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Preamble

We, the Heads of State and Government assembled in the city of Addis Ababa, from 6-10 September 1969,

1. Noting with concern the constantly increasing numbers of refugees in Africa and desirous of finding ways and means of alleviating their misery and suffering as well as providing them with a better life and future,
2. Recognizing the need for an essentially humanitarian approach towards solving the problems of refugees,
3. Aware, however, that refugee problems are a source of friction among many Member States, and desirous of eliminating the source of such discord,
4. Anxious to make a distinction between a refugee who seeks a peaceful and normal life and a person fleeing his country for the sole purpose of fomenting subversion from outside,
5. Determined that the activities of such subversive elements should be discouraged, in accordance with the Declaration on the Problem of Subversion and Resolution on the Problem of Refugees adopted at Accra in 1965,
6. Bearing in mind that the Charter of the United Nations and the Universal Declaration of Human Rights have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination,
7. Recalling Resolution 2312 (XXII) of 14 December 1967 of the United Nations General Assembly, relating to the Declaration on Territorial Asylum,
8. Convinced that all the problems of our continent must be solved in the spirit of the Charter of the Organization of African Unity and in the African context,
9. Recognizing that the United Nations Convention of 28 July 1951, as modified by the Protocol of 31 January 1967, constitutes the basic and universal instrument relating to the status of refugees and reflects the deep concern of States for refugees and their desire to establish common standards for their treatment,
10. Recalling Resolutions 26 and 104 of the OAU Assemblies of Heads of State and Government, calling upon Member States of the Organization who had not already done so to accede to the United Nations Convention of 1951 and to the Protocol of 1967 relating to the Status of Refugees, and meanwhile to apply their provisions to refugees in Africa,
11. Convinced that the efficiency of the measures recommended by the present Convention to solve the problem of refugees in Africa necessitates close and continuous collaboration between the Organization of African Unity and the Office of the United Nations High Commissioner for Refugees,

Have agreed as follows:
Article I
Definition of the term ‘Refugee’

1. For the purposes of this Convention, the term ‘refugee’ shall mean every person who, 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.

2. The term ‘refugee’ shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

3. In the case of a person who has several nationalities, the term ‘a country of which he is a national’ 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 which he is a national 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.

4. This Convention shall cease to apply to any refugee if:
   (a) he has voluntarily re-availed himself of the protection of the country of his nationality, or,
   (b) having lost his nationality, he has voluntarily reacquired it, or,
   (c) he has acquired a new nationality, and enjoys the protection of the country of his new nationality, or,
   (d) he has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution, or,
   (e) he can no longer, because the circumstances in connection with which he was recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality, or,
   (f) he has committed a serious non-political crime outside his country of refuge after his admission to that country as a refugee, or,
   (g) he has seriously infringed the purposes and objectives of this Convention.

5. The provisions of this Convention shall not apply to any person with respect to whom the country of asylum has 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 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 Organization of African Unity;
   (d) he has been guilty of acts contrary to the purposes and principles of the United Nations.

6. For the purposes of this Convention, the Contracting State of asylum shall determine whether an applicant is a refugee.
Article II
Asylum

1. Member States of the OAU shall use their best endeavours consistent with their respective legislations to receive refugees and to secure the settlement of those refugees who, for well-founded reasons, are unable or unwilling to return to their country of origin or nationality.
2. The grant of asylum to refugees is a peaceful and humanitarian act and shall not be regarded as an unfriendly act by any Member State.
3. No person shall be subjected by a Member State to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened for the reasons set out in Article I, paragraphs 1 and 2.
4. Where a Member State finds difficulty in continuing to grant asylum to refugees, such Member State may appeal directly to other Member States and through the OAU, and such other Member States shall in the spirit of African solidarity and international co-operation take appropriate measures to lighten the burden of the Member State granting asylum.
5. Where a refugee has not received the right to reside in any country of asylum, he may be granted temporary residence in any country of asylum in which he first presented himself as a refugee pending arrangement for his resettlement in accordance with the preceding paragraph.
6. For reasons of security, countries of asylum shall, as far as possible, settle refugees at a reasonable distance from the frontier of their country of origin.

Article III
Prohibition of Subversive Activities

1. Every refugee has duties to the country in which he finds himself, which require in particular that he conforms with its laws and regulations as well as with measures taken for the maintenance of public order. He shall also abstain from any subversive activities against any Member State of the OAU.
2. Signatory States undertake to prohibit refugees residing in their respective territories from attacking any State Member of the OAU, by any activity likely to cause tension between Member States, and in particular by use of arms, through the press, or by radio.

Article IV
Non-Discrimination

Member States undertake to apply the provisions of this Convention to all refugees without discrimination as to race, religion, nationality, membership of a particular social group or political opinions.
Article V
Voluntary Repatriation

1. The essentially voluntary character of repatriation shall be respected in all cases and no refugee shall be repatriated against his will.
2. The country of asylum, in collaboration with the country of origin, shall make adequate arrangements for the safe return of refugees who request repatriation.
3. The country of origin, on receiving back refugees, shall facilitate their resettlement and grant them the full rights and privileges of nationals of the country, and subject them to the same obligations.
4. Refugees who voluntarily return to their country shall in no way be penalized for having left it for any of the reasons giving rise to refugee situations. Whenever necessary, an appeal shall be made through national information media and through the Administrative Secretary-General of the OAU, inviting refugees to return home and giving assurance that the new circumstances prevailing in their country of origin will enable them to return without risk and to take up a normal and peaceful life without fear of being disturbed or punished, and that the text of such appeal should be given to refugees and clearly explained to them by their country of asylum.
5. Refugees who freely decide to return to their homeland, as a result of such assurances or on their own initiative, shall be given every possible assistance by the country of asylum, the country of origin, voluntary agencies and international and intergovernmental organizations, to facilitate their return.

Article IV
Travel Documents

1. Subject to Article III, Member States shall issue to refugees lawfully staying in their territories travel documents in accordance with the United Nations Convention relating to the Status of Refugees and the Schedule and Annex thereto, for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require. Member States may issue such a travel document to any other refugee in their territory.
2. Where an African country of second asylum accepts a refugee from a country of first asylum, the country of first asylum may be dispensed from issuing a document with a return clause.
3. Travel documents issued to refugees under previous international agreements by States Parties thereto shall be recognized and treated by Member States in the same way as if they had been issued to refugees pursuant to this Article.

Article VII
Co-operation of the National Authorities with the Organization of African Unity

In order to enable the Administrative Secretary-General of the Organization of African Unity to make reports to the competent organs of the Organization of African Unity, Member States undertake to provide the Secretariat 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 VIII
Co-operation with the Office of the United Nations High Commissioner for Refugees

1. Member States shall co-operate with the Office of the United Nations High
Commissioner for Refugees.
2. The present Convention shall be the effective regional complement in Africa of the

Article IX
Settlement of Disputes

Any dispute between States signatories to this Convention relating to its interpretation
or application, which cannot be settled by other means, shall be referred to the
Commission for Mediation, Conciliation and Arbitration of the Organization of African
Unity, at the request of any one of the Parties to the dispute.

Article X
Signature and Ratification

1. This Convention is open for signature and accession by all Member States of the
Organization of African Unity and shall be ratified by signatory States in accordance
with their respective constitutional processes. The instruments of ratification shall be
deposited with the Administrative Secretary-General of the Organization of African
Unity.
2. The original instrument, done if possible in African languages, and in English and
French, all texts being equally authentic, shall be deposited with the Administrative
Secretary-General of the Organization of African Unity.
3. Any independent African State, Member of the Organization of African Unity, may
at any time notify the Administrative Secretary-General of the Organization of African
Unity of its accession to this Convention.

Article XI
Entry into force

This Convention shall come into force upon deposit of instruments of ratification by
one-third of the Member States of the Organization of African Unity.

Article XII
Amendment

This Convention may be amended or revised if any Member State makes a written
request to the Administrative Secretary-General to that effect, provided however that
the proposed amendment shall not be submitted to the Assembly of Heads of State and
Government for consideration until all Member States have been duly notified of it and a period of one year has elapsed. Such an amendment shall not be effective unless approved by at least two-thirds of the Member States Parties to the present Convention.

Article XIII
Denunciation

1. Any Member State Party to this Convention may denounce its provisions by a written notification to the Administrative Secretary-General.
2. At the end of one year from the date of such notification, if not withdrawn, the Convention shall cease to apply with respect to the denouncing State.

Article XIV

Upon entry into force of this Convention, the Administrative Secretary-General of the OAU shall register it with the Secretary-General of the United Nations, in accordance with Article 102 of the Charter of the United Nations.

Article XV
Notifications by the Administrative Secretary-General of the Organization of African Unity

The Administrative Secretary-General of the Organization of African Unity shall inform all Members of the Organization:
(a) of signatures, ratifications and accessions in accordance with Article X;
(b) of entry into force, in accordance with Article XI;
(c) of requests for amendments submitted under the terms of Article XII;
(d) of denunciations, in accordance with Article XIII.

Entry into Force: 1 October 1986

Article 12

1. Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.
2. Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality.
3. Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with the law of those countries and international conventions.
4. A non-national legally admitted in a territory of a State Party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law.

5. The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups.

... 

Article 23

1. All peoples shall have the right to national and international peace and security. The principles of solidarity and friendly relations implicitly affirmed by the Charter of the United Nations and reaffirmed by that of the Organization of African Unity shall govern relations between States.

2. For the purpose of strengthening peace, solidarity and friendly relations, States parties to the present Charter shall ensure that:

(a) any individual enjoying the right of asylum under Article 12 of the present Charter shall not engage in subversive activities against his country of origin or any other State party to the present Charter;

(b) their territories shall not be used as bases for subversive or terrorist activities against the people of any other State party to the present Charter.

... 

3. 1954 Caracas Convention on Territorial Asylum

   Entry into force: 29 December 1954

The Governments of the Member States of the Organization of American States, desirous of concluding a Convention regarding Territorial Asylum, have agreed to the following articles:

Article 1

Every State has the right, in the exercise of its sovereignty, to admit into its territory such persons as it deems advisable, without, through the exercise of this right, giving rise to complaint by any other State.

Article 2

The respect which, according to international law, is due to the jurisdictional right of each State over the inhabitants in its territory, is equally due, without any restriction whatsoever, to that which it has over persons who enter it proceeding from a State in which they are persecuted for their beliefs, opinions, or political affiliations, or for acts which may be considered as political offenses.

Any violation of sovereignty that consists of acts committed by a government or its agents in another State against the life or security of an individual, carried out on the
territory of another State, may not be considered attenuated because the persecution began outside its boundaries or is due to political considerations or reasons of state.

Article 3

No State is under the obligation to surrender to another State, or to expel from its own territory, persons persecuted for political reasons or offenses.

