, for serious reasons, be considered 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 or public order under national law.

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

Without prejudice to paragraphs 3 to 5, Member States may exceed those time limits where necessary in order to ensure an adequate and complete examination of the application for international protection.

Article 32

Unfounded applications

1. Without prejudice to Article 27, Member States may only consider an application to be unfounded if the determining authority has established that the applicant does not qualify for international protection pursuant to Directive 2011/95/EU.
2. In cases of unfounded applications in which any of the circumstances listed in Article 31(8) apply, Member States may also consider an application to be manifestly unfounded, where it is defined as such in the national legislation.

SECTION II

Article 33

Inadmissible applications

1. In addition to cases in which an application is not examined in accordance with Regulation (EU) No 604/2013, Member States are not required to examine whether the applicant qualifies for international protection in accordance with Directive 2011/95/EU where an application is considered inadmissible pursuant to this Article.
2. Member States may consider an application for international protection as inadmissible only if:

- (a) another Member State has granted international protection;
- (b) a country which is not a Member State is considered as a first country of asylum for the applicant, pursuant to Article 35;
- (c) a country which is not a Member State is considered as a safe third country for the applicant, pursuant to Article 38;
- (d) the application is a subsequent application, where no new elements or findings relating to the examination of whether the applicant qualifies as a beneficiary of international protection by virtue of Directive 2011/95/EU have arisen or have been presented by the applicant; or
- (e) a dependant of the applicant lodges an application, after he or she has in accordance with Article 7(2) consented to have his or her case be part of an application lodged on his or her behalf, and there are no facts relating to the dependant's situation which justify a separate application.

Article 34

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 33 in their particular circumstances before the determining authority decides on the admissibility of an application for international protection. 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 42 in the case of a subsequent application.

This paragraph shall be without prejudice to Article 4(2)(a) of this Directive and to Article 5 of Regulation (EU) No 604/2013.

2. Member States may provide that the personnel of authorities other than the determining authority conduct the personal interview on the admissibility of the application for international protection. In such cases, Member States shall ensure that such personnel receive in advance the necessary basic training, in particular with respect to international human rights law, the Union asylum *acquis* and interview techniques.

SECTION III

Article 35

The concept of first country of asylum

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

⁽¹⁾ See page 1 of this Official Journal.

(a) he or she has been recognised in that country as a refugee and he or she can still avail himself/herself of that protection; or

(b) he or she otherwise enjoys sufficient protection in that country, including benefiting from the principle of *non-refoulement*,

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

In applying the concept of first country of asylum to the particular circumstances of an applicant, Member States may take into account Article 38(1). The applicant shall be allowed to challenge the application of the first country of asylum concept to his or her particular circumstances.

Article 36

The concept of safe country of origin

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

(a) he or she has the nationality of that country; or

(b) he or she is a stateless person and was formerly habitually resident in that country,

and he or she has not submitted any serious grounds for considering the country not to be a safe country of origin in his or her particular circumstances and in terms of his or her qualification as a beneficiary of international protection in accordance with Directive 2011/95/EU.

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

Article 37

National designation of third countries as safe countries of origin

1. Member States may retain or introduce legislation that allows, in accordance with Annex I, for the national designation of safe countries of origin for the purposes of examining applications for international protection.

2. Member States shall regularly review the situation in third countries designated as safe countries of origin in accordance with this Article.

3. 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, EASO, UNHCR, the Council of Europe and other relevant international organisations.

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

Article 38

The concept of safe third country

1. Member States may apply the safe third country concept only where the competent authorities are satisfied that a person seeking 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;

(b) there is no risk of serious harm as defined in Directive 2011/95/EU;

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

(d) the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected; and

(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 law, including:

(a) rules requiring a connection between the applicant 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 the third country is not safe in his or her particular circumstances. The applicant shall also be allowed to challenge the existence of a connection between him or 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 or 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 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.

Article 39

The concept of European safe third country

1. Member States may provide that no, or no full, examination of the application for international protection and of the safety of the applicant in his or 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 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.

3. The applicant shall be allowed to challenge the application of the concept of European safe third country on the grounds that the third country concerned is not safe in his or her particular circumstances.

4. 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*, including providing for exceptions from the application of this Article for humanitarian or political reasons or for reasons of public international law.

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

- (a) inform the applicant accordingly; and

- (b) provide him or 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.

6. Where the safe third country does not readmit the applicant, 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 shall inform the Commission periodically of the countries to which this concept is applied in accordance with this Article.

SECTION IV

Article 40

Subsequent application

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

2. For the purpose of taking a decision on the admissibility of an application for international protection pursuant to Article 33(2)(d), a subsequent application for international protection shall be subject first to a preliminary examination as to whether new elements or findings have arisen or have been presented by the applicant which relate to the examination of whether the applicant qualifies as a beneficiary of international protection by virtue of Directive 2011/95/EU.

3. If the preliminary examination referred to in paragraph 2 concludes that new elements or findings have arisen or been presented by the applicant which significantly add to the likelihood of the applicant qualifying as a beneficiary of international protection by virtue of Directive 2011/95/EU, the application shall be further examined in conformity with Chapter II. Member States may also provide for other reasons for a subsequent application to be further examined.

4. Member States may provide that the application will only be further examined if the applicant concerned was, through no fault of his or her own, incapable of asserting the situations set forth in paragraphs 2 and 3 of this Article in the previous procedure, in particular by exercising his or her right to an effective remedy pursuant to Article 46.

5. When a subsequent application is not further examined pursuant to this Article, it shall be considered inadmissible, in accordance with Article 33(2)(d).

6. The procedure referred to in this Article may also be applicable in the case of:

(a) a dependant who lodges an application after he or she has, in accordance with Article 7(2), consented to have his or her case be part of an application lodged on his or her behalf; and/or

(b) an unmarried minor who lodges an application after an application has been lodged on his or her behalf pursuant to Article 7(5)(c).

In those cases, the preliminary examination referred to in paragraph 2 will consist of examining whether there are facts relating to the dependant's or the unmarried minor's situation which justify a separate application.

7. Where a person with regard to whom a transfer decision has to be enforced pursuant to Regulation (EU) No 604/2013 makes further representations or a subsequent application in the transferring Member State, those representations or subsequent applications shall be examined by the responsible Member State, as defined in that Regulation, in accordance with this Directive.

Article 41

Exceptions from the right to remain in case of subsequent applications

1. Member States may make an exception from the right to remain in the territory where a person:

(a) has lodged a first subsequent application, which is not further examined pursuant to Article 40(5), merely in order to delay or frustrate the enforcement of a decision which would result in his or her imminent removal from that Member State; or

(b) makes another subsequent application in the same Member State, following a final decision considering a first subsequent application inadmissible pursuant to Article 40(5) or after a final decision to reject that application as unfounded.

Member States may make such an exception only where the determining authority considers that a return decision will not lead to direct or indirect *refoulement* in violation of that Member State's international and Union obligations.

2. In cases referred to in paragraph 1, Member States may also:

(a) derogate from the time limits normally applicable in accelerated procedures, in accordance with national law, when the examination procedure is accelerated in accordance with Article 31(8)(g);

(b) derogate from the time limits normally applicable to admissibility procedures provided for in Articles 33 and 34, in accordance with national law; and/or

(c) derogate from Article 46(8).

Article 42

Procedural rules

1. Member States shall ensure that applicants whose application is subject to a preliminary examination pursuant to Article 40 enjoy the guarantees provided for in Article 12(1).

2. Member States may lay down in national law rules on the preliminary examination pursuant to Article 40. Those rules may, *inter alia*:

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

(b) permit the preliminary examination to be conducted on the sole basis of written submissions without a personal interview, with the exception of the cases referred to in Article 40(6).

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

3. Member States shall ensure that the applicant is informed in an appropriate manner of the outcome of the preliminary examination and, if the application is not to be further examined, of the reasons why and the possibilities for seeking an appeal or review of the decision.

SECTION V

Article 43

Border procedures

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

(a) the admissibility of an application, pursuant to Article 33, made at such locations; and/or

(b) the substance of an application in a procedure pursuant to Article 31(8).

2. Member States shall ensure that a decision in the framework of the procedures provided for in paragraph 1 is taken within a reasonable time. When a decision has not been taken within four weeks, the applicant shall be granted entry to the territory of the Member State in order for his or her application to be processed in accordance with the other provisions of this Directive.

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

CHAPTER IV

PROCEDURES FOR THE WITHDRAWAL OF INTERNATIONAL PROTECTION

Article 44

Withdrawal of international protection

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

Article 45

Procedural rules

1. Member States shall ensure that, where the competent authority is considering withdrawing international protection from a third-country national or stateless person in accordance with Article 14 or 19 of Directive 2011/95/EU, the person concerned enjoys the following guarantees:

- (a) to be informed in writing that the competent authority is reconsidering his or her qualification as a beneficiary of international protection and the reasons for such a reconsideration; and
- (b) to be given the opportunity to submit, in a personal interview in accordance with Article 12(1)(b) and Articles 14 to 17 or in a written statement, reasons as to why his or her international protection should not be withdrawn.

2. In addition, Member States shall ensure that within the framework of the procedure set out in paragraph 1:

- (a) the competent authority is able to obtain precise and up-to-date information from various sources, such as, where

appropriate, from EASO and UNHCR, 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 international protection, it is not obtained from the actor(s) of persecution or serious harm in a manner that would result in such actor(s) being directly informed of the fact that the person concerned is a beneficiary of international protection whose status is under reconsideration, or jeopardise the physical integrity of the person or his or her dependants, or the liberty and security of his or her family members still living in the country of origin.

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

4. Once the competent authority has taken the decision to withdraw international protection, Article 20, Article 22, Article 23(1) and Article 29 are equally applicable.

5. By way of derogation from paragraphs 1 to 4 of this Article, Member States may decide that international protection shall lapse by law where the beneficiary of international protection has unequivocally renounced his or her recognition as such. A Member State may also provide that international protection shall lapse by law where the beneficiary of international protection has become a national of that Member State.

CHAPTER V

APPEALS PROCEDURES

Article 46

The right to an effective remedy

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

- (a) a decision taken on their application for international protection, including a decision:
 - (i) considering an application to be unfounded in relation to refugee status and/or subsidiary protection status;
 - (ii) considering an application to be inadmissible pursuant to Article 33(2);
 - (iii) taken at the border or in the transit zones of a Member State as described in Article 43(1);

- (iv) not to conduct an examination pursuant to Article 39;
- (b) a refusal to reopen the examination of an application after its discontinuation pursuant to Articles 27 and 28;
- (c) a decision to withdraw international protection pursuant to Article 45.
2. Member States shall ensure that persons recognised by the determining authority as eligible for subsidiary protection have the right to an effective remedy pursuant to paragraph 1 against a decision considering an application unfounded in relation to refugee status.
- Without prejudice to paragraph 1(c), where the subsidiary protection status granted by a Member State offers the same rights and benefits as those offered by the refugee status under Union and national law, that Member State may consider an appeal against a decision considering an application unfounded in relation to refugee status inadmissible on the grounds of insufficient interest on the part of the applicant in maintaining the proceedings.
3. In order to comply with paragraph 1, Member States shall ensure that an effective remedy provides for a full and *ex nunc* examination of both facts and points of law, including, where applicable, an examination of the international protection needs pursuant to Directive 2011/95/EU, at least in appeals procedures before a court or tribunal of first instance.
4. Member States shall provide for reasonable time limits and other necessary rules for the applicant to exercise his or her right to an effective remedy pursuant to paragraph 1. The time limits shall not render such exercise impossible or excessively difficult.
- Member States may also provide for an *ex officio* review of decisions taken pursuant to Article 43.
5. Without prejudice to paragraph 6, Member States shall allow applicants to remain in the territory until the time limit within which to exercise their right to an effective remedy has expired and, when such a right has been exercised within the time limit, pending the outcome of the remedy.
6. In the case of a decision:
- (a) considering an application to be manifestly unfounded in accordance with Article 32(2) or unfounded after examination in accordance with Article 31(8), except for cases where these decisions are based on the circumstances referred to in Article 31(8)(h);
- (b) considering an application to be inadmissible pursuant to Article 33(2)(a), (b) or (d);
- (c) rejecting the reopening of the applicant's case after it has been discontinued according to Article 28; or
- (d) not to examine or not to examine fully the application pursuant to Article 39,
- 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 the applicant's request or acting *ex officio*, if such a decision results in ending the applicant's right to remain in the Member State and where in such cases the right to remain in the Member State pending the outcome of the remedy is not provided for in national law.
7. Paragraph 6 shall only apply to procedures referred to in Article 43 provided that:
- (a) the applicant has the necessary interpretation, legal assistance and at least one week to prepare the request and submit to the court or tribunal the arguments in favour of granting him or her the right to remain on the territory pending the outcome of the remedy; and
- (b) in the framework of the examination of the request referred to in paragraph 6, the court or tribunal examines the negative decision of the determining authority in terms of fact and law.
- If the conditions referred to in points (a) and (b) are not met, paragraph 5 shall apply.
8. Member States shall allow the applicant to remain in the territory pending the outcome of the procedure to rule whether or not the applicant may remain on the territory, laid down in paragraphs 6 and 7.
9. Paragraphs 5, 6 and 7 shall be without prejudice to Article 26 of Regulation (EU) No 604/2013.
10. Member States may lay down time limits for the court or tribunal pursuant to paragraph 1 to examine the decision of the determining authority.
11. Member States may also lay down in national legislation the conditions under which it can be assumed that an applicant has implicitly withdrawn or abandoned his or her remedy pursuant to paragraph 1, together with the rules on the procedure to be followed.

CHAPTER VI

GENERAL AND FINAL PROVISIONS

Article 47

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 48

Confidentiality

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

Article 49

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.

When resorting to the measures referred to in Article 6(5), the second subparagraph of Article 14(1) and Article 31(3)(b), Member States shall inform the Commission as soon as the reasons for applying those exceptional measures have ceased to exist and at least on an annual basis. That information shall, where possible, include data on the percentage of the applications for which derogations were applied to the total number of applications processed during that period.

Article 50

Report

No later than 20 July 2017, 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 to the Commission all the information that is appropriate for drawing up its 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 five years.

As part of the first report, the Commission shall also report, in particular, on the application of Article 17 and the various tools used in relation to the reporting of the personal interview.

Article 51

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles

1 to 30, Article 31(1), (2) and (6) to (9), Articles 32 to 46, Articles 49 and 50 and Annex I by 20 July 2015 at the latest. They shall forthwith communicate the text of those measures to the Commission.

2. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 31(3), (4) and (5) by 20 July 2018. They shall forthwith communicate the text of those measures to the Commission.

3. When Member States adopt the provisions referred to in paragraphs 1 and 2, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the directive repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

4. 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.

Article 52

Transitional provisions

Member States shall apply the laws, regulations and administrative provisions referred to in Article 51(1) to applications for international protection lodged and to procedures for the withdrawal of international protection started after 20 July 2015 or an earlier date. Applications lodged before 20 July 2015 and procedures for the withdrawal of refugee status started before that date shall be governed by the laws, regulations and administrative provisions adopted pursuant to Directive 2005/85/EC.

Member States shall apply the laws, regulations and administrative provisions referred to in Article 51(2) to applications for international protection lodged after 20 July 2018 or an earlier date. Applications lodged before that date shall be governed by the laws, regulations and administrative provisions in accordance with Directive 2005/85/EC.

Article 53

Repeal

Directive 2005/85/EC is repealed for the Member States bound by this Directive with effect from 21 July 2015, without prejudice to the obligations of the Member States relating to the time limit for transposition into national law of the Directive set out in Annex II, Part B.

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

*Article 54***Entry into force and application**

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

Articles 47 and 48 shall apply from 21 July 2015.

*Article 55***Addressees**

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

Done at Brussels, 26 June 2013.

For the European Parliament
The President
M. SCHULZ

For the Council
The President
A. SHATTER

ANNEX I

Designation of safe countries of origin for the purposes of Article 37(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 2011/95/EU, 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 United Nations Convention against Torture, in particular the rights from which derogation cannot be made under Article 15(2) of the said European Convention;
 - (c) respect for the *non-refoulement* principle in accordance with the Geneva Convention;
 - (d) provision for a system of effective remedies against violations of those rights and freedoms.
-

ANNEX II

PART A

Repealed Directive

(referred to in Article 53)

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 51)

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

ANNEX III

Correlation Table

Directive 2005/85/EC	This Directive
Article 1	Article 1
Article 2(a) to (c)	Article 2(a) to (c)
—	Article 2(d)
Article 2(d) to (f)	Article 2(e) to (g)
—	Article 2(h) and (i)
Article 2(g)	Article 2(j)
—	Article 2(k) and (l)
Article 2(h) to (k)	Article 2(m) to (p)
—	Article 2(q)
Article 3(1) and (2)	Article 3(1) and (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)(a)	Article 4(2)(a)
Article 4(2)(b) to (d)	—
Article 4(2)(e)	Article 4(2)(b)
Article 4(2)(f)	—
—	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) to (4)
Article 6(2) and (3)	Article 7(1) and (2)
—	Article 7(3)
—	Article 7(4)
Article 6(4)	Article 7(5)
Article 6(5)	—
—	Article 8
Article 7(1) and (2)	Article 9(1) and (2)

Directive 2005/85/EC	This Directive
—	Article 9(3)
Article 8(1)	Article 10(1)
—	Article 10(2)
Article 8(2)(a) to (c)	Article 10(3)(a) to (c)
—	Article 10(3)(d)
Article 8(3) and (4)	Article 10(4) and (5)
Article 9(1)	Article 11(1)
Article 9(2), first subparagraph	Article 11(2), first subparagraph
Article 9(2), second subparagraph	—
Article 9(2), third subparagraph	Article 11(2), second subparagraph
Article 9(3)	Article 11(3)
Article 10(1)(a) to (c)	Article 12(1)(a) to (c)
—	Article 12(1)(d)
Article 10(1)(d) and (e)	Article 12(1)(e) and (f)
Article 10(2)	Article 12(2)
Article 11	Article 13
Article 12(1), first subparagraph	Article 14(1), first subparagraph
Article 12(2), second subparagraph	—
—	Article 14(1), second and third subparagraph
Article 12(2), third subparagraph	Article 14(1), fourth subparagraph
Article 12(2)(a)	Article 14(2)(a)
Article 12(2)(b)	—
Article 12(2)(c)	—
Article 12(3), first subparagraph	Article 14(2)(b)
Article 12(3), second subparagraph	Article 14(2), second subparagraph
Article 12(4) to (6)	Article 14(3) to (5)
Article 13(1) and (2)	Article 15(1) and (2)
Article 13(3)(a)	Article 15(3)(a)
—	Article 15(3)(b)
Article 13(3)(b)	Article 15(3)(c)
—	Article 15(3)(d)
—	Article 15(3)(e)
Article 13(4)	Article 15(4)

Directive 2005/85/EC	This Directive
Article 13(5)	—
—	Article 16
Article 14	—
—	Article 17
—	Article 18
—	Article 19
Article 15(1)	Article 22(1)
Article 15(2)	Article 20(1)
—	Article 20(2) to (4)
—	Article 21(1)
Article 15(3)(a)	—
Article 15(3)(b) and (c)	Article 21(2)(a) and (b)
Article 15(3)(d)	—
Article 15(3), second subparagraph	—
Article 15(4) to (6)	Article 21(3) to (5)
—	Article 22(2)
Article 16(1), first subparagraph	Article 23(1), first subparagraph
Article 16(1), second subparagraph, first sentence	Article 23(1), second subparagraph, introductory words
—	Article 23(1)(a)
Article 16(1), second subparagraph, second sentence	Article 23(1)(b)
Article 16(2), first sentence	Article 23(2)
Article 16(2), second sentence	—
—	Article 23(3)
Article 16(3)	Article 23(4), first subparagraph
Article 16(4), first subparagraph	—
Article 16(4), second and third subparagraphs	Article 23(4), second and third subparagraphs
—	Article 24
Article 17(1)	Article 25(1)
Article 17(2)(a)	Article 25(2)
Article 17(2)(b) and (c)	—
Article 17(3)	—
Article 17(4)	Article 25(3)
—	Article 25(4)
Article 17(5)	Article 25(5)

Directive 2005/85/EC	This Directive
—	Article 25(6)
Article 17(6)	Article 25(7)
Article 18	Article 26
Article 19	Article 27
Article 20(1) and (2)	Article 28(1) and (2)
—	Article 28(3)
Article 21	Article 29
Article 22	Article 30
Article 23(1)	Article 31(1)
Article 23(2), first subparagraph	Article 31(2)
—	Article 31(3)
—	Article 31(4) and (5)
Article 23(2), second subparagraph	Article 31(6)
Article 23(3)	—
—	Article 31(7)
Article 23(4)(a)	Article 31(8)(a)
Article 23(4)(b)	—
Article 23(4)(c)(i)	Article 31(8)(b)
Article 23(4)(c)(ii)	—
Article 23(4)(d)	Article 31(8)(c)
Article 23(4)(e)	—
Article 23(4)(f)	Article 31(8)(d)
Article 23(4)(g)	Article 31(8)(e)
—	Article 31(8)(f)
Article 23(4)(h) and (i)	—
Article 23(4)(j)	Article 31(8)(g)
—	Article 31(8)(h) and (i)
Article 23(4)(k) and (l)	—
Article 23(4)(m)	Article 31(8)(j)
Article 23(4)(n) and (o)	—
—	Article 31(9)
Article 24	—
Article 25	Article 33
Article 25(1)	Article 33(1)

Directive 2005/85/EC	This Directive
Article 25(2)(a) to (c)	Article 33(2)(a) to (c)
Article 25(2)(d) and (e)	—
Article 25(2)(f) and (g)	Article 33(2)(d) and (e)
—	Article 34
Article 26	Article 35
Article 27(1)(a)	Article 38(1)(a)
—	Article 38(1)(b)
Article 27(1)(b) to (d)	Article 38(1)(c) to (e)
Article 27(2) to (5)	Article 38(2) to (5)
Article 28	Article 32
Article 29	—
Article 30(1)	Article 37(1)
Article 30(2) to (4)	—
—	Article 37(2)
Article 30(5) and (6)	Article 37(3) and (4)
Article 31(1)	Article 36(1)
Article 31(2)	—
Article 31(3)	Article 36(2)
Article 32(1)	Article 40(1)
Article 32(2)	—
Article 32(3)	Article 40(2)
Article 32(4)	Article 40(3), first sentence
Article 32(5)	Article 40(3), second sentence
Article 32(6)	Article 40(4)
—	Article 40(5)
Article 32(7), first subparagraph	Article 40(6)(a)
—	Article 40(6)(b)
Article 32(7), second subparagraph	Article 40(6), second subparagraph
—	Article 40(7)
—	Article 41
Article 33	—
Article 34(1) and (2)(a)	Article 42(1) and (2)(a)
Article 34(2)(b)	—
Article 34(2)(c)	Article 42(2)(b)

Directive 2005/85/EC	This Directive
Article 34(3)(a)	Article 42(3)
Article 34(3)(b)	—
Article 35(1)	Article 43(1)(a)
—	Article 43(1)(b)
Article 35(2) and (3)(a) to (f)	—
Article 35(4)	Article 43(2)
Article 35(5)	Article 43(3)
Article 36(1) to (2)(c)	Article 39(1) to (2)(c)
Article 36(2)(d)	—
Article 36(3)	—
—	Article 39(3)
Article 36(4) to (6)	Article 39(4) to (6)
—	Article 39(7)
Article 36(7)	—
Article 37	Article 44
Article 38	Article 45
—	Article 46(1)(a)(i)
Article 39(1)(a)(i) and (ii)	Article 46(1)(a)(ii) and (iii)
Article 39(1)(a)(iii)	—
Article 39(1)(b)	Article 46(1)(b)
Article 39(1)(c) and (d)	—
Article 39(1)(e)	Article 46(1)(c)
—	Article 46(2) and (3)
Article 39(2)	Article 46(4), first subparagraph
—	Article 46(4), second and third subparagraphs
Article 39(3)	—
—	Article 46(5) to (9)
Article 39(4)	Article 46(10)
Article 39(5)	—
Article 39(6)	Article 41(11)
Article 40	Article 47
Article 41	Article 48
—	Article 49
Article 42	Article 50

Directive 2005/85/EC	This Directive
Article 43, first subparagraph	Article 51(1)
—	Article 51(2)
Article 43, second and third subparagraphs	Article 51(3) and (4)
Article 44	Article 52, first subparagraph
—	Article 52, second subparagraph
—	Article 53
Article 45	Article 54
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Annex I	—
Annex II	Annex I
Annex III	—
—	Annex II
—	Annex III

DIRECTIVES

DIRECTIVE 2011/95/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 13 December 2011

on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted

(recast)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

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

Whereas:

(1) A number of substantive changes are to be made to Council Directive 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 granted ⁽³⁾. In the interests of clarity, that Directive should be recast.

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

(3) The European Council at its special meeting in Tampere on 15 and 16 October 1999 agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention of 28 July 1951 relating to the Status of

Refugees ('the Geneva Convention'), as supplemented by the New York Protocol of 31 January 1967 ('the Protocol'), thus affirming the principle of *non-refoulement* and ensuring that nobody is sent back to persecution.

(4) The Geneva Convention and the Protocol provide the cornerstone of the international legal regime for the protection of refugees.

(5) The Tampere conclusions provide that a Common European Asylum System should include, in the short term, the approximation of rules on the recognition of refugees and the content of refugee status.

(6) The Tampere conclusions also provide that rules regarding refugee status should be complemented by measures on subsidiary forms of protection, offering an appropriate status to any person in need of such protection.

(7) 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 European Parliament and the Council, with a view to their adoption before the end of 2010.

(8) In the European Pact on Immigration and Asylum, adopted on 15 and 16 October 2008, the European Council noted that considerable disparities remain between one Member State and another concerning the grant of protection and the forms that protection takes and called for new initiatives to complete the establishment of a Common European Asylum System, provided for in the Hague Programme, and thus to offer a higher degree of protection.

⁽¹⁾ OJ C 18, 19.1.2011, p. 80.

⁽²⁾ Position of the European Parliament of 27 October 2011 (not yet published in the Official Journal) and decision of the Council of 24 November 2011.

⁽³⁾ OJ L 304, 30.9.2004, p. 12.