Article 4

The right of extradition is not applicable in connection with persons who, in accordance with the qualifications of the solicited State, are sought for political offenses, or for common offenses committed for political ends, or when extradition is solicited for predominantly political motives.

Article 5

The fact that a person has entered into the territorial jurisdiction of a State surreptitiously or irregularly does not affect the provisions of this Convention.

Article 6

Without prejudice to the provisions of the following articles, no State is under the obligation to establish any distinction in its legislation, or in its regulations or administrative acts applicable to aliens, solely because of the fact that they are political asylees or refugees.

Article 7

Freedom of expression of thought, recognized by domestic law for all inhabitants of a State, may not be ground of complaint by a third State on the basis of opinions expressed publicly against it or its government by asylees or refugees, except when these concepts constitute systematic propaganda through which they incite to the use of force or violence against the government of the complaining State.

Article 8

No State has the right to request that another State restrict for the political asylees or refugees the freedom of assembly or association which the latter States’s internal legislation grants to all aliens within its territory, unless such assembly or association has as its purpose fomenting the use of force or violence against the government of the soliciting State.

Article 9

At the request of the interested State, the State that has granted refuge or asylum shall take steps to keep watch over, or to intern at a reasonable distance from its border, those
political refugees or asylees who are notorious leaders of a subversive movement, as well as those against whom there is evidence that they are disposed to join it.

Determination of the reasonable distance from the border, for the purpose of internment, shall depend upon the judgment of the authorities of the State of refuge.

All expenses incurred as a result of the internment of political asylees and refugees shall be chargeable to the State that makes the request.

Article 10

The political internees referred to in the preceding article shall advise the government of the host State whenever they wish to leave its territory. Departure therefrom will be granted, under the condition that they are not to go to the country from which they came and the interested government is to be notified.

Article 11

In all cases in which a complaint or request is permissible in accordance with this Convention, the admissibility of evidence presented by the demanding State shall depend on the judgment of the solicited State.

Article 12

This Convention remains open to the signature of the Member States of the Organization of American States, and shall be ratified by the signatory States in accordance with their respective constitutional procedures.

Article 13

The original instrument, whose texts in the English, French, Portuguese, and Spanish languages are equally authentic, shall be deposited in the Pan American Union, which shall send certified copies to the governments for the purpose of ratification. The instruments of ratification shall be deposited in the Pan American Union; this organization shall notify the signatory governments of said deposit.

Article 14

This Convention shall take effect among the States that ratify it in the order in which their respective ratifications are deposited.

Article 15

This Convention shall remain effective indefinitely, but may be denounced by any of the signatory States by giving advance notice of one year, at the end of which period it shall cease to have effect for the denouncing State, remaining, however, in force among the remaining signatory States. The denunciation shall be forwarded to the Pan American Union which shall notify the other signatory States thereof.
4. 1954 Caracas Convention on Diplomatic Asylum
Entry into force: 29 December 1954

The Governments of the Member States of the Organization of American States, desirous of concluding a Convention on Diplomatic Asylum, have agreed to the following articles:

Article 1

Asylum granted in legations, war vessels, and military camps or aircraft, to persons being sought for political reasons or for political offenses shall be respected by the territorial State in accordance with the provisions of this Convention. For the purposes of this Convention, a legation is any seat of a regular diplomatic mission, the residence of chiefs of mission, and the premises provided by them for the dwelling places of asylees when the number of the latter exceeds the normal capacity of the buildings. War vessels or military aircraft that may be temporarily in shipyards, arsenals, or shops for repair may not constitute a place of asylum.

Article 2

Every State has the right to grant asylum; but it is not obligated to do so or to state its reasons for refusing it.

Article 3

It is not lawful to grant asylum to persons who, at the time of requesting it, are under indictment or on trial for common offenses or have been convicted by competent regular courts and have not served the respective sentence, nor to deserters from land, sea, and air forces, save when the acts giving rise to the request for asylum, whatever the case may be, are clearly of a political nature.

Persons included in the foregoing paragraph who de facto enter a place that is suitable as an asylum shall be invited to leave or, as the case may be, shall be surrendered to the local authorities, who may not try them for political offenses committed prior to the time of the surrender.

Article 4

It shall rest with the State granting asylum to determine the nature of the offense or the motives for the persecution.

Article 5

Asylum may not be granted except in urgent cases and for the period of time strictly necessary for the asylee to depart from the country with the guarantees granted by the
Government of the territorial State, to the end that his life, liberty, or personal integrity may not be endangered, or that the asylee’s safety is ensured in some other way.

Article 6

Urgent cases are understood to be those, among others, in which the individual is being sought by persons or mobs over whom the authorities have lost control, or by the authorities themselves, and is in danger of being deprived of his life or liberty because of political persecution and cannot, without risk, ensure his safety in any other way.

Article 7

If a case of urgency is involved, it shall rest with the State granting asylum to determine the degree of urgency of the case.

Article 8

The diplomatic representative, commander of a warship, military camp, or military airship, shall, as soon as possible after asylum has been granted, report the fact to the Minister of Foreign Affairs of the territorial State, or to the local administrative authority if the case arose outside the Capital.

Article 9

The official furnishing asylum shall take into account the information furnished to him by the territorial government in forming his judgment as to the nature of the offense or the existence of related common crimes; but this decision to continue the asylum or to demand a safe-conduct for the asylee shall be respected.

Article 10

The fact that the Government of the territorial State is not recognized by the State granting asylum shall not prejudice the application of the present Convention, and no act carried out by virtue of this Convention shall imply recognition.

Article 11

The Government of the territorial State, may, at any time, demand that the asylee be withdrawn from the country, for which purpose the said State shall grant a safe-conduct and the guarantees stipulated in Article 5.

Article 12

Once asylum has been granted, the State granting asylum may request that the asylee be allowed to depart for foreign territory, and the territorial State is under obligation to grant immediately, except in case of force majeure, the necessary guarantees, referred to in Article 5, as well as the corresponding safe-conduct.
Article 13

In the cases referred to in the preceding articles the State granting asylum may require that the guarantees be given in writing, and may take into account, in determining the rapidity of the journey, the actual conditions of danger involved in the departure of the asylee.

The State granting asylum has the right to transfer the asylee out of the country. The territorial State may point out the preferable route for the departure of the asylee, but this does not imply determining the country of destination.

If the asylum is granted on board a warship or military airship, departure may be made therein, but complying with the previous requisite of obtaining the appropriate safe-conduct.

Article 14

The State granting asylum cannot be held responsible for the prolongation of asylum caused by the need for obtaining the information required to determine whether or not the said asylum is proper, or whether there are circumstances that might endanger the safety of the asylee during the journey to a foreign country.

Article 15

When, in order to transfer an asylee to another country it may be necessary to traverse the territory of a State that is a party to this Convention, transit shall be authorized by the latter, the only requisite being the presentation, through diplomatic channels, of a safe-conduct, duly countersigned and bearing a notation of his status as asylee by the diplomatic mission that granted asylum. En route, the asylee shall be considered under the protection of the State granting asylum.

Article 16

Asylees may not be landed at any point in the territorial State or at any place near thereto, except for exigencies of transportation.

Article 17

Once the departure of the asylee has been carried out, the State granting asylum is not bound to settle him in its territory; but it may not return him to his country of origin, unless this is the express wish of the asylee.

If the territorial State informs the official granting asylum of its intention to request the subsequent extradition of the asylee, this shall not prejudice the application of any provision of the present Convention. In that event, the asylee shall remain in the territory of the State granting asylum until such time as the formal request for extradition is received, in accordance with the juridical principles governing that institution in the State granting asylum. Preventive surveillance over the asylee may not exceed thirty days.
Payment of the expenses incurred by such transfer and of preventive control shall devolve upon the requesting State.

*Article 18*

The official furnishing asylum may not allow the asylee to perform acts contrary to the public peace or to interfere in the internal politics of the territorial State.

*Article 19*

If as a consequence of a rupture of diplomatic relations the diplomatic representative who granted asylum must leave the territorial State, he shall abandon it with the asylees.

If this is not possible for reasons independent of the wish of the asylee or the diplomatic representative, he must surrender them to the diplomatic mission of a third State, which is a party to this Convention, under the guarantees established in the Convention.

If this is also not possible, he shall surrender them to a State that is not a party to this Convention and that agrees to maintain the asylum. The territorial State is to respect the said asylum.

*Article 20*

Diplomatic asylum shall not be subject to reciprocity. Every person is under its protection, whatever his nationality.

*Article 21*

The present Convention shall be open for signature by the Member States of the Organization of American States and shall be ratified by the signatory States in accordance with their respective constitutional procedures.

*Article 22*

The original instrument, whose texts in the English, French, Spanish, and Portuguese languages are equally authentic, shall be deposited in the Pan American Union, which shall send certified copies to the governments for the purpose of ratification. The instruments of ratification shall be deposited in the Pan American Union, and the said organization shall notify the signatory governments of the said deposit.

*Article 23*

The present Convention shall enter into force among the States that ratify it in the order in which their respective ratifications are deposited.
Article 24

The present Convention shall remain in force indefinitely, but may be denounced by any of the signatory States by giving advance notice of one year, at the end of which period it shall cease to have effect for the denouncing State, remaining in force, however, among the remaining signatory States. The denunciation shall be transmitted to the Pan American Union, which shall inform the other signatory States thereof.

5. 1969 American Convention on Human Rights – Extracts

   Entry into force: 18 July 1978

Article 20

1. Every person has the right to a nationality.
2. Every person has the right to the nationality of the State in whose territory he was born if he does not have the right to any other nationality.
3. No one shall be arbitrarily deprived of his nationality or of the right to change it.
...

Article 22

Freedom of Movement and Residence

1. Every person lawfully in the territory of a State Party has the right to move about in it and to reside in it subject to the provisions of the law.
2. Every person has the right to leave any country freely, including his own.
3. The exercise of the foregoing rights may be restricted only pursuant to a law to the extent necessary in a democratic society to prevent crime or to protect national security, public safety, public order, public morals, public health, or the rights or freedoms of others.
4. The exercise of the rights recognized in paragraph 1 may also be restricted by law in designated zones for reasons of public interest.
5. No one can be expelled from the territory of the State of which he is a national or be deprived of the right to enter it.
6. An alien lawfully in the territory of a State Party to this Convention may be expelled from it only pursuant to a decision reached in accordance with law.
7. Every person has the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the State and international conventions, in the event he is being pursued for political offenses or related common crimes.
8. In no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinions.
9. The collective expulsion of aliens is prohibited.
Entry into force: 28 March 1982

**Article 4**
Grounds for denying extradition

Extradition shall not be granted:

1. When the person sought has completed his punishment or has been granted amnesty, pardon or grace for the offense for which extradition is sought, or when he has been acquitted or the case against him for the same offense has been dismissed with prejudice.
2. When the prosecution or punishment is barred by the statute of limitations according to the laws of the requesting State or the requested State prior to the presentation of the request for extradition.
3. When the person sought has been tried or is to be tried before an extraordinary or ad hoc tribunal of the requesting State.
4. When, as determined by the requested State, the offense for which the person is sought is a political offense, an offense related thereto, or an ordinary criminal offense prosecuted for political reasons. The requested State may decide that the fact that the victim of the punishable act in question performed political functions does not in itself justify the designation of the offense as political.
5. When, from the circumstances of the case, it can be inferred that persecution for reasons of race, religion or nationality is involved, or that the position of the person sought may be prejudiced for any of these reasons.
6. With respect to offenses that in the requested State cannot be prosecuted unless a complaint or charge has been made by a party having a legitimate interest.

**Article 6**
Right of asylum

No provision of this Convention may be interpreted as a limitation on the right of asylum when its exercise is appropriate.
Conclusions and Recommendations

I

Recalling the conclusions and recommendations adopted by the Colloquium held in Mexico in 1981 on Asylum and International Protection of Refugees in Latin America, which established important landmarks for the analysis and consideration of this matter;

Recognizing that the refugee situation in Central America has evolved in recent years to the point at which it deserves special attention;

Appreciating the generous efforts which have been made by countries receiving Central American refugees, notwithstanding the great difficulties they have had to face, particularly in the current economic crisis;

Emphasizing the admirable humanitarian and non-political task which UNHCR has been called upon to carry out in the Central American countries, Mexico and Panama in accordance with the provisions of the 1951 United Nations Convention and the 1967 Protocol, as well as those of resolution 428 (V) of the United Nations General Assembly, by which the mandate of the United Nations High Commissioner for Refugees is applicable to all States whether or not parties to the said Convention and/or Protocol;

Bearing in mind also the function performed by the Inter-American Commission on Human Rights with regard to the protection of the rights of refugees in the continent;

Strongly supporting the efforts of the Contadora Group to find an effective and lasting solution to the problem of Central American refugees, which constitute a significant step in the negotiation of effective agreements in favour of peace in the region;

Expressing its conviction that many of the legal and humanitarian problems relating to refugees which have arisen in the Central American region, Mexico and Panama can only be tackled in the light of the necessary co-ordination and harmonization of universal and regional systems and national efforts;

II

Having acknowledged with appreciation the commitments with regard to refugees included in the Contadora Act on Peace and Co-operation in Central America, the bases of which the Colloquium fully shares and which are reproduced below:

(a) ‘To carry out, if they have not yet done so, the constitutional procedures for accession to the 1951 Convention and the 1967 Protocol relating to the Status of Refugees.’
(b) ‘To adopt the terminology established in the Convention and Protocol referred to in the foregoing paragraph with a view to distinguishing refugees from other categories of migrants.’

(c) ‘To establish the internal machinery necessary for the implementation, upon accession, of the provisions of the Convention and Protocol referred to above.’

(d) ‘To ensure the establishment of machinery for consultation between the Central American countries and representatives of the Government offices responsible for dealing with the problem of refugees in each State.’

(e) ‘To support the work performed by the United Nations High Commissioner for Refugees (UNHCR) in Central America and to establish direct co-ordination machinery to facilitate the fulfilment of his mandate.’

(f) ‘To ensure that any repatriation of refugees is voluntary, and is declared to be so on an individual basis, and is carried out with the co-operation of UNHCR.’

(g) ‘To ensure the establishment of tripartite commissions, composed of representatives of the State of origin, of the receiving State and of UNHCR with a view to facilitating the repatriation of refugees.’

(h) ‘To reinforce programmes for protection of and assistance to refugees, particularly in the areas of health, education, labour and safety.’

(i) ‘To ensure that programmes and projects are set up with a view to ensuring the self-sufficiency of refugees.’

(j) ‘To train the officials responsible in each State for protection of and assistance to refugees, with the co-operation of UNHCR and other international agencies.’

(k) ‘To request immediate assistance from the international community for Central American refugees, to be provided either directly, through bilateral or multilateral agreements, or through UNHCR and other organizations and agencies.’

(l) ‘To identify, with the co-operation of UNHCR, other countries which might receive Central American refugees. In no case shall a refugee be transferred to a third country against his will.’

(m) ‘To ensure that the Governments of the area make the necessary efforts to eradicate the causes of the refugee problem.’

(n) ‘To ensure that, once agreement has been reached on the bases for voluntary and individual repatriation, with full guarantees for the refugees, the receiving countries permit official delegations of the country of origin, accompanied by representatives of UNHCR and the receiving country, to visit the refugee camps.’

(o) ‘To ensure that the receiving countries facilitate, in co-ordination with UNHCR, the departure procedure for refugees in instances of voluntary and individual repatriation.’

(p) ‘To institute appropriate measures in the receiving countries to prevent the participation of refugees in activities directed against the country of origin, while at all times respecting the human rights of the refugees.’
The Colloquium adopted the following conclusions:

1. To promote within the countries of the region the adoption of national laws and regulations facilitating the application of the Convention and the Protocol and, if necessary, establishing internal procedures and mechanisms for the protection of refugees. In addition, to ensure that the national laws and regulations adopted reflect the principles and criteria of the Convention and the Protocol, thus fostering the necessary process of systematic harmonization of national legislation on refugees.

2. To ensure that ratification of or accession to the 1951 Convention and the 1967 Protocol by States which have not yet taken these steps is unaccompanied by reservations limiting the scope of those instruments, and to invite countries having formulated such reservations to consider withdrawing them as soon as possible.

3. To reiterate that, in view of the experience gained from the massive flows of refugees in the Central American area, it is necessary to consider enlarging the concept of a refugee, bearing in mind, as far as appropriate and in the light of the situation prevailing in the region, the precedent of the OAU Convention (article I, paragraph 2) and the doctrine employed in the reports of the Inter-American Commission on Human Rights. Hence the definition or concept of a refugee to be recommended for use in the region is one which, in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includes among refugees persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.

4. To confirm the peaceful, non-political and exclusively humanitarian nature of grant of asylum or recognition of the status of refugee and to underlie the importance of the internationally accepted principle that nothing in either shall be interpreted as an unfriendly act towards the country of origin of refugees.

5. To reiterate the importance and meaning of the principle of non-refoulement (including the prohibition of rejection at the frontier) as a corner-stone of the international protection of refugees. This principle is imperative in regard to refugees and in the present state of international law should be acknowledged and observed as a rule of jus cogens.

6. To reiterate to countries of asylum that refugee camps and settlements located in frontier areas should be set up inland at a reasonable distance from the frontier with a view to improving the protection afforded to refugees, safeguarding their human rights and implementing projects aimed at their self-sufficiency and integration into the host society.

7. To express its concern at the problem raised by military attacks on refugee camps and settlements which have occurred in different parts of the world and to propose to the Governments of the Central American countries, Mexico and Panama that they lend their support to the measures on this matter which have been proposed by the High Commissioner to the UNHCR Executive Committee.

8. To ensure that the countries of the region establish a minimum standard of treatment for refugees, on the basis of the provisions of the 1951 Convention and 1967 Protocol and of the American Convention on Human Rights, taking into consideration
the conclusions of the UNHCR Executive Committee, particularly No. 22 on the
Protection of Asylum Seekers in Situations of Large-Scale Influx.

9. To express its concern at the situation of displaced persons within their own
countries. In this connection, the Colloquium calls on national authorities and the
competent international organizations to offer protection and assistance to those persons
and to help relieve the hardship which many of them face.

10. To call on States parties to the 1969 American Convention on Human Rights
to apply this instrument in dealing with asilados and refugees who are in their
territories.

11. To make a study, in countries in the area which have a large number of
refugees, of the possibilities of integrating them into the productive life of the country
by allocating to the creation or generation of employment the resources made available
by the international community through UNHCR, thus making it possible for refugees
to enjoy their economic, social and cultural rights.

12. To reiterate the voluntary and individual character of repatriation of refugees
and the need for it to be carried out under conditions of absolute safety, preferably to
the place of residence of the refugee in his country of origin.

13. To acknowledge that reunification of families constitutes a fundamental
principle in regard to refugees and one which should be the basis for the regime of
humanitarian treatment in the country of asylum, as well as for facilities granted in
cases of voluntary repatriation.

14. To urge non-governmental, international and national organizations to
continue their worthy task, co-ordinating their activities with UNHCR and the national
authorities of the country of asylum, in accordance with the guidelines laid down by the
authorities in question.

15. To promote greater use of the competent organizations of the inter-American
system, in particular the Inter-American Commission on Human Rights, with a view to
enhancing the international protection of asilados and refugees. Accordingly, for the
performance of this task, the Colloquium considers that the close co-ordination and co-
operation existing between the Commission and UNHCR should be strengthened.

16. To acknowledge the importance of the OAS/UNHCR Programme of Co-
operation and the activities so far carried out and to propose that the next stage should
focus on the problem raised by massive refugee flows in Central America, Mexico and
Panama.

17. To ensure that in the countries of Central America and the Contadora Group
the international norms and national legislation relating to the protection of refugees,
and of human rights in general, are disseminated at all possible levels. In particular, the
Colloquium believes it especially important that such dissemination should be
undertaken with the valuable co-operation of the appropriate universities and centres of
higher education.
The Cartagena Colloquium therefore

Recommends:

— That the commitments with regard to refugees included in the Contadora Act should constitute norms for the 10 States participating in the Colloquium and be unfailingly and scrupulously observed in determining the conduct to be adopted in regard to refugees in the Central American area.

— That the conclusions reached by the Colloquium (III) should receive adequate attention in the search for solutions to the grave problems raised by the present massive flows of refugees in Central America, Mexico and Panama.

— That a volume should be published containing the working document and the proposals and reports, as well as the conclusions and recommendations of the Colloquium and other pertinent documents, and that the Colombian Government, UNHCR and the competent bodies of OAS should be requested to take the necessary steps to secure the widest possible circulation of the volume in question.

— That the present document should be proclaimed the ‘Cartagena Declaration on Refugees’.

— That the United Nations High Commissioner for Refugees should be requested to transmit the contents of the present declaration officially to the heads of State of the Central American countries, of Belize and of the countries forming the Contadora Group.

Finally, the Colloquium expressed its deep appreciation to the Colombian authorities, and in particular to the President of the Republic, Mr. Belisario Betancur, the Minister for Foreign Affairs, Mr. Augusto Ramírez Ocampo, and the United Nations High Commissioner for Refugees, Mr. Poul Hartling, who honoured the Colloquium with their presence, as well as to the University of Cartagena de Indias and the Regional Centre for Third World Studies for their initiative and for the realization of this important event. The Colloquium expressed its special recognition of the support and hospitality offered by the authorities of the Department of Bolivar and the City of Cartagena. It also thanked the people of Cartagena, rightly known as the ‘Heroic City’, for their warm welcome.