- (9) In the Stockholm Programme, the European Council reiterated its commitment to the objective of establishing a common area of protection and solidarity, based on a common asylum procedure and a uniform status, in accordance with Article 78 of the Treaty on the Functioning of the European Union (TFEU), for those granted international protection, by 2012 at the latest.
- (10) In the light of the results of the evaluations undertaken, it is appropriate, at this stage, to confirm the principles underlying Directive 2004/83/EC as well as to seek to achieve a higher level of approximation of the rules on the recognition and content of international protection on the basis of higher standards.
- (11) The resources of the European Refugee Fund and of the European Asylum Support Office should be mobilised to provide adequate support to Member States' efforts in implementing 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 pressure on their asylum systems, due in particular to their geographical or demographic situation.
- (12) The main objective of this Directive is, on the one hand, to ensure that Member States apply common criteria for the identification of persons genuinely in need of international protection, and, on the other hand, to ensure that a minimum level of benefits is available for those persons in all Member States.
- (13) The approximation of rules on the recognition and content of refugee and subsidiary protection status should help to limit the secondary movement of applicants for international protection between Member States, where such movement is purely caused by differences in legal frameworks.
- (14) Member States should have the power to introduce or maintain more favourable provisions than the standards laid down in this Directive for third-country nationals or stateless persons who request international protection from a Member State, where such a request is understood to be on the grounds that the person concerned is either a refugee within the meaning of Article 1(A) of the Geneva Convention, or a person eligible for subsidiary protection.
- (15) Those third-country nationals or stateless persons who are allowed to remain in the territories of the Member States for reasons not due to a need for international protection but on a discretionary basis on compassionate or humanitarian grounds fall outside the scope of this Directive.
- (16) 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 ensure full respect for human dignity and the right to asylum of applicants for asylum and their accompanying family members and to promote the application of Articles 1, 7, 11, 14, 15, 16, 18, 21, 24, 34 and 35 of that Charter, and should therefore be implemented accordingly.
- (17) 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, including in particular those that prohibit discrimination.
- (18) 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. In assessing the best interests of the child, Member States should in particular take due account of the principle of family unity, the minor's well-being and social development, safety and security considerations and the views of the minor in accordance with his or her age and maturity.
- (19) It is necessary to broaden the notion of family members, taking into account the different particular circumstances of dependency and the special attention to be paid to the best interests of the child.
- (20) This Directive is without prejudice to the Protocol on asylum for nationals of Member States of the European Union as annexed to the Treaty on European Union (TEU) and the TFEU.
- (21) The recognition of refugee status is a declaratory act.
- (22) Consultations with the United Nations High Commissioner for Refugees may provide valuable guidance for Member States when determining refugee status according to Article 1 of the Geneva Convention.
- (23) Standards for the definition and content of refugee status should be laid down to guide the competent national bodies of Member States in the application of the Geneva Convention.
- (24) It is necessary to introduce common criteria for recognising applicants for asylum as refugees within the meaning of Article 1 of the Geneva Convention.

- (25) In particular, it is necessary to introduce common concepts of protection needs arising *sur place*, sources of harm and protection, internal protection and persecution, including the reasons for persecution.
- (26) Protection can be provided, where they are willing and able to offer protection, either by the State or by parties or organisations, including international organisations, meeting the conditions set out in this Directive, which control a region or a larger area within the territory of the State. Such protection should be effective and of a non-temporary nature.
- (27) Internal protection against persecution or serious harm should be effectively available to the applicant in a part of the country of origin where he or she can safely and legally travel to, gain admittance to and can reasonably be expected to settle. Where the State or agents of the State are the actors of persecution or serious harm, there should be a presumption that effective protection is not available to the applicant. When the applicant is an unaccompanied minor, the availability of appropriate care and custodial arrangements, which are in the best interest of the unaccompanied minor, should form part of the assessment as to whether that protection is effectively available.
- (28) It is necessary, when assessing applications from minors for international protection, that Member States should have regard to child-specific forms of persecution.
- (29) One of the conditions for qualification for refugee status within the meaning of Article 1(A) of the Geneva Convention is the existence of a causal link between the reasons for persecution, namely race, religion, nationality, political opinion or membership of a particular social group, and the acts of persecution or the absence of protection against such acts.
- (30) It is equally necessary to introduce a common concept of the persecution ground 'membership of a particular social group'. For the purposes of defining a particular social group, issues arising from an applicant's gender, including gender identity and sexual orientation, which may be related to certain legal traditions and customs, resulting in for example genital mutilation, forced sterilisation or forced abortion, should be given due consideration in so far as they are related to the applicant's well-founded fear of persecution.
- (31) Acts contrary to the purposes and principles of the United Nations are set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations and are, amongst others, embodied in the United Nations resolutions relating to measures combating terrorism, which declare that 'acts, methods and practices of terrorism are contrary to the purposes and principles of the United Nations' and that 'knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations'.
- (32) As referred to in Article 14, 'status' can also include refugee status.
- (33) Standards for the definition and content of subsidiary protection status should also be laid down. Subsidiary protection should be complementary and additional to the refugee protection enshrined in the Geneva Convention.
- (34) It is necessary to introduce common criteria on the basis of which applicants for international protection are to be recognised as eligible for subsidiary protection. Those criteria should be drawn from international obligations under human rights instruments and practices existing in Member States.
- (35) Risks to which a population of a country or a section of the population is generally exposed do normally not create in themselves an individual threat which would qualify as serious harm.
- (36) Family members, merely due to their relation to the refugee, will normally be vulnerable to acts of persecution in such a manner that could be the basis for refugee status.
- (37) The notion of national security and public order also covers cases in which a third-country national belongs to an association which supports international terrorism or supports such an association.
- (38) When deciding on entitlements to the benefits included in this Directive, Member States should take due account of the best interests of the child, as well as of the particular circumstances of the dependency on the beneficiary of international protection of close relatives who are already present in the Member State and who are not family members of that beneficiary. In exceptional circumstances, where the close relative of the beneficiary of international protection is a married minor but not accompanied by his or her spouse, the best interests of the minor may be seen to lie with his or her original family.
- (39) While responding to the call of the Stockholm Programme for the establishment of a uniform status for refugees or for persons eligible for subsidiary protection, and with the exception of derogations which are necessary and objectively justified, beneficiaries of subsidiary protection status should be granted the same rights and benefits as those enjoyed by refugees under this Directive, and should be subject to the same conditions of eligibility.

- (40) Within the limits set out by international obligations, Member States may lay down that the granting of benefits with regard to access to employment, social welfare, healthcare and access to integration facilities requires the prior issue of a residence permit.
- (41) In order to enhance the effective exercise of the rights and benefits laid down in this Directive by beneficiaries of international protection, it is necessary to take into account their specific needs and the particular integration challenges with which they are confronted. Such taking into account should normally not result in a more favourable treatment than that provided to their own nationals, without prejudice to the possibility for Member States to introduce or retain more favourable standards.
- (42) In that context, efforts should be made in particular to address the problems which prevent beneficiaries of international protection from having effective access to employment-related educational opportunities and vocational training, inter alia, relating to financial constraints.
- (43) This Directive does not apply to financial benefits from the Member States which are granted to promote education.
- (44) Special measures need to be considered with a view to effectively addressing the practical difficulties encountered by beneficiaries of international protection concerning the authentication of their foreign diplomas, certificates or other evidence of formal qualifications, in particular due to the lack of documentary evidence and their inability to meet the costs related to the recognition procedures.
- (45) Especially to avoid social hardship, it is appropriate to provide beneficiaries of international protection with adequate social welfare and means of subsistence, without discrimination in the context of social assistance. With regard to social assistance, the modalities and detail of the provision of core benefits to beneficiaries of subsidiary protection status should be determined by national law. The possibility of limiting such assistance to core benefits is to be understood as covering at least minimum income support, assistance in the case of illness, or pregnancy, and parental assistance, in so far as those benefits are granted to nationals under national law.
- (46) Access to healthcare, including both physical and mental healthcare, should be ensured to beneficiaries of international protection.
- (47) The specific needs and particularities of the situation of beneficiaries of refugee status and of subsidiary protection status should be taken into account, as far as possible, in the integration programmes provided to them including, where appropriate, language training and the provision of information concerning individual rights and obligations relating to their protection status in the Member State concerned.
- (48) The implementation of this Directive should be evaluated at regular intervals, taking into consideration in particular the evolution of the international obligations of Member States regarding *non-refoulement*, the evolution of the labour markets in the Member States as well as the development of common basic principles for integration.
- (49) Since the objectives of this Directive, namely to establish standards for the granting of international protection to third-country nationals and stateless persons by Member States, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Directive, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the TEU. 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 those objectives.
- (50) In accordance with Articles 1, 2 and Article 4a(1) of the Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the TEU and to the TFEU, and without prejudice to Article 4 of that Protocol, the United Kingdom and Ireland are not taking part in the adoption of this Directive and are not bound by it or subject to its application.
- (51) In accordance with Articles 1 and 2 of the Protocol (No 22) on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.
- (52) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with Directive 2004/83/EC. The obligation to transpose the provisions which are unchanged arises under that Directive.
- (53) This Directive should be without prejudice to the obligations of the Member States relating to the time limit for transposition into national law of Directive 2004/83/EC set out in Annex I, Part B,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Purpose

The purpose of this Directive is to lay down standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection-granted.

Article 2

Definitions

For the purposes of this Directive the following definitions shall apply:

- (a) 'international protection' means refugee status and subsidiary protection status as defined in points (e) and (g);
- (b) 'beneficiary of international protection' means a person who has been granted refugee status or subsidiary protection status as defined in points (e) and (g);
- (c) 'Geneva Convention' means the Convention relating to the Status of Refugees done at Geneva on 28 July 1951, as amended by the New York Protocol of 31 January 1967;
- (d) 'refugee' means a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 does not apply;
- (e) 'refugee status' means the recognition by a Member State of a third-country national or a stateless person as a refugee;
- (f) 'person eligible for subsidiary protection' means a third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) does not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country;
- (g) '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;
- (h) '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 this Directive, that can be applied for separately;
- (i) 'applicant' means a third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken;
- (j) 'family members' means, in so far as the family already existed in the country of origin, the following members of the family of the beneficiary of international protection who are present in the same Member State in relation to the application for international protection:
 - the spouse of the beneficiary of international protection or his or her unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to third-country nationals,
 - the minor children of the couples referred to in the first indent or of the beneficiary of international protection, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under national law,
 - the father, mother or another adult responsible for the beneficiary of international protection whether by law or by the practice of the Member State concerned, when that beneficiary is a minor and unmarried;
- (k) 'minor' means a third-country national or stateless person below the age of 18 years;
- (l) 'unaccompanied minor' means a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he or she has entered the territory of the Member States;

- (m) 'residence permit' means any permit or authorisation issued by the authorities of a Member State, in the form provided for under that State's law, allowing a third-country national or stateless person to reside on its territory;
- (n) 'country of origin' means the country or countries of nationality or, for stateless persons, of former habitual residence.

Article 3

More favourable standards

Member States may introduce or retain more favourable standards for determining who qualifies as a refugee or as a person eligible for subsidiary protection, and for determining the content of international protection, in so far as those standards are compatible with this Directive.

CHAPTER II

ASSESSMENT OF APPLICATIONS FOR INTERNATIONAL PROTECTION

Article 4

Assessment of facts and circumstances

1. Member States may consider it the duty of the applicant to submit as soon as possible all the elements needed to substantiate the application for international protection. In cooperation with the applicant, it is the duty of the Member State to assess the relevant elements of the application.
2. The elements referred to in paragraph 1 consist of the applicant's statements and all the documentation at the applicant's disposal regarding the applicant's age, background, including that of relevant relatives, identity, nationality(ies), country(ies) and place(s) of previous residence, previous asylum applications, travel routes, travel documents and the reasons for applying for international protection.
3. The assessment of an application for international protection is to be carried out on an individual basis and includes taking into account:
 - (a) all relevant facts as they relate to the country of origin at the time of taking a decision on the application, including laws and regulations of the country of origin and the manner in which they are applied;
 - (b) the relevant statements and documentation presented by the applicant including information on whether the applicant has been or may be subject to persecution or serious harm;
 - (c) the individual position and personal circumstances of the applicant, including factors such as background, gender and

age, so as to assess whether, on the basis of the applicant's personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious harm;

- (d) whether the applicant's activities since leaving the country of origin were engaged in for the sole or main purpose of creating the necessary conditions for applying for international protection, so as to assess whether those activities would expose the applicant to persecution or serious harm if returned to that country;
- (e) whether the applicant could reasonably be expected to avail himself or herself of the protection of another country where he or she could assert citizenship.

4. The fact that an applicant has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, is a serious indication of the applicant's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.

5. Where Member States apply the principle according to which it is the duty of the applicant to substantiate the application for international protection and where aspects of the applicant's statements are not supported by documentary or other evidence, those aspects shall not need confirmation when the following conditions are met:

- (a) the applicant has made a genuine effort to substantiate his application;
- (b) all relevant elements at the applicant's disposal have been submitted, and a satisfactory explanation has been given regarding any lack of other relevant elements;
- (c) the applicant's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant's case;
- (d) the applicant has applied for international protection at the earliest possible time, unless the applicant can demonstrate good reason for not having done so; and
- (e) the general credibility of the applicant has been established.

Article 5

International protection needs arising sur place

1. A well-founded fear of being persecuted or a real risk of suffering serious harm may be based on events which have taken place since the applicant left the country of origin.

2. A well-founded fear of being persecuted or a real risk of suffering serious harm may be based on activities which the applicant has engaged in since he or she left the country of origin, in particular where it is established that the activities relied upon constitute the expression and continuation of convictions or orientations held in the country of origin.

3. Without prejudice to the Geneva Convention, Member States may determine that an applicant who files a subsequent application shall not normally be granted refugee status if the risk of persecution is based on circumstances which the applicant has created by his or her own decision since leaving the country of origin.

Article 6

Actors of persecution or serious harm

Actors of persecution or serious harm include:

- (a) the State;
- (b) parties or organisations controlling the State or a substantial part of the territory of the State;
- (c) non-State actors, if it can be demonstrated that the actors mentioned in points (a) and (b), including international organisations, are unable or unwilling to provide protection against persecution or serious harm as defined in Article 7.

Article 7

Actors of protection

1. Protection against persecution or serious harm can only be provided by:

- (a) the State; or
- (b) parties or organisations, including international organisations, controlling the State or a substantial part of the territory of the State;

provided they are willing and able to offer protection in accordance with paragraph 2.

2. Protection against persecution or serious harm must be effective and of a non-temporary nature. Such protection is generally provided when the actors mentioned under points (a) and (b) of paragraph 1 take reasonable steps to prevent the persecution or suffering of serious harm, *inter alia*, by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and when the applicant has access to such protection.

3. When assessing whether an international organisation controls a State or a substantial part of its territory and

provides protection as described in paragraph 2, Member States shall take into account any guidance which may be provided in relevant Union acts.

Article 8

Internal protection

1. As part of the assessment of the application for international protection, Member States may determine that an applicant is not in need of international protection if in a part of the country of origin, he or she:

- (a) has no well-founded fear of being persecuted or is not at real risk of suffering serious harm; or
- (b) has access to protection against persecution or serious harm as defined in Article 7;

and he or she can safely and legally travel to and gain admittance to that part of the country and can reasonably be expected to settle there.

2. In examining whether an applicant has a well-founded fear of being persecuted or is at real risk of suffering serious harm, or has access to protection against persecution or serious harm in a part of the country of origin in accordance with paragraph 1, Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant in accordance with Article 4. To that end, Member States shall ensure that precise and up-to-date information is obtained from relevant sources, such as the United Nations High Commissioner for Refugees and the European Asylum Support Office.

CHAPTER III

QUALIFICATION FOR BEING A REFUGEE

Article 9

Acts of persecution

1. In order to be regarded as an act of persecution within the meaning of Article 1(A) of the Geneva Convention, an act must:

- (a) be sufficiently serious by its nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; or
- (b) be an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as mentioned in point (a).

2. Acts of persecution as qualified in paragraph 1 can, inter alia, take the form of:

- (a) acts of physical or mental violence, including acts of sexual violence;
- (b) legal, administrative, police, and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner;
- (c) prosecution or punishment which is disproportionate or discriminatory;
- (d) denial of judicial redress resulting in a disproportionate or discriminatory punishment;
- (e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling within the scope of the grounds for exclusion as set out in Article 12(2);
- (f) acts of a gender-specific or child-specific nature.

3. In accordance with point (d) of Article 2, there must be a connection between the reasons mentioned in Article 10 and the acts of persecution as qualified in paragraph 1 of this Article or the absence of protection against such acts.

Article 10

Reasons for persecution

1. Member States shall take the following elements into account when assessing the reasons for persecution:

- (a) the concept of race shall, in particular, include considerations of colour, descent, or membership of a particular ethnic group;
- (b) the concept of religion shall in particular include the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief;
- (c) the concept of nationality shall not be confined to citizenship or lack thereof but shall, in particular, include membership of a group determined by its cultural, ethnic, or linguistic identity, common geographical or political origins or its relationship with the population of another State;
- (d) a group shall be considered to form a particular social group where in particular:

- members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and

- that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society.

Depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sexual orientation. Sexual orientation cannot be understood to include acts considered to be criminal in accordance with national law of the Member States. Gender related aspects, including gender identity, shall be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group;

- (e) the concept of political opinion shall, in particular, include the holding of an opinion, thought or belief on a matter related to the potential actors of persecution mentioned in Article 6 and to their policies or methods, whether or not that opinion, thought or belief has been acted upon by the applicant.

2. When assessing if an applicant has a well-founded fear of being persecuted it is immaterial whether the applicant actually possesses the racial, religious, national, social or political characteristic which attracts the persecution, provided that such a characteristic is attributed to the applicant by the actor of persecution.

Article 11

Cessation

1. A third-country national or a stateless person shall cease to be a refugee if he or she:

- (a) has voluntarily re-availed himself or herself of the protection of the country of nationality; or
- (b) having lost his or her nationality, has voluntarily re-acquired it; or
- (c) has acquired a new nationality, and enjoys the protection of the country of his or her new nationality; or
- (d) has voluntarily re-established himself or herself in the country which he or she left or outside which he or she remained owing to fear of persecution; or

- (e) can no longer, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of nationality; or
- (f) being a stateless person, he or she is able, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, to return to the country of former habitual residence.

2. In considering points (e) and (f) of paragraph 1, Member States shall have regard to whether the change of circumstances is of such a significant and non-temporary nature that the refugee's fear of persecution can no longer be regarded as well-founded.

3. Points (e) and (f) of paragraph 1 shall not apply to a refugee who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself or herself of the protection of the country of nationality or, being a stateless person, of the country of former habitual residence.

Article 12

Exclusion

1. A third-country national or a stateless person is excluded from being a refugee if:
 - (a) he or she falls within the scope of Article 1(D) of the Geneva Convention, relating to protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees. When such protection or assistance has ceased for any reason, without the position of such persons being definitely settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, those persons shall *ipso facto* be entitled to the benefits of this Directive;
 - (b) he or she is recognised by the competent authorities of the country in which he or she has taken up residence as having the rights and obligations which are attached to the possession of the nationality of that country, or rights and obligations equivalent to those.
2. A third-country national or a stateless person is excluded from being a refugee where there are serious reasons for considering that:
 - (a) he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
 - (b) he or she has committed a serious non-political crime outside the country of refuge prior to his or her

admission as a refugee, which means the time of issuing a residence permit based on the granting of refugee status; particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes;

- (c) he or she has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations.

3. Paragraph 2 applies to persons who incite or otherwise participate in the commission of the crimes or acts mentioned therein.

CHAPTER IV

REFUGEE STATUS

Article 13

Granting of refugee status

Member States shall grant refugee status to a third-country national or a stateless person who qualifies as a refugee in accordance with Chapters II and III.

Article 14

Revocation of, ending of or refusal to renew refugee status

1. Concerning applications for international protection filed after the entry into force of Directive 2004/83/EC, Member States shall revoke, end or refuse to renew the refugee status of a third-country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body if he or she has ceased to be a refugee in accordance with Article 11.
2. Without prejudice to the duty of the refugee in accordance with Article 4(1) to disclose all relevant facts and provide all relevant documentation at his or her disposal, the Member State which has granted refugee status shall, on an individual basis, demonstrate that the person concerned has ceased to be or has never been a refugee in accordance with paragraph 1 of this Article.
3. Member States shall revoke, end or refuse to renew the refugee status of a third-country national or a stateless person if, after he or she has been granted refugee status, it is established by the Member State concerned that:
 - (a) he or she should have been or is excluded from being a refugee in accordance with Article 12;
 - (b) his or her misrepresentation or omission of facts, including the use of false documents, was decisive for the granting of refugee status.

4. Member States may revoke, end or refuse to renew the status granted to a refugee by a governmental, administrative, judicial or quasi-judicial body, when:

- (a) there are reasonable grounds for regarding him or her as a danger to the security of the Member State in which he or she is present;
- (b) he or she, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that Member State.

5. In situations described in paragraph 4, Member States may decide not to grant status to a refugee, where such a decision has not yet been taken.

6. Persons to whom paragraphs 4 or 5 apply are entitled to rights set out in or similar to those set out in Articles 3, 4, 16, 22, 31, 32 and 33 of the Geneva Convention in so far as they are present in the Member State.

CHAPTER V

QUALIFICATION FOR SUBSIDIARY PROTECTION

Article 15

Serious harm

Serious harm consists of:

- (a) the death penalty or execution; or
- (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or
- (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

Article 16

Cessation

1. A third-country national or a stateless person shall cease to be eligible for subsidiary protection when the circumstances which led to the granting of subsidiary protection status have ceased to exist or have changed to such a degree that protection is no longer required.

2. In applying paragraph 1, Member States shall have regard to whether the change in circumstances is of such a significant and non-temporary nature that the person eligible for subsidiary protection no longer faces a real risk of serious harm.

3. Paragraph 1 shall not apply to a beneficiary of subsidiary protection status who is able to invoke compelling reasons arising out of previous serious harm for refusing to avail himself or herself of the protection of the country of nationality or, being a stateless person, of the country of former habitual residence.

Article 17

Exclusion

1. A third-country national or a stateless person is excluded from being eligible for subsidiary protection where there are serious reasons for considering that:

- (a) he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
- (b) he or she has committed a serious crime;
- (c) he or she has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations;
- (d) he or she constitutes a danger to the community or to the security of the Member State in which he or she is present.

2. Paragraph 1 applies to persons who incite or otherwise participate in the commission of the crimes or acts mentioned therein.

3. Member States may exclude a third-country national or a stateless person from being eligible for subsidiary protection if he or she, prior to his or her admission to the Member State concerned, has committed one or more crimes outside the scope of paragraph 1 which would be punishable by imprisonment, had they been committed in the Member State concerned, and if he or she left his or her country of origin solely in order to avoid sanctions resulting from those crimes.

CHAPTER VI

SUBSIDIARY PROTECTION STATUS

Article 18

Granting of subsidiary protection status

Member States shall grant subsidiary protection status to a third-country national or a stateless person eligible for subsidiary protection in accordance with Chapters II and V.

Article 19

Revocation of, ending of or refusal to renew subsidiary protection status

1. Concerning applications for international protection filed after the entry into force of Directive 2004/83/EC, Member States shall revoke, end or refuse to renew the subsidiary protection status of a third-country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body if he or she has ceased to be eligible for subsidiary protection in accordance with Article 16.

2. Member States may revoke, end or refuse to renew the subsidiary protection status of a third-country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body, if after having been granted subsidiary protection status, he or she should have been excluded from being eligible for subsidiary protection in accordance with Article 17(3).

3. Member States shall revoke, end or refuse to renew the subsidiary protection status of a third-country national or a stateless person, if:

(a) he or she, after having been granted subsidiary protection status, should have been or is excluded from being eligible for subsidiary protection in accordance with Article 17(1) and (2);

(b) his or her misrepresentation or omission of facts, including the use of false documents, was decisive for the granting of subsidiary protection status.

4. Without prejudice to the duty of the third-country national or stateless person in accordance with Article 4(1) to disclose all relevant facts and provide all relevant documentation at his or her disposal, the Member State which has granted the subsidiary protection status shall, on an individual basis, demonstrate that the person concerned has ceased to be or is not eligible for subsidiary protection in accordance with paragraphs 1, 2 and 3 of this Article.

2. This Chapter shall apply both to refugees and persons eligible for subsidiary protection unless otherwise indicated.

3. When implementing this Chapter, Member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.

4. Paragraph 3 shall apply only to persons found to have special needs after an individual evaluation of their situation.

5. The best interests of the child shall be a primary consideration for Member States when implementing the provisions of this Chapter that involve minors.

Article 21

Protection from refoulement

1. Member States shall respect the principle of *non-refoulement* in accordance with their international obligations.

2. Where not prohibited by the international obligations mentioned in paragraph 1, Member States may *refoule* a refugee, whether formally recognised or not, when:

(a) there are reasonable grounds for considering him or her as a danger to the security of the Member State in which he or she is present; or

(b) he or she, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that Member State.

3. Member States may revoke, end or refuse to renew or to grant the residence permit of (or to) a refugee to whom paragraph 2 applies.

CHAPTER VII

CONTENT OF INTERNATIONAL PROTECTION

Article 20

General rules

1. This Chapter shall be without prejudice to the rights laid down in the Geneva Convention.

Article 22

Information

Member States shall provide beneficiaries of international protection, as soon as possible after refugee status or subsidiary protection status has been granted, with access to information, in a language that they understand or are reasonably supposed to understand, on the rights and obligations relating to that status.

*Article 23***Maintaining family unity**

1. Member States shall ensure that family unity can be maintained.
2. Member States shall ensure that family members of the beneficiary of international protection who do not individually qualify for such protection are entitled to claim the benefits referred to in Articles 24 to 35, in accordance with national procedures and as far as is compatible with the personal legal status of the family member.
3. Paragraphs 1 and 2 are not applicable where the family member is or would be excluded from international protection pursuant to Chapters III and V.
4. Notwithstanding paragraphs 1 and 2, Member States may refuse, reduce or withdraw the benefits referred to therein for reasons of national security or public order.
5. Member States may decide that this Article also applies to other close relatives who lived together as part of the family at the time of leaving the country of origin, and who were wholly or mainly dependent on the beneficiary of international protection at that time.

*Article 24***Residence permits**

1. As soon as possible after international protection has been granted, Member States shall issue to beneficiaries of refugee status a residence permit which must be valid for at least 3 years and renewable, unless compelling reasons of national security or public order otherwise require, and without prejudice to Article 21(3).

Without prejudice to Article 23(1), the residence permit to be issued to the family members of the beneficiaries of refugee status may be valid for less than 3 years and renewable.