In conclusion, the Colloquium recorded its acknowledgement of the generous tradition of asylum and refuge practised by the Colombian people and authorities.

Cartagena de Indias, 22 November 1984
Entry into force: 3 September 1953
Text: ETS No. 5

**Article 1**

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section 1 of this Convention.

...  

**Article 3**

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

...  

**Article 13**

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**

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**

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 Article 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.
Entry into force: 2 May 1968
Text: ETS No. 46

Article 2

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ‘ordre public’, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interests in a democratic society.

Article 3

1. No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national.
2. No one shall be deprived of the right to enter the territory of the State of which he is a national.

Article 4

Collective expulsion of aliens is prohibited.

10. 1957 European Convention on Extradition – Extracts
Entry into force: 18 April 1960
Text: ETS No. 24

Article 3

Political offences

1. Extradition shall not be granted if the offence in respect of which it is requested is regarded by the requested Party as a political offence or as an offence connected with a political offence.
2. The same rule shall apply if the requested Party has substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person’s position may be prejudiced for any of these reasons.
3. The taking or attempted taking of the life of a Head of State or a member of his family shall not be deemed to be a political offence for the purposes of this Convention.
4. This Article shall not affect any obligations which the Contracting Parties may have undertaken or may undertake under any other international convention of a multilateral character.

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**Article 21**

1. Transit through the territory of one of the Contracting Parties shall be granted on submission of a request ...provided that the offence concerned is not considered by the Party requested to grant transit as an offence of a political or purely military character having regard to Articles 3 and 4 of the Convention.

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Entry into force: 20 August 1979
Text: ETS No. 86

**Article 1**

For the application of Article 3 of the Convention, political offences shall not be considered to include the following:

(a) the crimes against humanity specified in the Convention on the Prevention and Punishment of the Crime of Genocide adopted on 9 December 1948 by the General Assembly of the United Nations;

(b) the violations specified in Article 50 of the 1949 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Article 51 of the 1949 Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Article 130 of the 1949 Geneva Convention relative to the Treatment of Prisoners of War and Article 147 of the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War;

(c) any comparable violations of the laws of war having effect at the time when this Protocol enters into force and of customs of war existing at that time, which are not already provided for in the above-mentioned provisions of the Geneva Conventions.
12. 1977 European Convention on the Suppression of Terrorism –
Extracts
Entry into force: 4 August 1970
Text: ETS No. 90

Article 1

For the purposes of extradition between Contracting States, none of the following
offences shall be regarded as a political offence or as an offence connected with a
political offence or as an offence inspired by political motives:

(a) an offence within the scope of the Convention for the Suppression of
Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970;
(b) an offence within the scope of the Convention for the Suppression of
Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September
1971;
(c) a serious offence involving an attack against the life, physical integrity or
liberty of internationally protected persons, including diplomatic agents;
(d) an offence involving kidnapping, the taking of a hostage or serious unlawful
detention;
(e) an offence involving the use of a bomb, grenade, rocket, automatic firearm
or letter or parcel bomb if this use endangers persons;
(f) an attempt to commit any of the foregoing offences or participation as an
accomplice of a person who commits or attempts to commit such an offence.

Article 2

1. For the purposes of extradition between Contracting States, a Contracting State may
decide not to regard as a political offence or as an offence connected with a political
offence or as an offence inspired by political motives a serious offence involving an act
of violence, other than one covered by Article 1, against the life, physical integrity or
liberty of a person.
2. The same shall apply to a serious offence involving an act against property, other
than one covered by Article 1, if the act created a collective danger for persons.
3. The same shall apply to an attempt to commit any of the foregoing offences or
participation as an accomplice of a person who commits or attempts to commit such an
offence.

Article 3

The provisions of all extradition treaties and arrangements applicable between
Contracting States, including the European Convention on Extradition, are modified as
between Contracting States to the extent that they are incompatible with this
Convention.

...
Article 5

Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State has substantial grounds for believing that the request for extradition for an offence mentioned in Article 1 or 2 has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person’s position may be prejudiced for any of these reasons.

Article 6

1. Each Contracting State shall take such measures as may be necessary to establish its jurisdiction over an offence mentioned in Article 1 in the case where the suspected offender is present in its territory and it does not extradite him after receiving a request for extradition from a Contracting State whose jurisdiction is based on a rule of jurisdiction existing equally in the law of the requested State.
2. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 7

A Contracting State in whose territory a person suspected to have committed an offence mentioned in Article 1 is found and which has received a request for extradition under the conditions mentioned in Article 6, paragraph 1, shall, if it does not extradite that person, submit the case, without exception whatsoever and without undue delay, to its competent authorities for the purpose of prosecution. Those authorities shall take their decision in the same manner as in the case of any offence of a serious nature under the law of that State.

Article 8

1. Contracting States shall afford one another the widest measure of mutual assistance in criminal matters in connection with proceedings brought in respect of the offences mentioned in Article 1 or 2. The law of the requested State concerning mutual assistance in criminal matters shall apply in all cases. Nevertheless this assistance may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.
2. Nothing in this Convention shall be interpreted as imposing an obligation to afford mutual assistance if the requested State has substantial grounds for believing that the request for mutual assistance in respect of an offence mentioned in Article 1 or 2 has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion or that that person’s position may be prejudiced for any of these reasons.
3. The provisions of all treaties and arrangements concerning mutual assistance in criminal matters applicable between Contracting States, including the European Convention on Mutual Assistance in Criminal Matters, are modified as between Contracting States to the extent that they are incompatible with this Convention.

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, goods, services 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 Community and the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the Treaty on European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Community and by the Council of Europe and the case-law of the Court of Justice of the European Communities and of the European Court of Human Rights.

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.

...


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.

... 

CHAPTER VII
GENERAL PROVISIONS

Article 51 – Scope

1. The provisions of this Charter are addressed to the institutions and bodies 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.
2. This Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties.

Article 52 – Scope of guaranteed rights

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 which are based on the Community Treaties or the Treaty on European Union 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.

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, the Community 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.


_The Council of the European Union,_

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

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

Whereas:

(1) The preparation of a common policy on asylum, including common European arrangements for asylum, 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 European Union.

(2) Cases of mass influx of displaced persons who cannot return to their country of origin have become more substantial in Europe in recent years. In these cases it may be necessary to set up exceptional schemes to offer them immediate temporary protection.

(3) In the conclusions relating to persons displaced by the conflict in the former Yugoslavia adopted by the Ministers responsible for immigration at their meetings in London on 30 November and 1 December 1992 and Copenhagen on 1 and 2 June 1993, the Member States and the Community institutions expressed their concern at the situation of displaced persons.

(4) On 25 September 1995 the Council adopted a Resolution on burden-sharing with regard to the admission and residence of displaced persons on a temporary basis, and, on 4 March 1996, adopted Decision 96/198/JHA on an alert and emergency procedure for burden-sharing with regard to the admission and residence of displaced persons on a temporary basis.

(5) The Action Plan of the Council and the Commission of 3 December 1998 provides for the rapid adoption, in accordance with the Treaty of Amsterdam, of minimum standards for giving temporary protection to displaced persons from

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third countries who cannot return to their country of origin and of measures promoting a balance of effort between Member States in receiving and bearing the consequences of receiving displaced persons.

(6) On 27 May 1999 the Council adopted conclusions on displaced persons from Kosovo. These conclusions call on the Commission and the Member States to learn the lessons of their response to the Kosovo crisis in order to establish the measures in accordance with the Treaty.

(7) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, acknowledged the need to reach agreement on the issue of temporary protection for displaced persons on the basis of solidarity between Member States.

(8) It is therefore necessary to establish minimum standards for giving temporary protection in the event of a mass influx of displaced persons and to take measures to promote a balance of efforts between the Member States in receiving and bearing the consequences of receiving such persons.

(9) Those standards and measures are linked and interdependent for reasons of effectiveness, coherence and solidarity and in order, in particular, to avert the risk of secondary movements. They should therefore be enacted in a single legal instrument.

(10) This temporary protection should be compatible with the Member States’ international obligations as regards refugees. In particular, it must not prejudge the recognition of refugee status pursuant to the Geneva Convention of 28 July 1951 on the status of refugees, as amended by the New York Protocol of 31 January 1967, ratified by all the Member States.

(11) The mandate of the United Nations High Commissioner for Refugees regarding refugees and other persons in need of international protection should be respected, and effect should be given to Declaration No 17, annexed to the Final Act to the Treaty of Amsterdam, on Article 63 of the Treaty establishing the European Community which provides that consultations are to be established with the United Nations High Commissioner for Refugees and other relevant international organisations on matters relating to asylum policy.

(12) It is in the very nature of minimum standards that Member States have the power to introduce or maintain more favourable provisions for persons enjoying temporary protection in the event of a mass influx of displaced persons.

(13) Given the exceptional character of the provisions established by this Directive in order to deal with a mass influx or imminent mass influx of displaced persons from third countries who are unable to return to their country of origin, the protection offered should be of limited duration.

(14) The existence of a mass influx of displaced persons should be established by a Council Decision, which should be binding in all Member States in relation to the displaced persons to whom the Decision applies. The conditions for the expiry of the Decision should also be established.

(15) The Member States’ obligations as to the conditions of reception and residence of persons enjoying temporary protection in the event of a mass influx of displaced persons should be determined. These obligations should be fair and offer an adequate level of protection to those concerned.
With respect to the treatment of persons enjoying temporary protection under this Directive, the Member States are bound by obligations under instruments of international law to which they are party and which prohibit discrimination.

Member States should, in concert with the Commission, enforce adequate measures so that the processing of personal data respects the standard of protection of Directive 95/46/EC of the European Parliament and the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

Rules should be laid down to govern access to the asylum procedure in the context of temporary protection in the event of a mass influx of displaced persons, in conformity with the Member States’ international obligations and with the Treaty.

Provision should be made for principles and measures governing the return to the country of origin and the measures to be taken by Member States in respect of persons whose temporary protection has ended.

Provision should be made for a solidarity mechanism intended to contribute to the attainment of a balance of effort between Member States in receiving and bearing the consequences of receiving displaced persons in the event of a mass influx. The mechanism should consist of two components. The first is financial and the second concerns the actual reception of persons in the Member States.

The implementation of temporary protection should be accompanied by administrative cooperation between the Member States in liaison with the Commission.

It is necessary to determine criteria for the exclusion of certain persons from temporary protection in the event of a mass influx of displaced persons.

Since the objectives of the proposed action, namely to establish minimum standards for giving temporary protection in the event of a mass influx of displaced persons and measures promoting a balance of efforts between the Member States in receiving and bearing the consequences of receiving such persons, cannot be sufficiently attained by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom gave notice, by letter of 27 September 2000, of its wish to take part in the adoption and application of this Directive.

Pursuant to Article 1 of the said Protocol, Ireland is not participating in the adoption of this Directive. Consequently and without prejudice to Article 4 of the aforementioned Protocol, the provisions of this Directive do not apply to Ireland.

In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the
European Community, Denmark is not participating in the adoption of this Directive, and is therefore not bound by it nor subject to its application.

Has Adopted this Directive:

CHAPTER I
GENERAL PROVISIONS

Article 1

The purpose of this Directive is to establish minimum standards for giving temporary protection in the event of a mass influx of displaced persons from third countries who are unable to return to their country of origin and to promote a balance of effort between Member States in receiving and bearing the consequences of receiving such persons.

Article 2

For the purposes of this Directive:

(a) ‘temporary protection’ means a procedure of exceptional character to provide, in the event of a mass influx or imminent mass influx of displaced persons from third countries who are unable to return to their country of origin, immediate and temporary protection to such persons, in particular if there is also a risk that the asylum system will be unable to process this influx without adverse effects for its efficient operation, in the interests of the persons concerned and other persons requesting protection;


(c) ‘displaced persons’ means third-country nationals or stateless persons who have had to leave their country or region of origin, or have been evacuated, in particular in response to an appeal by international organisations, and are unable to return in safe and durable conditions because of the situation prevailing in that country, who may fall within the scope of Article 1A of the Geneva Convention or other international or national instruments giving international protection, in particular:
   (i) persons who have fled areas of armed conflict or endemic violence;
   (ii) persons at serious risk of, or who have been the victims of, systematic or generalised violations of their human rights;

(d) ‘mass influx’ means arrival in the Community of a large number of displaced persons, who come from a specific country or geographical area, whether their arrival in the Community was spontaneous or aided, for example through an evacuation programme;

(e) ‘refugees’ means third-country nationals or stateless persons within the meaning of Article 1A of the Geneva Convention;

(f) ‘unaccompanied minors’ 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 for them whether 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 have entered the territory of the Member States;

(g) ‘residence permit’ means any permit or authorisation issued by the authorities of a Member State and taking the form provided for in that State’s legislation, allowing a third country national or a stateless person to reside on its territory;

(h) ‘sponsor’ means a third-country national enjoying temporary protection in a Member State in accordance with a decision taken under Article 5 and who wants to be joined by members of his or her family.

**Article 3**

1. Temporary protection shall not prejudge recognition of refugee status under the Geneva Convention.
2. Member States shall apply temporary protection with due respect for human rights and fundamental freedoms and their obligations regarding non-refoulement.
3. The establishment, implementation and termination of temporary protection shall be the subject of regular consultations with the Office of the United Nations High Commissioner for Refugees (UNHCR) and other relevant international organisations.
4. This Directive shall not apply to persons who have been accepted under temporary protection schemes prior to its entry into force.
5. This Directive shall not affect the prerogative of the Member States to adopt or retain more favourable conditions for persons covered by temporary protection.

**Chapter II

Duration and Implementation of Temporary Protection**

**Article 4**

1. Without prejudice to Article 6, the duration of temporary protection shall be one year. Unless terminated under the terms of Article 6(1)(b), it may be extended automatically by six monthly periods for a maximum of one year.
2. Where reasons for temporary protection persist, the Council may decide by qualified majority, on a proposal from the Commission, which shall also examine any request by a Member State that it submit a proposal to the Council, to extend that temporary protection by up to one year.

**Article 5**

1. The existence of a mass influx of displaced persons shall be established by a Council Decision adopted by a qualified majority on a proposal from the Commission, which shall also examine any request by a Member State that it submit a proposal to the Council.
2. The Commission proposal shall include at least:
   (a) a description of the specific groups of persons to whom the temporary protection will apply;
(b) the date on which the temporary protection will take effect;
(c) an estimation of the scale of the movements of displaced persons.

3. The Council Decision shall have the effect of introducing temporary protection for
   the displaced persons to which it refers, in all the Member States, in accordance with
   the provisions of this Directive. The Decision shall include at least:
   (a) a description of the specific groups of persons to whom the temporary protection
       applies;
   (b) the date on which the temporary protection will take effect;
   (c) information received from Member States on their reception capacity;
   (d) information from the Commission, UNHCR and other relevant international
       organisations.

4. The Council Decision shall be based on:
   (a) an examination of the situation and the scale of the movements of displaced
       persons;
   (b) an assessment of the advisability of establishing temporary protection, taking
       into account the potential for emergency aid and action on the ground or the
       inadequacy of such measures;
   (c) information received from the Member States, the Commission, UNHCR and
       other relevant international organisations.


Article 6

1. Temporary protection shall come to an end:
   (a) when the maximum duration has been reached; or
   (b) at any time, by Council Decision adopted by a qualified majority on a proposal
       from the Commission, which shall also examine any request by a Member State
       that it submit a proposal to the Council.

2. The Council Decision shall be based on the establishment of the fact that the
   situation in the country of origin is such as to permit the safe and durable return of those
   granted temporary protection with due respect for human rights and fundamental
   freedoms and Member States’ obligations regarding non-refoulement. The European
   Parliament shall be informed of the Council Decision.

Article 7

1. Member States may extend temporary protection as provided for in this Directive to
   additional categories of displaced persons over and above those to whom the Council
   Decision provided for in Article 5 applies, where they are displaced for the same
   reasons and from the same country or region of origin. They shall notify the Council
   and the Commission immediately.

2. The provisions of Articles 24, 25 and 26 shall not apply to the use of the possibility
   referred to in paragraph 1, with the exception of the structural support included in the
   European Refugee Fund set up by Decision 2000/596/EC, under the conditions laid
   down in that Decision.
CHAPTER III
OBLIGATIONS OF THE MEMBER STATES TOWARDS PERSONS ENJOYING TEMPORARY PROTECTION

Article 8

1. The Member States shall adopt the necessary measures to provide persons enjoying temporary protection with residence permits for the entire duration of the protection. Documents or other equivalent evidence shall be issued for that purpose.
2. Whatever the period of validity of the residence permits referred to in paragraph 1, the treatment granted by the Member States to persons enjoying temporary protection may not be less favourable than that set out in Articles 9 to 16.
3. The Member States shall, if necessary, provide persons to be admitted to their territory for the purposes of temporary protection with every facility for obtaining the necessary visas, including transit visas. Formalities must be reduced to a minimum because of the urgency of the situation. Visas should be free of charge or their cost reduced to a minimum.

Article 9

The Member States shall provide persons enjoying temporary protection with a document, in a language likely to be understood by them, in which the provisions relating to temporary protection and which are relevant to them are clearly set out.

Article 10

To enable the effective application of the Council Decision referred to in Article 5, Member States shall register the personal data referred to in Annex II, point (a), with respect to the persons enjoying temporary protection on their territory.

Article 11

A Member State shall take back a person enjoying temporary protection on its territory, if the said person remains on, or, seeks to enter without authorisation onto, the territory of another Member State during the period covered by the Council Decision referred to in Article 5. Member States may, on the basis of a bilateral agreement, decide that this Article should not apply.

Article 12

The Member States shall authorise, for a period not exceeding that of temporary protection, persons enjoying temporary protection to engage in employed or self-employed activities, subject to rules applicable to the profession, as well as in activities such as educational opportunities for adults, vocational training and practical workplace experience. For reasons of labour market policies, Member States may give priority to EU citizens and citizens of States bound by the Agreement on the European Economic Area and also to legally resident third-country nationals who receive unemployment
benefit. The general 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 13

1. The Member States shall ensure that persons enjoying temporary protection have access to suitable accommodation or, if necessary, receive the means to obtain housing.  
2. The Member States shall make provision for persons enjoying temporary protection to receive necessary assistance in terms of social welfare and means of subsistence, if they do not have sufficient resources, as well as for medical care. Without prejudice to paragraph 4, the assistance necessary for medical care shall include at least emergency care and essential treatment of illness.  
3. Where persons enjoying temporary protection are engaged in employed or self-employed activities, account shall be taken, when fixing the proposed level of aid, of their ability to meet their own needs.  
4. The Member States shall provide necessary medical or other assistance to persons enjoying temporary protection who have special needs, such as unaccompanied minors or persons who have undergone torture, rape or other serious forms of psychological, physical or sexual violence.

Article 14

1. The Member States shall grant to persons under 18 years of age enjoying temporary protection access to the education system under the same conditions as nationals of the host Member State. The Member States may stipulate that such access must be confined to the state education system.  
2. The Member States may allow adults enjoying temporary protection access to the general education system.

Article 15

1. For the purpose of this Article, in cases where families already existed in the country of origin and were separated due to circumstances surrounding the mass influx, the following persons shall be considered to be part of a family:
   (a) the spouse of the sponsor or his/her unmarried partner in a stable relationship, where the legislation or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to aliens; the minor unmarried children of the sponsor or of his/her spouse, without distinction as to whether they were born in or out of wedlock or adopted;  
   (b) other close relatives who lived together as part of the family unit at the time of the events leading to the mass influx, and who were wholly or mainly dependent on the sponsor at the time.  
2. In cases where the separate family members enjoy temporary protection in different Member States, Member States shall reunite family members where they are satisfied that the family members fall under the description of paragraph 1(a), taking into
account the wish of the said family members. Member States may reunite family members where they are satisfied that the family members fall under the description of paragraph 1(b), taking into account on a case by case basis the extreme hardship they would face if the reunification did not take place.

3. Where the sponsor enjoys temporary protection in one Member State and one or some family members are not yet in a Member State, the Member State where the sponsor enjoys temporary protection shall reunite family members, who are in need of protection, with the sponsor in the case of family members where it is satisfied that they fall under the description of paragraph 1(a). The Member State may reunite family members, who are in need of protection, with the sponsor in the case of family members where it is satisfied that they fall under the description of paragraph 1(b), taking into account on a case by case basis the extreme hardship which they would face if the reunification did not take place.

4. When applying this Article, the Member States shall taken into consideration the best interests of the child.

5. The Member States concerned shall decide, taking account of Articles 25 and 26, in which Member State the reunification shall take place.

6. Reunited family members shall be granted residence permits under temporary protection. Documents or other equivalent evidence shall be issued for that purpose. Transfers of family members onto the territory of another Member State for the purposes of reunification under paragraph 2, shall result in the withdrawal of the residence permits issued, and the termination of the obligations towards the persons concerned relating to temporary protection, in the Member State of departure.

7. The practical implementation of this Article may involve cooperation with the international organisations concerned.

8. A Member State shall, at the request of another Member State, provide information, as set out in Annex II, on a person receiving temporary protection which is needed to process a matter under this Article.

**Article 16**

1. The Member States shall as soon as possible take measures to ensure the necessary representation of unaccompanied minors enjoying temporary protection by legal guardianship, or, where necessary, representation by an organisation which is responsible for the care and well-being of minors, or by any other appropriate representation.