2. As soon as possible after international protection has been granted, Member States shall issue to beneficiaries of subsidiary protection status and their family members a renewable residence permit which must be valid for at least 1 year and, in case of renewal, for at least 2 years, unless compelling reasons of national security or public order otherwise require.

*Article 25***Travel document**

1. Member States shall issue to beneficiaries of refugee status travel documents, in the form set out in the Schedule to the Geneva Convention, for the purpose of travel outside their territory unless compelling reasons of national security or public order otherwise require.
2. Member States shall issue to beneficiaries of subsidiary protection status who are unable to obtain a national passport, documents which enable them to travel outside their territory, unless compelling reasons of national security or public order otherwise require.

*Article 26***Access to employment**

1. Member States shall authorise beneficiaries of international protection to engage in employed or self-employed activities subject to rules generally applicable to the profession and to the public service, immediately after protection has been granted.
2. Member States shall ensure that activities such as employment-related education opportunities for adults, vocational training, including training courses for upgrading skills, practical workplace experience and counselling services afforded by employment offices, are offered to beneficiaries of international protection, under equivalent conditions as nationals.
3. Member States shall endeavour to facilitate full access for beneficiaries of international protection to the activities referred to in paragraph 2.

4. The law in force in the Member States applicable to remuneration, access to social security systems relating to employed or self-employed activities and other conditions of employment shall apply.

*Article 27***Access to education**

1. Member States shall grant full access to the education system to all minors granted international protection, under the same conditions as nationals.
2. Member States shall allow adults granted international protection access to the general education system, further training or retraining, under the same conditions as third-country nationals legally resident.

*Article 28***Access to procedures for recognition of qualifications**

1. Member States shall ensure equal treatment between beneficiaries of international protection and nationals in the context of the existing recognition procedures for foreign diplomas, certificates and other evidence of formal qualifications.

2. Member States shall endeavour to facilitate full access for beneficiaries of international protection who cannot provide documentary evidence of their qualifications to appropriate schemes for the assessment, validation and accreditation of their prior learning. Any such measures shall comply with Articles 2(2) and 3(3) of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications ⁽¹⁾.

*Article 29***Social welfare**

1. Member States shall ensure that beneficiaries of international protection receive, in the Member State that has granted such protection, the necessary social assistance as provided to nationals of that Member State.

2. By way of derogation from the general rule laid down in paragraph 1, Member States may limit social assistance granted to beneficiaries of subsidiary protection status to core benefits which will then be provided at the same level and under the same eligibility conditions as nationals.

*Article 30***Healthcare**

1. Member States shall ensure that beneficiaries of international protection have access to healthcare under the same eligibility conditions as nationals of the Member State that has granted such protection.

2. Member States shall provide, under the same eligibility conditions as nationals of the Member State that has granted protection, adequate healthcare, including treatment of mental disorders when needed, to beneficiaries of international protection who have special needs, such as pregnant women, disabled people, persons who have undergone torture, rape or other serious forms of psychological, physical or sexual violence or minors who have been victims of any form of abuse, neglect, exploitation, torture, cruel, inhuman and degrading treatment or who have suffered from armed conflict.

*Article 31***Unaccompanied minors**

1. As soon as possible after the granting of international protection Member States shall take the necessary measures to ensure the representation of unaccompanied minors by a legal guardian or, where necessary, by an organisation responsible for the care and well-being of minors, or by any other appropriate representation including that based on legislation or court order.

2. Member States shall ensure that the minor's needs are duly met in the implementation of this Directive by the appointed guardian or representative. The appropriate authorities shall make regular assessments.

3. Member States shall ensure that unaccompanied minors are placed either:

(a) with adult relatives; or

(b) with a foster family; or

(c) in centres specialised in accommodation for minors; or

(d) in other accommodation suitable for minors.

In this context, the views of the child shall be taken into account in accordance with his or her age and degree of maturity.

4. As far as possible, siblings shall be kept together, taking into account the best interests of the minor concerned and, in particular, his or her age and degree of maturity. Changes of residence of unaccompanied minors shall be limited to a minimum.

5. If an unaccompanied minor is granted international protection and the tracing of his or her family members has not already started, Member States shall start tracing them as soon as possible after the granting of international protection, whilst protecting the minor's best interests. If the tracing has already started, Member States shall continue the tracing process where appropriate. In cases where there may be a threat to the life or integrity of the minor or his or her close relatives, particularly if they have remained in the country of origin, care must be taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis.

6. Those working with unaccompanied minors shall have had and continue to receive appropriate training concerning their needs.

⁽¹⁾ OJ L 255, 30.9.2005, p. 22.

*Article 32***Access to accommodation**

1. Member States shall ensure that beneficiaries of international protection have access to accommodation under equivalent conditions as other third-country nationals legally resident in their territories.

2. While allowing for national practice of dispersal of beneficiaries of international protection, Member States shall endeavour to implement policies aimed at preventing discrimination of beneficiaries of international protection and at ensuring equal opportunities regarding access to accommodation.

*Article 33***Freedom of movement within the Member State**

Member States shall allow freedom of movement within their territory to beneficiaries of international protection, under the same conditions and restrictions as those provided for other third-country nationals legally resident in their territories.

*Article 34***Access to integration facilities**

In order to facilitate the integration of beneficiaries of international protection into society, Member States shall ensure access to integration programmes which they consider to be appropriate so as to take into account the specific needs of beneficiaries of refugee status or of subsidiary protection status, or create pre-conditions which guarantee access to such programmes.

*Article 35***Repatriation**

Member States may provide assistance to beneficiaries of international protection who wish to be repatriated.

CHAPTER VIII

ADMINISTRATIVE COOPERATION*Article 36***Cooperation**

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

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

*Article 37***Staff**

Member States shall ensure that authorities and other organisations implementing this Directive have received the necessary training and shall be bound by the confidentiality principle, as defined in the national law, in relation to any information they obtain in the course of their work.

CHAPTER IX

FINAL PROVISIONS*Article 38***Reports**

1. By 21 June 2015, the Commission shall report to the European Parliament and the Council on the application of this Directive and shall propose any amendments that are necessary. Those proposals for amendment shall be made by way of priority in Articles 2 and 7. Member States shall send the Commission all the information that is appropriate for drawing up that report by 21 December 2014.

2. After presenting the report, the Commission shall report to the European Parliament and the Council on the application of this Directive at least every 5 years.

*Article 39***Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 1, 2, 4, 7, 8, 9, 10, 11, 16, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35 by 21 December 2013. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the directive repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

2. Member States shall communicate to the Commission the text of the main provisions of national law covered by this Directive.

*Article 40***Repeal**

Directive 2004/83/EC is repealed for the Member States bound by this Directive with effect from 21 December 2013, 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 I, Part B.

For the Member States bound by this Directive, 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 II.

*Article 41***Entry into force**

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Articles 1, 2, 4, 7, 8, 9, 10, 11, 16, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35 shall apply from 22 December 2013.

*Article 42***Addressees**

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

Done at Strasbourg, 13 December 2011.

For the European Parliament

The President

J. BUZEK

For the Council

The President

M. SZPUNAR

ANNEX I

PART A

Repealed Directive

(referred to in Article 40)

Council Directive 2004/83/EC

(OJ L 304, 30.9.2004, p. 12).

PART B

Time limit for transposition into national law

(referred to in Article 39)

Directive	Time limit for transposition
2004/83/EC	10 October 2006

ANNEX II

Correlation table

Directive 2004/83/EC	This Directive
Article 1	Article 1
Article 2, introductory words	Article 2, introductory words
Article 2(a)	Article 2(a)
—	Article 2(b)
Article 2(b)-(g)	Article 2(c)-(h)
—	Article 2(i)
Article 2(h)	Article 2(j) first and second indent
—	Article 2(j) third indent
—	Article 2(k)
Article 2(i)	Article 2(l)
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COUNCIL DIRECTIVE 2003/86/EC
of 22 September 2003
on the right to family reunification

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 63(3)(a) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽³⁾,

Having regard to the opinion of the Committee of the Regions ⁽⁴⁾,

Whereas:

the objectives defined at Tampere have been reaffirmed by the Laeken European Council on 14 and 15 December 2001.

(1) With a view to the progressive establishment of an area of freedom, security and justice, the Treaty establishing the European Community provides both for the adoption of measures aimed at ensuring the free movement of persons, in conjunction with flanking measures relating to external border controls, asylum and immigration, and for the adoption of measures relating to asylum, immigration and safeguarding the rights of third country nationals.

(2) Measures concerning family reunification should be adopted in conformity with the obligation to protect the family and respect family life enshrined in many instruments of international law. This Directive respects the fundamental rights and observes the principles recognised in particular in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and in the Charter of Fundamental Rights of the European Union.

(3) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, acknowledged the need for harmonisation of national legislation on the conditions for admission and residence of third country nationals. In this context, it has in particular stated that the European Union should ensure fair treatment of third country nationals residing lawfully on the territory of the Member States and that a more vigorous integration policy should aim at granting them rights and obligations comparable to those of citizens of the European Union. The European Council accordingly asked the Council rapidly to adopt the legal instruments on the basis of Commission proposals. The need for achieving

(4) Family reunification is a necessary way of making family life possible. It helps to create sociocultural stability facilitating the integration of third country nationals in the Member State, which also serves to promote economic and social cohesion, a fundamental Community objective stated in the Treaty.

(5) Member States should give effect to the provisions of this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinions, membership of a national minority, fortune, birth, disabilities, age or sexual orientation.

(6) To protect the family and establish or preserve family life, the material conditions for exercising the right to family reunification should be determined on the basis of common criteria.

(7) Member States should be able to apply this Directive also when the family enters together.

(8) Special attention should be paid to the situation of refugees on account of the reasons which obliged them to flee their country and prevent them from leading a normal family life there. More favourable conditions should therefore be laid down for the exercise of their right to family reunification.

(9) Family reunification should apply in any case to members of the nuclear family, that is to say the spouse and the minor children.

(10) It is for the Member States to decide whether they wish to authorise family reunification for relatives in the direct ascending line, adult unmarried children, unmarried or registered partners as well as, in the event of a polygamous marriage, minor children of a further spouse and the sponsor. Where a Member State authorises family reunification of these persons, this is without prejudice of the possibility, for Member States which do not recognise the existence of family ties in the cases covered by this provision, of not granting to the said persons the treatment of family members with regard to the right to reside in another Member State, as defined by the relevant EC legislation.

⁽¹⁾ OJ C 116 E, 26.4.2000, p. 66, and OJ C 62 E, 27.2.2001, p. 99.

⁽²⁾ OJ C 135, 7.5.2001, p. 174.

⁽³⁾ OJ C 204, 18.7.2000, p. 40.

⁽⁴⁾ OJ C 73, 26.3.2003, p. 16.

(11) The right to family reunification should be exercised in proper compliance with the values and principles recognised by the Member States, in particular with respect to the rights of women and of children; such compliance justifies the possible taking of restrictive measures against applications for family reunification of polygamous households.

(12) The possibility of limiting the right to family reunification of children over the age of 12, whose primary residence is not with the sponsor, is intended to reflect the children's capacity for integration at early ages and shall ensure that they acquire the necessary education and language skills in school.

(13) A set of rules governing the procedure for examination of applications for family reunification and for entry and residence of family members should be laid down. Those procedures should be effective and manageable, taking account of the normal workload of the Member States' administrations, as well as transparent and fair, in order to offer appropriate legal certainty to those concerned.

(14) Family reunification may be refused on duly justified grounds. In particular, the person who wishes to be granted family reunification should not constitute a threat to public policy or public security. The notion of public policy may cover a conviction for committing a serious crime. In this context it has to be noted that the notion of public policy and public security covers also cases in which a third country national belongs to an association which supports terrorism, supports such an association or has extremist aspirations.

(15) The integration of family members should be promoted. For that purpose, they should be granted a status independent of that of the sponsor, in particular in cases of breakup of marriages and partnerships, and access to education, employment and vocational training on the same terms as the person with whom they are reunited, under the relevant conditions.

(16) Since the objectives of the proposed action, namely the establishment of a right to family reunification for third country nationals to be exercised in accordance with common rules, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved by the Community, 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 those objectives.

(17) In accordance with Articles 1 and 2 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 and without prejudice to Article 4 of the said Protocol these Member States are not participating in the adoption of this Directive and are not bound by or subject to its application.

(18) In accordance with Article 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and 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,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

General provisions

Article 1

The purpose of this Directive is to determine the conditions for the exercise of the right to family reunification by third country nationals residing lawfully in the territory of the Member States.

Article 2

For the purposes of this Directive:

- (a) 'third country national' means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty;
- (b) 'refugee' means any third country national or stateless person enjoying refugee status within the meaning of the Geneva Convention relating to the status of refugees of 28 July 1951, as amended by the Protocol signed in New York on 31 January 1967;
- (c) 'sponsor' means a third country national residing lawfully in a Member State and applying or whose family members apply for family reunification to be joined with him/her;
- (d) 'family reunification' means the entry into and residence in a Member State by family members of a third country national residing lawfully in that Member State in order to preserve the family unit, whether the family relationship arose before or after the resident's entry;
- (e) 'residence permit' means any authorisation issued by the authorities of a Member State allowing a third country national to stay legally in its territory, in accordance with the provisions of Article 1(2)(a) of Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third country nationals ⁽¹⁾;

⁽¹⁾ OJ L 157, 15.6.2002, p. 1.