2. During the period of temporary protection Member States shall provide for unaccompanied minors to be placed:
   (a) with adult relatives;
   (b) with a foster-family;
   (c) in reception centres with special provisions for minors, or in other accommodation suitable for minors;
   (d) with the person who looked after the child when fleeing.

The Member States shall take the necessary steps to enable the placement. Agreement by the adult person or persons concerned shall be established by the Member States. The views of the child shall be taken into account in accordance with the age and maturity of the child.
CHAPTER IV
ACCESS TO THE ASYLUM PROCEDURE IN THE CONTEXT OF TEMPORARY PROTECTION

Article 17

1. Persons enjoying temporary protection must be able to lodge an application for asylum at any time.
2. The examination of any asylum application not processed before the end of the period of temporary protection shall be completed after the end of that period.

Article 18

The criteria and mechanisms for deciding which Member State is responsible for considering an asylum application shall apply. In particular, the Member State responsible for examining an asylum application submitted by a person enjoying temporary protection pursuant to this Directive, shall be the Member State which has accepted his transfer onto its territory.

Article 19

1. The Member States may provide that temporary protection may not be enjoyed concurrently with the status of asylum seeker while applications are under consideration.
2. Where, after an asylum application has been examined, refugee status or, where applicable, other kind of protection is not granted to a person eligible for or enjoying temporary protection, the Member States shall, without prejudice to Article 28, provide for that person to enjoy or to continue to enjoy temporary protection for the remainder of the period of protection.

CHAPTER V
RETURN AND MEASURES AFTER TEMPORARY PROTECTION HAS ENDED

Article 20

When the temporary protection ends, the general laws on protection and on aliens in the Member States shall apply, without prejudice to Articles 21, 22 and 23.

Article 21

1. The Member States shall take the measures necessary to make possible the voluntary return of persons enjoying temporary protection or whose temporary protection has ended. The Member States shall ensure that the provisions governing voluntary return of persons enjoying temporary protection facilitate their return with respect for human dignity.

   The Member State shall ensure that the decision of those persons to return is taken in full knowledge of the facts. The Member States may provide for exploratory visits.
2. For such time as the temporary protection has not ended, the Member States shall, on the basis of the circumstances prevailing in the country of origin, give favourable consideration to requests for return to the host Member State from persons who have enjoyed temporary protection and exercised their right to a voluntary return.

3. At the end of the temporary protection, the Member States may provide for the obligations laid down in Chapter III to be extended individually to persons who have been covered by temporary protection and are benefiting from a voluntary return programme. The extension shall have effect until the date of return.

Article 22

1. The Member States shall take the measures necessary to ensure that the enforced return of persons whose temporary protection has ended and who are not eligible for admission is conducted with due respect for human dignity.

2. In cases of enforced return, Member States shall consider any compelling humanitarian reasons which may make return impossible or unreasonable in specific cases.

Article 23

1. The Member States shall take the necessary measures concerning the conditions of residence of persons who have enjoyed temporary protection and who cannot, in view of their state of health, reasonably be expected to travel; where for example they would suffer serious negative effects if their treatment was interrupted. They shall not be expelled so long as that situation continues.

2. The Member States may allow families whose children are minors and attend school in a Member State to benefit from residence conditions allowing the children concerned to complete the current school period.

Chapter VI
Solidarity

Article 24

The measures provided for in this Directive shall benefit from the European Refugee Fund set up by Decision 2000/596/EC, under the terms laid down in that Decision.

Article 25

1. The Member States shall receive persons who are eligible for temporary protection in a spirit of Community solidarity. They shall indicate – in figures or in general terms – their capacity to receive such persons. This information shall be set out in the Council Decision referred to in Article 5. After that Decision has been adopted, the Member States may indicate additional reception capacity by notifying the Council and the Commission. This information shall be passed on swiftly to UNHCR.

2. The Member States concerned, acting in cooperation with the competent international organisations, shall ensure that the eligible persons defined in the Council
Decision referred to in Article 5, who have not yet arrived in the Community have expressed their will to be received onto their territory.

3. When the number of those who are eligible for temporary protection following a sudden and massive influx exceeds the reception capacity referred to in paragraph 1, the Council shall, as a matter of urgency, examine the situation and take appropriate action, including recommending additional support for Member States affected.

Article 26

1. For the duration of the temporary protection, the Member States shall cooperate with each other with regard to transferral of the residence of persons enjoying temporary protection from one Member State to another, subject to the consent of the persons concerned to such transferral.

2. A Member State shall communicate requests for transfers to the other Member States and notify the Commission and UNHCR. The Member States shall inform the requesting Member State of their capacity for receiving transferees.

3. A Member State shall, at the request of another Member State, provide information, as set out in Annex II, on a person enjoying temporary protection which is needed to process a matter under this Article.

4. Where a transfer is made from one Member State to another, the residence permit in the Member State of departure shall expire and the obligations towards the persons concerned relating to temporary protection in the Member State of departure shall come to an end. The new host Member State shall grant temporary protection to the persons concerned.

5. The Member States shall use the model pass set out in Annex I for transfers between Member States of persons enjoying temporary protection.

CHAPTER VII
ADMINISTRATIVE COOPERATION

Article 27

1. For the purposes of the administrative cooperation required to implement temporary protection, the Member States shall each appoint a national contact point, whose address they shall communicate to each other and to the Commission. The Member States shall, in liaison with the Commission, take all the appropriate measures to establish direct cooperation and an exchange of information between the competent authorities.

2. The Member States shall, regularly and as quickly as possible, communicate data concerning the number of persons enjoying temporary protection and full information on the national laws, regulations and administrative provisions relating to the implementation of temporary protection.
CHAPTER VIII
SPECIAL PROVISIONS

Article 28

1. The Member States may exclude a person from temporary protection if:
   (a) there are serious reasons for considering that:
      (i) 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;
      (ii) he or she has committed a serious non-political crime outside the Member State of reception prior to his or her admission to that Member State as a person enjoying temporary protection. The severity of the expected persecution is to be weighed against the nature of the criminal offence of which the person concerned is suspected. Particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes. This applies both to the participants in the crime and to its instigators;
      (iii) he or she has been guilty of acts contrary to the purposes and principles of the United Nations;
   (b) there are reasonable grounds for regarding him or her as a danger to the security of the host Member State or, having been convicted by a final judgment of a particularly serious crime, he or she is a danger to the community of the host Member State.

2. The grounds for exclusion referred to in paragraph 1 shall be based solely on the personal conduct of the person concerned. Exclusion decisions or measures shall be based on the principle of proportionality.

CHAPTER IX
FINAL PROVISIONS

Article 29

Persons who have been excluded from the benefit of temporary protection or family reunification by a Member State shall be entitled to mount a legal challenge in the Member State concerned.

Article 30

The Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.
Article 31

1. Not later than two years after the date specified in Article 32, 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. The Member States shall send the Commission all the information that is appropriate for drawing up this report.

2. After presenting the report referred to at paragraph 1, 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.

Article 32

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2002 at the latest. They shall forthwith inform the Commission thereof.

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

Article 33

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

Article 34

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

Done at Brussels, 20 July 2001...

ANNEX I

Model pass for the transfer of persons enjoying temporary protection
(details omitted)

ANNEX II

The information referred to in Articles 10, 15 and 26 of the Directive includes to the extent necessary one or more of the following documents or data:

(a) personal data on the person concerned (name, nationality, date and place of birth, marital status, family relationship);
(b) identity documents and travel documents of the person concerned;
15. 2001 European Union Council Common Position on Combating Terrorism

The Council of the European Union

Having regard to the Treaty on European Union, and in particular Articles 15 and 34 thereof,
Whereas:
(1) At its extraordinary meeting on 21 September 2001, the European Council declared that terrorism is a real challenge to the world and to Europe and that the fight against terrorism will be priority objective of the European Union.
(2) On 28 September 2001, the United Nations Security Council adopted resolution 1373(2001), reaffirming that terrorist acts constitute threat to peace and security and setting out measures aimed at combating terrorism and in particular the fight against the financing of terrorism and the provision of safe havens for terrorists.
(3) On 8 October 2001, the Council reaffirmed the determination of the EU and its Member States to play their full part, in coordinated manner, in the global coalition against terrorism, under the aegis of the United Nations. The Council also reiterated the Union’s determination to attack the sources which fund terrorism, in close cooperation with the United States.
(4) On 19 October 2001, the European Council declared that it is determined to combat terrorism in every form throughout the world and that it will continue its efforts to strengthen the coalition of the international community to combat terrorism in every shape and form, for example by the increased cooperation between the operational services responsible for combating terrorism: Europol, Eurojust, the intelligence services, police forces and judicial authorities.
(5) Action has already been taken to implement some of the measures listed below.

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(6) Under these extraordinary circumstances, action by the Community is needed in order to implement some of the measures listed below,

*Has Adopted this Common Position:*

**Article 1**

The wilful provision or collection, by any means, directly or indirectly, of funds by citizens or within the territory of each of the Member States of the European Union with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts shall be criminalized.

**Article 2**

Funds and other financial assets or economic resources of:
- persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts;
- entities owned or controlled, directly or indirectly, by such persons; and
- persons and entities acting on behalf of or under the direction of such persons and entities,

including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities, shall be frozen.

**Article 3**

Funds, financial assets or economic resources or financial or other related services shall not be made available, directly or indirectly, for the benefit of:
- persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts;
- entities owned or controlled, directly or indirectly, by such persons; and
- persons and entities acting on behalf of or under the direction of such persons.

**Article 4**

Measures shall be taken to suppress any form of support, active or passive, to entities or persons involved in terrorist acts, including measures aimed at suppressing the recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists.

**Article 5**

Steps shall be taken to prevent the commission of terrorist acts, including by the provision of early warning among Member States or between Member States and third States by exchange of information.
Article 6

Safe haven shall be denied to those who finance, plan, support, or commit terrorist acts, or provide safe havens.

Article 7

Persons who finance, plan, facilitate or commit terrorist acts shall be prevented from using the territories of the Member States of the European Union for those purposes against Member States or third States or their citizens.

Article 8

Persons who participate in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts shall be brought to justice; such terrorist acts shall be established as serious criminal offences in laws and regulations of Member States and the punishment shall duly reflect the seriousness of such terrorist acts.

Article 9

Member States shall afford one another, as well as third States, the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts in accordance with international and domestic law, including assistance in obtaining evidence in the possession of a Member State or third State which is necessary for the proceedings.

Article 10

The movement of terrorists or terrorist groups shall be prevented by effective border controls and controls on the issuing of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents. The Council notes the Commission’s intention to put forward proposals in this area, where appropriate.