(f) 'unaccompanied minor' means third country nationals or stateless persons below the age of eighteen, who arrive on the territory of the Member States unaccompanied by an adult responsible by law or custom, and for as long as they are not effectively taken into the care of such a person, or minors who are left unaccompanied after they entered the territory of the Member States.

Article 3

1. This Directive shall apply where the sponsor is holding a residence permit issued by a Member State for a period of validity of one year or more who has reasonable prospects of obtaining the right of permanent residence, if the members of his or her family are third country nationals of whatever status.

2. This Directive shall not apply where the sponsor is:

- (a) applying for recognition of refugee status whose application has not yet given rise to a final decision;
- (b) authorised to reside in a Member State on the basis of temporary protection or applying for authorisation to reside on that basis and awaiting a decision on his status;
- (c) authorised to reside in a Member State on the basis of a subsidiary form of protection in accordance with international obligations, national legislation or the practice of the Member States or applying for authorisation to reside on that basis and awaiting a decision on his status.

3. This Directive shall not apply to members of the family of a Union citizen.

4. This Directive is without prejudice to more favourable provisions of:

- (a) bilateral and multilateral agreements between the Community or the Community and its Member States, on the one hand, and third countries, on the other;
- (b) the European Social Charter of 18 October 1961, the amended European Social Charter of 3 May 1987 and the European Convention on the legal status of migrant workers of 24 November 1977.

5. This Directive shall not affect the possibility for the Member States to adopt or maintain more favourable provisions.

CHAPTER II

Family members

Article 4

1. The Member States shall authorise the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, as well as in Article 16, of the following family members:

- (a) the sponsor's spouse;

(b) the minor children of the sponsor and of his/her spouse, including children adopted in accordance with a decision taken by the competent authority in the Member State concerned or a decision which is automatically enforceable due to international obligations of that Member State or must be recognised in accordance with international obligations;

(c) the minor children including adopted children of the sponsor where the sponsor has custody and the children are dependent on him or her. Member States may authorise the reunification of children of whom custody is shared, provided the other party sharing custody has given his or her agreement;

(d) the minor children including adopted children of the spouse where the spouse has custody and the children are dependent on him or her. Member States may authorise the reunification of children of whom custody is shared, provided the other party sharing custody has given his or her agreement.

The minor children referred to in this Article must be below the age of majority set by the law of the Member State concerned and must not be married.

By way of derogation, where a child is aged over 12 years and arrives independently from the rest of his/her family, the Member State may, before authorising entry and residence under this Directive, verify whether he or she meets a condition for integration provided for by its existing legislation on the date of implementation of this Directive.

2. The Member States may, by law or regulation, authorise the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, of the following family members:

(a) first-degree relatives in the direct ascending line of the sponsor or his or her spouse, where they are dependent on them and do not enjoy proper family support in the country of origin;

(b) the adult unmarried children of the sponsor or his or her spouse, where they are objectively unable to provide for their own needs on account of their state of health.

3. The Member States may, by law or regulation, authorise the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, of the unmarried partner, being a third country national, with whom the sponsor is in a duly attested stable long-term relationship, or of a third country national who is bound to the sponsor by a registered partnership in accordance with Article 5(2), and of the unmarried minor children, including adopted children, as well as the adult unmarried children who are objectively unable to provide for their own needs on account of their state of health, of such persons.

Member States may decide that registered partners are to be treated equally as spouses with respect to family reunification.

4. In the event of a polygamous marriage, where the sponsor already has a spouse living with him in the territory of a Member State, the Member State concerned shall not authorise the family reunification of a further spouse.

By way of derogation from paragraph 1(c), Member States may limit the family reunification of minor children of a further spouse and the sponsor.

5. In order to ensure better integration and to prevent forced marriages Member States may require the sponsor and his/her spouse to be of a minimum age, and at maximum 21 years, before the spouse is able to join him/her.

6. By way of derogation, Member States may request that the applications concerning family reunification of minor children have to be submitted before the age of 15, as provided for by its existing legislation on the date of the implementation of this Directive. If the application is submitted after the age of 15, the Member States which decide to apply this derogation shall authorise the entry and residence of such children on grounds other than family reunification.

CHAPTER III

Submission and examination of the application

Article 5

1. Member States shall determine whether, in order to exercise the right to family reunification, an application for entry and residence shall be submitted to the competent authorities of the Member State concerned either by the sponsor or by the family member or members.

2. The application shall be accompanied by documentary evidence of the family relationship and of compliance with the conditions laid down in Articles 4 and 6 and, where applicable, Articles 7 and 8, as well as certified copies of family member(s)' travel documents.

If appropriate, in order to obtain evidence that a family relationship exists, Member States may carry out interviews with the sponsor and his/her family members and conduct other investigations that are found to be necessary.

When examining an application concerning the unmarried partner of the sponsor, Member States shall consider, as evidence of the family relationship, factors such as a common child, previous cohabitation, registration of the partnership and any other reliable means of proof.

3. The application shall be submitted and examined when the family members are residing outside the territory of the Member State in which the sponsor resides.

By way of derogation, a Member State may, in appropriate circumstances, accept an application submitted when the family members are already in its territory.

4. The competent authorities of the Member State shall give the person, who has submitted the application, written notification of the decision as soon as possible and in any event no later than nine months from the date on which the application was lodged.

In exceptional circumstances linked to the complexity of the examination of the application, the time limit referred to in the first subparagraph may be extended.

Reasons shall be given for the decision rejecting the application. Any consequences of no decision being taken by the end of the period provided for in the first subparagraph shall be determined by the national legislation of the relevant Member State.

5. When examining an application, the Member States shall have due regard to the best interests of minor children.

CHAPTER IV

Requirements for the exercise of the right to family reunification

Article 6

1. The Member States may reject an application for entry and residence of family members on grounds of public policy, public security or public health.

2. Member States may withdraw or refuse to renew a family member's residence permit on grounds of public policy or public security or public health.

When taking the relevant decision, the Member State shall consider, besides Article 17, the severity or type of offence against public policy or public security committed by the family member, or the dangers that are emanating from such person.

3. Renewal of the residence permit may not be withheld and removal from the territory may not be ordered by the competent authority of the Member State concerned on the sole ground of illness or disability suffered after the issue of the residence permit.

Article 7

1. When the application for family reunification is submitted, the Member State concerned may require the person who has submitted the application to provide evidence that the sponsor has:

- (a) accommodation regarded as normal for a comparable family in the same region and which meets the general health and safety standards in force in the Member State concerned;
- (b) sickness insurance in respect of all risks normally covered for its own nationals in the Member State concerned for himself/herself and the members of his/her family;

(c) stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family, without recourse to the social assistance system of the Member State concerned. Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum national wages and pensions as well as the number of family members.

2. Member States may require third country nationals to comply with integration measures, in accordance with national law.

With regard to the refugees and/or family members of refugees referred to in Article 12 the integration measures referred to in the first subparagraph may only be applied once the persons concerned have been granted family reunification.

Article 8

Member States may require the sponsor to have stayed lawfully in their territory for a period not exceeding two years, before having his/her family members join him/her.

By way of derogation, where the legislation of a Member State relating to family reunification in force on the date of adoption of this Directive takes into account its reception capacity, the Member State may provide for a waiting period of no more than three years between submission of the application for family reunification and the issue of a residence permit to the family members.

CHAPTER V

Family reunification of refugees

Article 9

1. This Chapter shall apply to family reunification of refugees recognised by the Member States.

2. Member States may confine the application of this Chapter to refugees whose family relationships predate their entry.

3. This Chapter is without prejudice to any rules granting refugee status to family members.

Article 10

1. Article 4 shall apply to the definition of family members except that the third subparagraph of paragraph 1 thereof shall not apply to the children of refugees.

2. The Member States may authorise family reunification of other family members not referred to in Article 4, if they are dependent on the refugee.

3. If the refugee is an unaccompanied minor, the Member States:

(a) shall authorise the entry and residence for the purposes of family reunification of his/her first-degree relatives in the direct ascending line without applying the conditions laid down in Article 4(2)(a);

(b) may authorise the entry and residence for the purposes of family reunification of his/her legal guardian or any other member of the family, where the refugee has no relatives in the direct ascending line or such relatives cannot be traced.

Article 11

1. Article 5 shall apply to the submission and examination of the application, subject to paragraph 2 of this Article.

2. Where a refugee cannot provide official documentary evidence of the family relationship, the Member States shall take into account other evidence, to be assessed in accordance with national law, of the existence of such relationship. A decision rejecting an application may not be based solely on the fact that documentary evidence is lacking.

Article 12

1. By way of derogation from Article 7, the Member States shall not require the refugee and/or family member(s) to provide, in respect of applications concerning those family members referred to in Article 4(1), the evidence that the refugee fulfils the requirements set out in Article 7.

Without prejudice to international obligations, where family reunification is possible in a third country with which the sponsor and/or family member has special links, Member States may require provision of the evidence referred to in the first subparagraph.

Member States may require the refugee to meet the conditions referred to in Article 7(1) if the application for family reunification is not submitted within a period of three months after the granting of the refugee status.

2. By way of derogation from Article 8, the Member States shall not require the refugee to have resided in their territory for a certain period of time, before having his/her family members join him/her.

CHAPTER VI

Entry and residence of family members

Article 13

1. As soon as the application for family reunification has been accepted, the Member State concerned shall authorise the entry of the family member or members. In that regard, the Member State concerned shall grant such persons every facility for obtaining the requisite visas.

2. The Member State concerned shall grant the family members a first residence permit of at least one year's duration. This residence permit shall be renewable.

3. The duration of the residence permits granted to the family member(s) shall in principle not go beyond the date of expiry of the residence permit held by the sponsor.

Article 14

1. The sponsor's family members shall be entitled, in the same way as the sponsor, to:

- (a) access to education;
- (b) access to employment and self-employed activity;
- (c) access to vocational guidance, initial and further training and retraining.

2. Member States may decide according to national law the conditions under which family members shall exercise an employed or self-employed activity. These conditions shall set a time limit which shall in no case exceed 12 months, during which Member States may examine the situation of their labour market before authorising family members to exercise an employed or self-employed activity.

3. Member States may restrict access to employment or self-employed activity by first-degree relatives in the direct ascending line or adult unmarried children to whom Article 4(2) applies.

Article 15

1. Not later than after five years of residence, and provided that the family member has not been granted a residence permit for reasons other than family reunification, the spouse or unmarried partner and a child who has reached majority shall be entitled, upon application, if required, to an autonomous residence permit, independent of that of the sponsor.

Member States may limit the granting of the residence permit referred to in the first subparagraph to the spouse or unmarried partner in cases of breakdown of the family relationship.

2. The Member States may issue an autonomous residence permit to adult children and to relatives in the direct ascending line to whom Article 4(2) applies.

3. In the event of widowhood, divorce, separation, or death of first-degree relatives in the direct ascending or descending line, an autonomous residence permit may be issued, upon application, if required, to persons who have entered by virtue of family reunification. Member States shall lay down provisions ensuring the granting of an autonomous residence permit in the event of particularly difficult circumstances.

4. The conditions relating to the granting and duration of the autonomous residence permit are established by national law.

CHAPTER VII

Penalties and redress

Article 16

1. Member States may reject an application for entry and residence for the purpose of family reunification, or, if appropriate, withdraw or refuse to renew a family member's residence permit, in the following circumstances:

- (a) where the conditions laid down by this Directive are not or are no longer satisfied.

When renewing the residence permit, where the sponsor has not sufficient resources without recourse to the social assistance system of the Member State, as referred to in Article 7(1)(c), the Member State shall take into account the contributions of the family members to the household income;

- (b) where the sponsor and his/her family member(s) do not or no longer live in a real marital or family relationship;
- (c) where it is found that the sponsor or the unmarried partner is married or is in a stable long-term relationship with another person.

2. Member States may also reject an application for entry and residence for the purpose of family reunification, or withdraw or refuse to renew the family member's residence permits, where it is shown that:

- (a) false or misleading information, false or falsified documents were used, fraud was otherwise committed or other unlawful means were used;
- (b) the marriage, partnership or adoption was contracted for the sole purpose of enabling the person concerned to enter or reside in a Member State.

When making an assessment with respect to this point, Member States may have regard in particular to the fact that the marriage, partnership or adoption was contracted after the sponsor had been issued his/her residence permit.

3. The Member States may withdraw or refuse to renew the residence permit of a family member where the sponsor's residence comes to an end and the family member does not yet enjoy an autonomous right of residence under Article 15.

4. Member States may conduct specific checks and inspections where there is reason to suspect that there is fraud or a marriage, partnership or adoption of convenience as defined by paragraph 2. Specific checks may also be undertaken on the occasion of the renewal of family members' residence permit.

Article 17

Member States shall take due account of the nature and solidity of the person's family relationships and the duration of his residence in the Member State and of the existence of family, cultural and social ties with his/her country of origin where they reject an application, withdraw or refuse to renew a residence permit or decide to order the removal of the sponsor or members of his family.

Article 18

The Member States shall ensure that the sponsor and/or the members of his/her family have the right to mount a legal challenge where an application for family reunification is rejected or a residence permit is either not renewed or is withdrawn or removal is ordered.

The procedure and the competence according to which the right referred to in the first subparagraph is exercised shall be established by the Member States concerned.

CHAPTER VIII

Final provisions*Article 19*

Periodically, and for the first time not later than 3 October 2007, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose such amendments as may appear necessary. These proposals for amendments shall be made by way of priority in relation to Articles 3, 4, 7, 8 and 13.

Article 20

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by not later than 3 October 2005. They shall forthwith inform the Commission thereof.

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

Article 21

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

Article 22

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

Done at Brussels, 22 September 2003.

For the Council

The President

F. FRATTINI

DIRECTIVE 2008/115/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 16 December 2008****on common standards and procedures in Member States for returning illegally staying third-country nationals**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 63(3)(b) thereof,

Having regard to the proposal from the Commission,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽¹⁾,

Whereas:

- (1) The Tampere European Council of 15 and 16 October 1999 established a coherent approach in the field of immigration and asylum, dealing together with the creation of a common asylum system, a legal immigration policy and the fight against illegal immigration.
- (2) The Brussels European Council of 4 and 5 November 2004 called for the establishment of an effective removal and repatriation policy, based on common standards, for persons to be returned in a humane manner and with full respect for their fundamental rights and dignity.
- (3) On 4 May 2005 the Committee of Ministers of the Council of Europe adopted 'Twenty guidelines on forced return'.
- (4) Clear, transparent and fair rules need to be fixed to provide for an effective return policy as a necessary element of a well managed migration policy.
- (5) This Directive should establish a horizontal set of rules, applicable to all third-country nationals who do not or who no longer fulfil the conditions for entry, stay or residence in a Member State.
- (6) Member States should ensure that the ending of illegal stay of third-country nationals is carried out through a fair and transparent procedure. According to general principles of EU law, decisions taken under this Directive should be adopted on a case-by-case basis and based on objective criteria, implying that consider-

ation should go beyond the mere fact of an illegal stay. When using standard forms for decisions related to return, namely return decisions and, if issued, entry-ban decisions and decisions on removal, Member States should respect that principle and fully comply with all applicable provisions of this Directive.

- (7) The need for Community and bilateral readmission agreements with third countries to facilitate the return process is underlined. International cooperation with countries of origin at all stages of the return process is a prerequisite to achieving sustainable return.
- (8) It is recognised that it is legitimate for Member States to return illegally staying third-country nationals, provided that fair and efficient asylum systems are in place which fully respect the principle of non-refoulement.
- (9) In accordance with Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status ⁽²⁾, a third-country national who has applied for asylum in a Member State should not be regarded as staying illegally on the territory of that Member State until a negative decision on the application, or a decision ending his or her right of stay as asylum seeker has entered into force.
- (10) Where there are no reasons to believe that this would undermine the purpose of a return procedure, voluntary return should be preferred over forced return and a period for voluntary departure should be granted. An extension of the period for voluntary departure should be provided for when considered necessary because of the specific circumstances of an individual case. In order to promote voluntary return, Member States should provide for enhanced return assistance and counselling and make best use of the relevant funding possibilities offered under the European Return Fund.
- (11) A common minimum set of legal safeguards on decisions related to return should be established to guarantee effective protection of the interests of the individuals concerned. The necessary legal aid should be made available to those who lack sufficient resources. Member States should provide in their national legislation for which cases legal aid is to be considered necessary.

⁽¹⁾ Opinion of the European Parliament of 18 June 2008 (not yet published in the Official Journal) and Council Decision of 9 December 2008.

⁽²⁾ OJ L 326, 13.12.2005, p. 13.

- (12) The situation of third-country nationals who are staying illegally but who cannot yet be removed should be addressed. Their basic conditions of subsistence should be defined according to national legislation. In order to be able to demonstrate their specific situation in the event of administrative controls or checks, such persons should be provided with written confirmation of their situation. Member States should enjoy wide discretion concerning the form and format of the written confirmation and should also be able to include it in decisions related to return adopted under this Directive.
- (13) The use of coercive measures should be expressly subject to the principles of proportionality and effectiveness with regard to the means used and objectives pursued. Minimum safeguards for the conduct of forced return should be established, taking into account Council Decision 2004/573/EC of 29 April 2004 on the organisation of joint flights for removals from the territory of two or more Member States, of third-country nationals who are subjects of individual removal orders⁽¹⁾. Member States should be able to rely on various possibilities to monitor forced return.
- (14) The effects of national return measures should be given a European dimension by establishing an entry ban prohibiting entry into and stay on the territory of all the Member States. The length of the entry ban should be determined with due regard to all relevant circumstances of an individual case and should not normally exceed five years. In this context, particular account should be taken of the fact that the third-country national concerned has already been the subject of more than one return decision or removal order or has entered the territory of a Member State during an entry ban.
- (15) It should be for the Member States to decide whether or not the review of decisions related to return implies the power for the reviewing authority or body to substitute its own decision related to the return for the earlier decision.
- (16) The use of detention for the purpose of removal should be limited and subject to the principle of proportionality with regard to the means used and objectives pursued. Detention is justified only to prepare the return or carry out the removal process and if the application of less coercive measures would not be sufficient.
- (17) Third-country nationals in detention should be treated in a humane and dignified manner with respect for their fundamental rights and in compliance with international and national law. Without prejudice to the initial apprehension by law-enforcement authorities, regulated by national legislation, detention should, as a rule, take place in specialised detention facilities.
- (18) Member States should have rapid access to information on entry bans issued by other Member States. This information sharing should take place in accordance with Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II)⁽²⁾.
- (19) Cooperation between the institutions involved at all levels in the return process and the exchange and promotion of best practices should accompany the implementation of this Directive and provide European added value.
- (20) Since the objective of this Directive, namely to establish common rules concerning return, removal, use of coercive measures, detention and entry bans, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, 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 to achieve that objective.
- (21) Member States should implement this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinions, membership of a national minority, property, birth, disability, age or sexual orientation.
- (22) In line with the 1989 United Nations Convention on the Rights of the Child, the 'best interests of the child' should be a primary consideration of Member States when implementing this Directive. In line with the European Convention for the Protection of Human Rights and Fundamental Freedoms, respect for family life should be a primary consideration of Member States when implementing this Directive.
- (23) Application of this Directive is without prejudice to the obligations resulting from the Geneva Convention relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967.
- (24) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

⁽¹⁾ OJ L 261, 6.8.2004, p. 28.

⁽²⁾ OJ L 381, 28.12.2006, p. 4.

- (25) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application. Given that this Directive builds — to the extent that it applies to third-country nationals who do not fulfil or who no longer fulfil the conditions of entry in accordance with the Schengen Borders Code ⁽¹⁾ — upon the Schengen acquis under the provisions of Title IV of Part Three of the Treaty establishing the European Community, Denmark shall, in accordance with Article 5 of the said Protocol, decide, within a period of six months after the adoption of this Directive, whether it will implement it in its national law.
- (26) To the extent that it applies to third-country nationals who do not fulfil or who no longer fulfil the conditions of entry in accordance with the Schengen Borders Code, this Directive constitutes a development of provisions of the Schengen acquis in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis ⁽²⁾; moreover, in accordance with Articles 1 and 2 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, and without prejudice to Article 4 of the said Protocol, the United Kingdom is not taking part in the adoption of this Directive and is therefore not bound by it in its entirety or subject to its application.
- (27) To the extent that it applies to third-country nationals who do not fulfil or who no longer fulfil the conditions of entry in accordance with the Schengen Borders Code, this Directive constitutes a development of provisions of the Schengen acquis in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen acquis ⁽³⁾; moreover, in accordance with Articles 1 and 2 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, and without prejudice to Article 4 of the said Protocol, Ireland is not taking part in the adoption of this Directive and is therefore not bound by it in its entirety or subject to its application.
- (28) As regards Iceland and Norway, this Directive constitutes — to the extent that it applies to third-country nationals who do not fulfil or who no longer fulfil the conditions of entry in accordance with the Schengen Borders Code — a development of provisions of the Schengen acquis within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen acquis, which fall within the area referred to in Article 1, point C, of Council Decision 1999/437/EC ⁽⁴⁾ on certain arrangements for the application of that Agreement.
- (29) As regards Switzerland, this Directive constitutes — to the extent that it applies to third-country nationals who do not fulfil or who no longer fulfil the conditions of entry in accordance with the Schengen Borders Code — a development of provisions of the Schengen acquis within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis, which fall within the area referred to in Article 1, point C, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC ⁽⁵⁾ on the conclusion, on behalf of the European Community, of that Agreement.
- (30) As regards Liechtenstein, this Directive constitutes — to the extent that it applies to third-country nationals who do not fulfil or who no longer fulfil the conditions of entry in accordance with the Schengen Borders Code — a development of provisions of the Schengen acquis within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis, which fall within the area referred to in Article 1, point C, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/261/EC ⁽⁶⁾ on the signature, on behalf of the European Community, and on the provisional application of, certain provisions of that Protocol,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Directive sets out common standards and procedures to be applied in Member States for returning illegally staying third-country nationals, in accordance with fundamental rights as general principles of Community law as well as international law, including refugee protection and human rights obligations.

⁽¹⁾ Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 105, 13.4.2006, p. 1).

⁽²⁾ OJ L 131, 1.6.2000, p. 43.

⁽³⁾ OJ L 64, 7.3.2002, p. 20.

⁽⁴⁾ OJ L 176, 10.7.1999, p. 31.

⁽⁵⁾ OJ L 53, 27.2.2008, p. 1.

⁽⁶⁾ OJ L 83, 26.3.2008, p. 3.

Article 2

Scope

1. This Directive applies to third-country nationals staying illegally on the territory of a Member State.

2. Member States may decide not to apply this Directive to third-country nationals who:

(a) are subject to a refusal of entry in accordance with Article 13 of the Schengen Borders Code, or who are apprehended or intercepted by the competent authorities in connection with the irregular crossing by land, sea or air of the external border of a Member State and who have not subsequently obtained an authorisation or a right to stay in that Member State;

(b) are subject to return as a criminal law sanction or as a consequence of a criminal law sanction, according to national law, or who are the subject of extradition procedures.

3. This Directive shall not apply to persons enjoying the Community right of free movement as defined in Article 2(5) of the Schengen Borders Code.

Article 3

Definitions

For the purpose of this Directive the following definitions shall apply:

1. 'third-country national' means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty and who is not a person enjoying the Community right of free movement, as defined in Article 2(5) of the Schengen Borders Code;

2. 'illegal stay' means the presence on the territory of a Member State, of a third-country national who does not fulfil, or no longer fulfils the conditions of entry as set out in Article 5 of the Schengen Borders Code or other conditions for entry, stay or residence in that Member State;

3. 'return' means the process of a third-country national going back — whether in voluntary compliance with an obligation to return, or enforced — to:

— his or her country of origin, or

— a country of transit in accordance with Community or bilateral readmission agreements or other arrangements, or

— another third country, to which the third-country national concerned voluntarily decides to return and in which he or she will be accepted;

4. 'return decision' means an administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return;

5. 'removal' means the enforcement of the obligation to return, namely the physical transportation out of the Member State;

6. 'entry ban' means an administrative or judicial decision or act prohibiting entry into and stay on the territory of the Member States for a specified period, accompanying a return decision;

7. 'risk of absconding' means the existence of reasons in an individual case which are based on objective criteria defined by law to believe that a third-country national who is the subject of return procedures may abscond;

8. 'voluntary departure' means compliance with the obligation to return within the time-limit fixed for that purpose in the return decision;

9. 'vulnerable persons' means minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.

Article 4

More favourable provisions

1. This Directive shall be without prejudice to more favourable provisions of:

(a) bilateral or multilateral agreements between the Community or the Community and its Member States and one or more third countries;

(b) bilateral or multilateral agreements between one or more Member States and one or more third countries.

2. This Directive shall be without prejudice to any provision which may be more favourable for the third-country national, laid down in the Community acquis relating to immigration and asylum.

3. This Directive shall be without prejudice to the right of the Member States to adopt or maintain provisions that are more favourable to persons to whom it applies provided that such provisions are compatible with this Directive.

4. With regard to third-country nationals excluded from the scope of this Directive in accordance with Article 2(2)(a), Member States shall:

(a) ensure that their treatment and level of protection are no less favourable than as set out in Article 8(4) and (5) (limitations on use of coercive measures), Article 9(2)(a) (postponement of removal), Article 14(1) (b) and (d) (emergency health care and taking into account needs of vulnerable persons), and Articles 16 and 17 (detention conditions) and

(b) respect the principle of non-refoulement.

Article 5

Non-refoulement, best interests of the child, family life and state of health

When implementing this Directive, Member States shall take due account of:

(a) the best interests of the child;

(b) family life;

(c) the state of health of the third-country national concerned,

and respect the principle of non-refoulement.

CHAPTER II

TERMINATION OF ILLEGAL STAY

Article 6

Return decision

1. Member States shall issue a return decision to any third-country national staying illegally on their territory, without prejudice to the exceptions referred to in paragraphs 2 to 5.

2. Third-country nationals staying illegally on the territory of a Member State and holding a valid residence permit or other authorisation offering a right to stay issued by another Member State shall be required to go to the territory of that other Member State immediately. In the event of non-compliance by the third-country national concerned with this requirement, or where the third-country national's immediate departure is required for reasons of public policy or national security, paragraph 1 shall apply.

3. Member States may refrain from issuing a return decision to a third-country national staying illegally on their territory if the third-country national concerned is taken back by another Member State under bilateral agreements or arrangements existing on the date of entry into force of this Directive. In

such a case the Member State which has taken back the third-country national concerned shall apply paragraph 1.

4. Member States may at any moment decide to grant an autonomous residence permit or other authorisation offering a right to stay for compassionate, humanitarian or other reasons to a third-country national staying illegally on their territory. In that event no return decision shall be issued. Where a return decision has already been issued, it shall be withdrawn or suspended for the duration of validity of the residence permit or other authorisation offering a right to stay.