Article 11

Steps shall be taken to intensify and accelerate the exchange of operational information, especially regarding actions or movements of terrorist persons or networks; forged or falsified travel documents; traffic in arms, explosives or sensitive materials; use of communication technologies by terrorist groups; and the threat posed by the possession of weapons of mass destruction by terrorist groups.

Article 12

Information shall be exchanged among Member States or between Member States and third States in accordance with international and national law, and cooperation shall be
enhanced among Member States or between Member States and third States on administrative and judicial matters to prevent the commission of terrorist acts.

**Article 13**

Cooperation among Member States or between Member States and third States, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of terrorist acts shall be enhanced.

**Article 14**

Member States shall become parties as soon as possible to the relevant international conventions and protocols relating to terrorism listed in the Annex.

**Article 15**

Member States shall increase cooperation and fully implement the relevant international conventions and protocols relating to terrorism and United Nations Security Council Resolutions 1269(1999) and 1368(2001).

**Article 16**

Appropriate measures shall be taken in accordance with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts. The Council notes the Commission’s intention to put forward proposals in this area, where appropriate.

**Article 17**

Steps shall be taken in accordance with international law to ensure that refugee status is not abused by the perpetrators, organisers or facilitators of terrorist acts and that claims of political motivation are not recognised as grounds for refusing requests for the extradition of alleged terrorists. The Council notes the Commission’s intention to put forward proposals in this area, where appropriate.

**Article 18**

This Common Position shall take effect on the date of its adoption.

**Article 19**

This Common Position shall be published in the Official Journal.

*Done* at Brussels, 27 December 2001...
ANNEX

LIST OF INTERNATIONAL CONVENTIONS AND PROTOCOLS RELATING TO TERRORISM
REFERRED TO IN ARTICLE 14

1. Convention on Offenses and Certain Other Offenses Committed on Board Aircraft – Tokyo 14.9.1963
5. European Convention for the Suppression of Terrorism – Strasbourg 27.1.1977


The Council of the European Union,

Having regard to the Treaty establishing the European Community, and in particular point (1)(b) of the first subparagraph of Article 63 thereof,
Having regard to the proposal from the Commission,
Having regard to the opinion of the European Parliament,
Having regard to the opinion of the Economic and Social Committee,

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

Whereas:

(1) 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 Community.

(2) 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, thus maintaining the principle of non-refoulement.

(3) The Tampere Conclusions provide that a Common European Asylum System should include, in the short term, common minimum conditions of reception of asylum seekers.

(4) The establishment of minimum standards for the reception of asylum seekers is a further step towards a European asylum policy.

(5) 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 and 18 of the said Charter.

(6) With respect to the treatment of persons falling within the scope of this Directive, Member States are bound by obligations under instruments of international law to which they are party and which prohibit discrimination.

(7) Minimum standards for the reception of asylum seekers that will normally suffice to ensure them a dignified standard of living and comparable living conditions in all Member States should be laid down.

(8) The harmonisation of conditions for the reception of asylum seekers should help to limit the secondary movements of asylum seekers influenced by the variety of conditions for their reception.

(9) Reception of groups with special needs should be specifically designed to meet those needs.

(10) Reception of applicants who are in detention should be specifically designed to meet their needs in that situation.

(11) In order to ensure compliance with the minimum 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.

(12) The possibility of abuse of the reception system should be restricted by laying down cases for the reduction or withdrawal of reception conditions for asylum seekers.

(13) The efficiency of national reception systems and cooperation among Member States in the field of reception of asylum seekers should be secured.

(14) Appropriate coordination should be encouraged between the competent authorities as regards the reception of asylum seekers, and harmonious relationships between local communities and accommodation centres should therefore be promoted.
(15) It is in the very nature of minimum standards that Member States 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.
(16) 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 emanating from the Geneva Convention for third country nationals and stateless persons.
(17) The implementation of this Directive should be evaluated at regular intervals.
(18) Since the objectives of the proposed action, namely to establish minimum standards on the reception of asylum seekers in Member States, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the proposed action, be better achieved by the Community, the Community may adopt measures in accordance with the principles 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.
(19) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom gave notice, by letter of 18 August 2001, of its wish to take part in the adoption and application of this Directive.
(20) In accordance with Article 1 of the said Protocol, Ireland is not participating in the adoption of this Directive. Consequently, and without prejudice to Article 4 of the aforementioned Protocol, the provisions of this Directive do not apply to Ireland.
(21) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not participating in the adoption of this Directive and is therefore neither bound by it nor subject to its application.

Has Adopted this Directive:

CHAPTER I
PURPOSE, DEFINITIONS AND SCOPE

Article 1 – Purpose

The purpose of this Directive is to lay down minimum standards for the reception of asylum seekers in Member States.

Article 2 – Definitions

For the purposes of this Directive:
(a) ‘Geneva Convention’ shall mean the Convention of 28 July 1951 relating to the status of refugees, as amended by the New York Protocol of 31 January 1967;
(b) ‘application for asylum’ shall mean the application made by a third-country national or a stateless person which can be understood as a request for international protection from a Member State, under the Geneva Convention. Any application for international protection is presumed to be an application for
asylum unless a third-country national or a stateless person explicitly requests another kind of protection that can be applied for separately;

(c) ‘applicant’ or ‘asylum seeker’ shall mean a third country national or a stateless person who has made an application for asylum in respect of which a final decision has not yet been taken;

(d) ‘family members’ shall mean, 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 asylum:
   (i) the spouse of the asylum seeker or his or her unmarried partner in a stable relationship, where the legislation or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to aliens;
   (ii) the minor children of the couple referred to in point (i) or of the applicant, on condition that they are unmarried and dependent and regardless of whether they were born in or out of wedlock or adopted as defined under the national law;

(e) ‘refugee’ shall mean a person who fulfils the requirements of Article 1(A) of the Geneva Convention;

(f) ‘refugee status’ shall mean the status granted by a Member State to a person who is a refugee and is admitted as such to the territory of that Member State;

(g) ‘procedures’ and ‘appeals’, shall mean the procedures and appeals established by Member States in their national law;

(h) ‘unaccompanied minors’ shall mean persons below the age of eighteen who arrive in the territory of the Member States unaccompanied by an adult responsible for them whether by law or by custom, and for as long as they are not effectively taken into the care of such a person; it shall include minors who are left unaccompanied after they have entered the territory of Member States;

(i) ‘reception conditions’ shall mean the full set of measures that Member States grant to asylum seekers in accordance with this Directive;

(j) ‘material reception conditions’ shall mean the reception conditions that include housing, food and clothing, provided in kind, or as financial allowances or in vouchers, and a daily expenses allowance;

(k) ‘detention’ shall mean confinement of an asylum seeker by a Member State within a particular place, where the applicant is deprived of his or her freedom of movement;

(l) ‘accommodation centre’ shall mean any place used for collective housing of asylum seekers.

Article 3 – Scope

1. This Directive shall apply to all third country nationals and stateless persons who make an application for asylum at the border or in the territory of a Member State as long as they are allowed to remain on the territory as asylum seekers, as well as to family members, if they are covered by such application for asylum according to the 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 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 the Geneva Convention for third-country nationals or stateless persons who are found not to be refugees.

Article 4 – More favourable provisions

Member States may introduce or retain more favourable provisions in the field of reception conditions for asylum seekers and other close relatives of the applicant who are present in the same Member State when they are dependent on him 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 asylum seekers, within a reasonable time not exceeding fifteen days after they have lodged their application for asylum with the competent authority, 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, as far as possible, in a language that the applicants may reasonably be supposed to understand. Where appropriate, this information may also be supplied orally.

Article 6 – Documentation

1. Member States shall ensure that, within three days after an application is lodged with the competent authority, the applicant is provided with a document issued in his or her own name certifying his or her status as an asylum seeker or testifying that he or she is allowed to stay in 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 this fact.

2. Member States may exclude application of this Article when the asylum seeker is in detention and during the examination of an application for asylum made at the border or
within the context of a procedure to decide on the right of the applicant legally to enter the territory of a Member State. In specific cases, during the examination of an application for asylum, 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 asylum seeker.

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

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

Article 7 – Residence and freedom of movement

1. Asylum seekers 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 asylum seeker for reasons of public interest, public order or, when necessary, for the swift processing and effective monitoring of his or her application.

3. When it proves necessary, for example for legal reasons or reasons of public order, Member States may confine an applicant to a particular place in accordance with their national law.

4. 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 legislation.

5. Member States shall provide for the possibility of granting applicants temporary permission to leave the place of residence mentioned in paragraphs 2 and 4 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.

6. 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 – 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 asylum seeker’s agreement.
Article 9 – Medical screening

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

Article 10 – Schooling and education of minors

1. Member States shall grant to minor children of asylum seekers and to asylum seekers who are minors access to the education system under similar conditions as nationals of the host Member State 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.

   Minors shall be younger than the age of legal majority in the Member State in which the application for asylum was lodged or is being examined. 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 the application for asylum was lodged by the minor or the minor’s parents. This period may be extended to one year where specific education is provided in order to facilitate access to the education system.

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 may offer other education arrangements.

Article 11 – Employment

1. Member States shall determine a period of time, starting from the date on which an application for asylum was lodged, during which an applicant shall not have access to the labour market.

2. If a decision at first instance has not been taken within one year of the presentation of an application for asylum and this delay cannot be attributed to the applicant, Member States shall decide the conditions for granting access to the labour market for the applicant.

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.

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

Article 12 – Vocational training

Member States may allow asylum seekers 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 11.
Article 13 – 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 asylum.
2. Member States shall make provisions on material reception conditions to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence.

   Member States shall ensure that that standard of living is met in the specific situation of persons who have special needs, in accordance with Article 17, 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 these basic needs were being covered, Member States may ask the asylum seeker for a refund.
5. Material reception conditions may be provided in kind, or in the form of financial allowances or vouchers or in a combination of these provisions.

   Where Member States provide material reception conditions in the form of financial allowances or vouchers, the amount thereof shall be determined in accordance with the principles set out in this Article.

Article 14 – 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 asylum lodged at the border;
   (b) accommodation centres which guarantee an adequate standard of living;
   (c) private houses, flats, hotels or other premises adapted for housing applicants.
2. Member States shall ensure that applicants provided with the housing referred to in paragraph 1(a), (b) and (c) are assured:
   (a) protection of their family life;
   (b) the possibility of communicating with relatives, legal advisers and representatives of the United Nations High Commissioner for Refugees (UNHCR) and non-governmental organisations (NGOs) recognised by Member States. Member States shall pay particular attention to the prevention of assault within the premises and accommodation centres referred to in paragraph 1(a) and (b).
3. Member States shall ensure, if appropriate, that minor children of applicants or applicants who are minors are lodged with their parents or with the adult family member responsible for them whether by law or by custom.

4. 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 of the transfer and of their new address.

5. Persons working in accommodation centres shall be adequately trained 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.

6. 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.