5. If a third-country national staying illegally on the territory of a Member State is the subject of a pending procedure for renewing his or her residence permit or other authorisation offering a right to stay, that Member State shall consider refraining from issuing a return decision, until the pending procedure is finished, without prejudice to paragraph 6.

6. This Directive shall not prevent Member States from adopting a decision on the ending of a legal stay together with a return decision and/or a decision on a removal and/or entry ban in a single administrative or judicial decision or act as provided for in their national legislation, without prejudice to the procedural safeguards available under Chapter III and under other relevant provisions of Community and national law.

Article 7

Voluntary departure

1. A return decision shall provide for an appropriate period for voluntary departure of between seven and thirty days, without prejudice to the exceptions referred to in paragraphs 2 and 4. Member States may provide in their national legislation that such a period shall be granted only following an application by the third-country national concerned. In such a case, Member States shall inform the third-country nationals concerned of the possibility of submitting such an application.

The time period provided for in the first subparagraph shall not exclude the possibility for the third-country nationals concerned to leave earlier.

2. Member States shall, where necessary, extend the period for voluntary departure by an appropriate period, taking into account the specific circumstances of the individual case, such as the length of stay, the existence of children attending school and the existence of other family and social links.

3. Certain obligations aimed at avoiding the risk of absconding, such as regular reporting to the authorities, deposit of an adequate financial guarantee, submission of documents or the obligation to stay at a certain place may be imposed for the duration of the period for voluntary departure.

4. If there is a risk of absconding, or if an application for a legal stay has been dismissed as manifestly unfounded or fraudulent, or if the person concerned poses a risk to public policy, public security or national security, Member States may refrain from granting a period for voluntary departure, or may grant a period shorter than seven days.

Article 8

Removal

1. Member States shall take all necessary measures to enforce the return decision if no period for voluntary departure has been granted in accordance with Article 7(4) or if the obligation to return has not been complied with within the period for voluntary departure granted in accordance with Article 7.

2. If a Member State has granted a period for voluntary departure in accordance with Article 7, the return decision may be enforced only after the period has expired, unless a risk as referred to in Article 7(4) arises during that period.

3. Member States may adopt a separate administrative or judicial decision or act ordering the removal.

4. Where Member States use — as a last resort — coercive measures to carry out the removal of a third-country national who resists removal, such measures shall be proportionate and shall not exceed reasonable force. They shall be implemented as provided for in national legislation in accordance with fundamental rights and with due respect for the dignity and physical integrity of the third-country national concerned.

5. In carrying out removals by air, Member States shall take into account the Common Guidelines on security provisions for joint removals by air annexed to Decision 2004/573/EC.

6. Member States shall provide for an effective forced-return monitoring system.

Article 9

Postponement of removal

1. Member States shall postpone removal:

- (a) when it would violate the principle of non-refoulement, or
- (b) for as long as a suspensory effect is granted in accordance with Article 13(2).

2. Member States may postpone removal for an appropriate period taking into account the specific circumstances of the

individual case. Member States shall in particular take into account:

- (a) the third-country national's physical state or mental capacity;
- (b) technical reasons, such as lack of transport capacity, or failure of the removal due to lack of identification.

3. If a removal is postponed as provided for in paragraphs 1 and 2, the obligations set out in Article 7(3) may be imposed on the third-country national concerned.

Article 10

Return and removal of unaccompanied minors

1. Before deciding to issue a return decision in respect of an unaccompanied minor, assistance by appropriate bodies other than the authorities enforcing return shall be granted with due consideration being given to the best interests of the child.

2. Before removing an unaccompanied minor from the territory of a Member State, the authorities of that Member State shall be satisfied that he or she will be returned to a member of his or her family, a nominated guardian or adequate reception facilities in the State of return.

Article 11

Entry ban

1. Return decisions shall be accompanied by an entry ban:

- (a) if no period for voluntary departure has been granted, or
- (b) if the obligation to return has not been complied with.

In other cases return decisions may be accompanied by an entry ban.

2. The length of the entry ban shall be determined with due regard to all relevant circumstances of the individual case and shall not in principle exceed five years. It may however exceed five years if the third-country national represents a serious threat to public policy, public security or national security.

3. Member States shall consider withdrawing or suspending an entry ban where a third-country national who is the subject of an entry ban issued in accordance with paragraph 1, second subparagraph, can demonstrate that he or she has left the territory of a Member State in full compliance with a return decision.

Victims of trafficking in human beings who have been granted a residence permit pursuant to Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities ⁽¹⁾ shall not be subject of an entry ban without prejudice to paragraph 1, first subparagraph, point (b), and provided that the third-country national concerned does not represent a threat to public policy, public security or national security.

Member States may refrain from issuing, withdraw or suspend an entry ban in individual cases for humanitarian reasons.

Member States may withdraw or suspend an entry ban in individual cases or certain categories of cases for other reasons.

4. Where a Member State is considering issuing a residence permit or other authorisation offering a right to stay to a third-country national who is the subject of an entry ban issued by another Member State, it shall first consult the Member State having issued the entry ban and shall take account of its interests in accordance with Article 25 of the Convention implementing the Schengen Agreement ⁽²⁾.

5. Paragraphs 1 to 4 shall apply without prejudice to the right to international protection, as defined in Article 2(a) of 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 granted ⁽³⁾, in the Member States.

CHAPTER III

PROCEDURAL SAFEGUARDS

Article 12

Form

1. Return decisions and, if issued, entry-ban decisions and decisions on removal shall be issued in writing and give reasons in fact and in law as well as information about available legal remedies.

The information on reasons in fact may be limited where national law allows for the right to information to be restricted, in particular in order to safeguard national security, defence, public security and for the prevention, investigation, detection and prosecution of criminal offences.

2. Member States shall provide, upon request, a written or oral translation of the main elements of decisions related to return, as referred to in paragraph 1, including information on the available legal remedies in a language the third-country

national understands or may reasonably be presumed to understand.

3. Member States may decide not to apply paragraph 2 to third country nationals who have illegally entered the territory of a Member State and who have not subsequently obtained an authorisation or a right to stay in that Member State.

In such cases decisions related to return, as referred to in paragraph 1, shall be given by means of a standard form as set out under national legislation.

Member States shall make available generalised information sheets explaining the main elements of the standard form in at least five of those languages which are most frequently used or understood by illegal migrants entering the Member State concerned.

Article 13

Remedies

1. The third-country national concerned shall be afforded an effective remedy to appeal against or seek review of decisions related to return, as referred to in Article 12(1), before a competent judicial or administrative authority or a competent body composed of members who are impartial and who enjoy safeguards of independence.

2. The authority or body mentioned in paragraph 1 shall have the power to review decisions related to return, as referred to in Article 12(1), including the possibility of temporarily suspending their enforcement, unless a temporary suspension is already applicable under national legislation.

3. The third-country national concerned shall have the possibility to obtain legal advice, representation and, where necessary, linguistic assistance.

4. Member States shall ensure that the necessary legal assistance and/or representation is granted on request free of charge in accordance with relevant national legislation or rules regarding legal aid, and may provide that such free legal assistance and/or representation is subject to conditions as set out in Article 15(3) to (6) of Directive 2005/85/EC.

Article 14

Safeguards pending return

1. Member States shall, with the exception of the situation covered in Articles 16 and 17, ensure that the following principles are taken into account as far as possible in relation to third-country nationals during the period for voluntary departure granted in accordance with Article 7 and during periods for which removal has been postponed in accordance with Article 9:

⁽¹⁾ OJ L 261, 6.8.2004, p. 19.

⁽²⁾ OJ L 239, 22.9.2000, p. 19.

⁽³⁾ OJ L 304, 30.9.2004, p. 12.

- (a) family unity with family members present in their territory is maintained;
- (b) emergency health care and essential treatment of illness are provided;
- (c) minors are granted access to the basic education system subject to the length of their stay;
- (d) special needs of vulnerable persons are taken into account.

2. Member States shall provide the persons referred to in paragraph 1 with a written confirmation in accordance with national legislation that the period for voluntary departure has been extended in accordance with Article 7(2) or that the return decision will temporarily not be enforced.

CHAPTER IV

DETENTION FOR THE PURPOSE OF REMOVAL

Article 15

Detention

1. Unless other sufficient but less coercive measures can be applied effectively in a specific case, Member States may only keep in detention a third-country national who is the subject of return procedures in order to prepare the return and/or carry out the removal process, in particular when:

- (a) there is a risk of absconding or
- (b) the third-country national concerned avoids or hampers the preparation of return or the removal process.

Any detention shall be for as short a period as possible and only maintained as long as removal arrangements are in progress and executed with due diligence.

2. Detention shall be ordered by administrative or judicial authorities.

Detention shall be ordered in writing with reasons being given in fact and in law.

When detention has been ordered by administrative authorities, Member States shall:

- (a) either provide for a speedy judicial review of the lawfulness of detention to be decided on as speedily as possible from the beginning of detention;
- (b) or grant the third-country national concerned the right to take proceedings by means of which the lawfulness of detention shall be subject to a speedy judicial review to be decided on as speedily as possible after the launch of

the relevant proceedings. In such a case Member States shall immediately inform the third-country national concerned about the possibility of taking such proceedings.

The third-country national concerned shall be released immediately if the detention is not lawful.

3. In every case, detention shall be reviewed at reasonable intervals of time either on application by the third-country national concerned or ex officio. In the case of prolonged detention periods, reviews shall be subject to the supervision of a judicial authority.

4. When it appears that a reasonable prospect of removal no longer exists for legal or other considerations or the conditions laid down in paragraph 1 no longer exist, detention ceases to be justified and the person concerned shall be released immediately.

5. Detention shall be maintained for as long a period as the conditions laid down in paragraph 1 are fulfilled and it is necessary to ensure successful removal. Each Member State shall set a limited period of detention, which may not exceed six months.

6. Member States may not extend the period referred to in paragraph 5 except for a limited period not exceeding a further twelve months in accordance with national law in cases where regardless of all their reasonable efforts the removal operation is likely to last longer owing to:

- (a) a lack of cooperation by the third-country national concerned, or
- (b) delays in obtaining the necessary documentation from third countries.

Article 16

Conditions of detention

1. Detention shall take place as a rule in specialised detention facilities. Where a Member State cannot provide accommodation in a specialised detention facility and is obliged to resort to prison accommodation, the third-country nationals in detention shall be kept separated from ordinary prisoners.

2. Third-country nationals in detention shall be allowed — on request — to establish in due time contact with legal representatives, family members and competent consular authorities.

3. Particular attention shall be paid to the situation of vulnerable persons. Emergency health care and essential treatment of illness shall be provided.

4. Relevant and competent national, international and non-governmental organisations and bodies shall have the possibility to visit detention facilities, as referred to in paragraph 1, to the extent that they are being used for detaining third-country nationals in accordance with this Chapter. Such visits may be subject to authorisation.

5. Third-country nationals kept in detention shall be systematically provided with information which explains the rules applied in the facility and sets out their rights and obligations. Such information shall include information on their entitlement under national law to contact the organisations and bodies referred to in paragraph 4.

Article 17

Detention of minors and families

1. Unaccompanied minors and families with minors shall only be detained as a measure of last resort and for the shortest appropriate period of time.

2. Families detained pending removal shall be provided with separate accommodation guaranteeing adequate privacy.

3. Minors in detention shall have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age, and shall have, depending on the length of their stay, access to education.

4. Unaccompanied minors shall as far as possible be provided with accommodation in institutions provided with personnel and facilities which take into account the needs of persons of their age.

5. The best interests of the child shall be a primary consideration in the context of the detention of minors pending removal.

Article 18

Emergency situations

1. In situations where an exceptionally large number of third-country nationals to be returned places an unforeseen heavy burden on the capacity of the detention facilities of a Member State or on its administrative or judicial staff, such a Member State may, as long as the exceptional situation persists, decide to allow for periods for judicial review longer than those provided for under the third subparagraph of Article 15(2) and to take urgent measures in respect of the conditions of detention derogating from those set out in Articles 16(1) and 17(2).

2. When resorting to such exceptional measures, the Member State concerned shall inform the Commission. It shall also inform the Commission as soon as the reasons for applying these exceptional measures have ceased to exist.

3. Nothing in this Article shall be interpreted as allowing Member States to derogate from their general obligation to take all appropriate measures, whether general or particular, to ensure fulfilment of their obligations under this Directive.

CHAPTER V

FINAL PROVISIONS

Article 19

Reporting

The Commission shall report every three years to the European Parliament and the Council on the application of this Directive in the Member States and, if appropriate, propose amendments.

The Commission shall report for the first time by 24 December 2013 and focus on that occasion in particular on the application of Article 11, Article 13(4) and Article 15 in Member States. In relation to Article 13(4) the Commission shall assess in particular the additional financial and administrative impact in Member States.

Article 20

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 24 December 2010. In relation to Article 13(4), Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 24 December 2011. They shall forthwith communicate to the Commission the text of those measures.

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

2. 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.

Article 21

Relationship with the Schengen Convention

This Directive replaces the provisions of Articles 23 and 24 of the Convention implementing the Schengen Agreement.

Article 22

Entry into force

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

*Article 23***Addressees**

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

Done at Strasbourg, 16 December 2008.

For the European Parliament

The President

H.-G. PÖTTERING

For the Council

The President

B. LE MAIRE