7. Legal advisors or counsellors of asylum seekers and representatives of the United Nations High Commissioner for Refugees or non-governmental organisations designated by the latter and recognised by the Member State concerned shall be granted access to accommodation centres and other housing facilities in order to assist the said asylum seekers. Limits on such access may be imposed only on grounds relating to the security of the centres and facilities and of the asylum seekers.

8. 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:
   – an initial assessment of the specific needs of the applicant is required,
   – material reception conditions, as provided for in this Article, are not available in a certain geographical area,
   – housing capacities normally available are temporarily exhausted,
   – the asylum seeker is in detention or confined to border posts.

These different conditions shall cover in any case basic needs.

**Article 15 – 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 illness.

2. Member States shall provide necessary medical or other assistance to applicants who have special needs.

**CHAPTER III
REDUCTION OR WITHDRAWAL OF RECEPTION CONDITIONS**

**Article 16 – Reduction or withdrawal of reception conditions**

1. Member States may reduce or withdraw reception conditions in the following cases:
   (a) where an asylum seeker:
      – abandons the place of residence determined by the competent authority without informing it or, if requested, without permission, or
      – 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
has already lodged an application in the same Member State. 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 reception conditions;
(b) where an applicant has concealed financial resources and has therefore unduly benefited from material reception conditions.

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

2. Member States may refuse conditions in cases where an asylum seeker has failed to demonstrate that the asylum claim was made as soon as reasonably practicable after arrival in that Member State.

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

4. Decisions for reduction, withdrawal or refusal of reception conditions or sanctions referred to in paragraphs 1, 2 and 3 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 17, taking into account the principle of proportionality. Member States shall under all circumstances ensure access to emergency health care.

5. Member States shall ensure that material reception conditions are not withdrawn or reduced before a negative decision is taken.

Chapter IV
Provisions for Persons with Special Needs

Article 17 – General principle

1. 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 and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, in the national legislation implementing the provisions of Chapter II relating to material reception conditions and health care.

2. Paragraph 1 shall apply only to persons found to have special needs after an individual evaluation of their situation.

Article 18 – 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.

2. 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.
Article 19 – Unaccompanied minors

1. Member States shall as soon as possible take measures to ensure the necessary representation of unaccompanied minors by legal guardianship or, where necessary, representation by an organisation which is responsible for the care and well-being of minors, or by any other appropriate representation. Regular assessments shall be made by the appropriate authorities.

2. Unaccompanied minors who make an application for asylum shall, from the moment they are admitted to the territory to the moment they are obliged to leave the host Member State in which the application for asylum 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 asylum seekers.

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, protecting the unaccompanied minor’s best interests, shall endeavour to trace the members of his or her family as soon as possible. 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 or receive appropriate training concerning their needs, 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.

Article 20 – Victims of torture and violence

Member States shall ensure that, if necessary, persons who have been subjected to torture, rape or other serious acts of violence receive the necessary treatment of damages caused by the aforementioned acts.

Chapter V
Appeals

Article 21 – Appeals

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

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

**CHAPTER VI**

**ACTIONS TO IMPROVE THE EFFICIENCY OF THE RECEPTION SYSTEM**

*Article 22 – Cooperation*

Member States shall regularly inform the Commission on the data concerning the number of persons, broken down by sex and age, covered by reception conditions and provide full information on the type, name and format of the documents provided for by Article 6.

*Article 23 – Guidance, monitoring and control system*

Member States shall, with due respect to their constitutional structure, ensure that appropriate guidance, monitoring and control of the level of reception conditions are established.

*Article 24 – 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 provisions enacted to implement this Directive.

**CHAPTER VII**

**FINAL PROVISIONS**

*Article 25 – Reports*

By 6 August 2006, 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, including the statistical data provided for by Article 22 by 6 February 2006.

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

*Article 26 – Transposition*
1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 6 February 2005. They shall forthwith inform the Commission thereof.

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

2. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field relating to the enforcement of this Directive.

**Article 27 – Entry into force**

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

**Article 28 – Addressees**

This Directive is addressed to the Member States in accordance with the Treaty establishing the European Union.

*Done* at Brussels, 27 January 2003...

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17. 2003 European Union Council Regulation on the Criteria and Mechanisms for Determining the Member State responsible for Examining an Asylum Application

*The Council of the European Union,*

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

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

Whereas:

(1) 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 Community.

5 EU 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: *Official Journal* of the European Union L 50/1, 25.2.2003 (Acts whose publication is obligatory) – footnotes omitted.
(2) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention relating to the Status of Refugees of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967, thus ensuring that nobody is sent back to persecution, i.e. maintaining the principle of non-refoulement. In this respect, and without affecting the responsibility criteria laid down in this Regulation, Member States, all respecting the principle of non-refoulement, are considered as safe countries for third-country nationals.

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

(4) 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 determining refugee status and not to compromise the objective of the rapid processing of asylum applications.

(5) As regards the introduction in successive phases of a common European asylum system that should lead, in the longer term, to a common procedure and a uniform status, valid throughout the Union, for those granted asylum, it is appropriate at this stage, while making the necessary improvements in the light of experience, to confirm the principles underlying the Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities, signed in Dublin on 15 June 1990 (hereinafter referred to as the Dublin Convention), whose implementation has stimulated the process of harmonising asylum policies.

(6) Family unity should be preserved in so far as this is compatible with the other objectives pursued by establishing criteria and mechanisms for determining the Member State responsible for examining an asylum application.

(7) The processing together of the asylum applications of the members of one family by a single Member State makes it possible to ensure that the applications are examined thoroughly and the decisions taken in respect of them are consistent. Member States should be able to derogate from the responsibility criteria, so as to make it possible to bring family members together where this is necessary on humanitarian grounds.

(8) The progressive creation of an area without internal frontiers in which free movement of persons is guaranteed in accordance with the Treaty establishing the European Community and the establishment of Community 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.

(9) The application of this Regulation can be facilitated, and its effectiveness increased, by bilateral arrangements between Member States for improving communications 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.

(10) Continuity between the system for determining the Member State responsible established by the Dublin Convention and the system established by this Regulation
should be ensured. Similarly, consistency should be ensured between this Regulation and 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.

(11) The operation of the Eurodac system, as established by Regulation (EC) No 2725/2000 and in particular the implementation of Articles 4 and 8 contained therein should facilitate the implementation of this Regulation.

(12) With respect to the treatment of persons falling within the scope of this Regulation, Member States are bound by obligations under instruments of international law to which they are party.

(13) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission.

(14) The application of the Regulation should be evaluated at regular intervals.

(15) The Regulation observes the fundamental rights and principles which are acknowledged in particular in the Charter of Fundamental Rights of the European Union. In particular, it seeks to ensure full observance of the right to asylum guaranteed by Article 18.

(16) Since the objective of the proposed measure, namely the establishment of 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, cannot be sufficiently achieved by the Member States and, given the scale and effects, can therefore 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 Regulation does not go beyond what is necessary in order to achieve that objective.

(17) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom and Ireland gave notice, by letters of 30 October 2001, of their wish to take part in the adoption and application of this Regulation.

(18) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark does not take part in the adoption of this Regulation and is not bound by it nor subject to its application.

(19) The Dublin Convention remains in force and continues to apply between Denmark and the Member States that are bound by this Regulation until such time an agreement allowing Denmark’s participation in the Regulation has been concluded,

*Has Adopted this Regulation:*
CHAPTER I
SUBJECT-MATTER AND DEFINITIONS

Article 1

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

Article 2

For the purposes of this Regulation:

(a) ‘third-country national’ means anyone who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty establishing the European Community;


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

(d) ‘applicant’ or ‘asylum seeker’ means a third country national who has made an application for asylum in respect of which a final decision has not yet been taken;

(e) ‘examination of an asylum application’ means any examination of, or decision or ruling concerning, an application for asylum by the competent authorities in accordance with national law except for procedures for determining the Member State responsible in accordance with this Regulation;

(f) ‘withdrawal of the asylum application’ means the actions by which the applicant for asylum terminates the procedures initiated by the submission of his application for asylum, in accordance with national law, either explicitly or tacitly;

(g) ‘refugee’ means any third-country national qualifying for the status defined by the Geneva Convention and authorised to reside as such on the territory of a Member State;

(h) ‘unaccompanied minor’ means unmarried persons below the age of eighteen who arrive in the territory of the Member States unaccompanied by an adult responsible for them whether by law or by custom, and for as long as they are not effectively taken into the care of such a person; it includes minors who are left unaccompanied after they have entered the territory of the Member States;

(i) ‘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 in the territory of the Member States:
(i) the spouse of the asylum seeker or his or her unmarried partner in a stable relationship, where the legislation or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to aliens;
(ii) the minor children of couples referred to in point (i) or of the applicant, on condition that they are unmarried and dependent and regardless of whether they were born in or out of wedlock or adopted as defined under the national law;
(iii) the father, mother or guardian when the applicant or refugee is a minor and unmarried;

(j) ‘residence document’ means any authorisation issued by the authorities of a Member State authorising a third-country national to stay in its territory, including the documents substantiating the authorisation to remain in 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 responsible Member State as established in this Regulation or during examination of an application for asylum or an application for a residence permit;

(k) ‘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:
(i) ‘long-stay visa’ means the authorisation or decision of a Member State required for entry for an intended stay in that Member State of more than three months;
(ii) ‘short-stay visa’ means the authorisation or decision of a Member State required for entry for an intended stay in that State or in several Member States for a period whose total duration does not exceed three months;
(iii) ‘transit visa’ means the authorisation or decision of a Member State for entry for transit through the territory of that Member State or several Member States, except for transit at an airport;
(iv) ‘airport transit visa’ means the authorisation or decision allowing a third-country national specifically subject to this requirement to pass through the transit zone of an airport, without gaining access to the national territory of the Member State concerned, during a stopover or a transfer between two sections of an international flight.

CHAPTER II
GENERAL PRINCIPLES

Article 3

1. Member States shall examine the application of any third-country national who applies at the border or in their territory to any one of them for asylum. 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. By way of derogation from paragraph 1, each Member State may examine an application for asylum lodged with it by a third-country national, even if such examination is not its responsibility under the criteria laid down in this Regulation. In such an event, that Member State shall become the Member State responsible within the meaning of this Regulation and shall assume the obligations associated with that responsibility. Where appropriate, it shall inform 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 take back the applicant.

3. Any Member State shall retain the right, pursuant to its national laws, to send an asylum seeker to a third country, in compliance with the provisions of the Geneva Convention.

4. The asylum seeker shall be informed in writing in a language that he or she may reasonably be expected to understand regarding the application of this Regulation, its time limits and its effects.

Article 4

1. The process of determining the Member State responsible under this Regulation shall start as soon as an application for asylum is first lodged with a Member State.

2. An application for asylum shall be deemed to have been lodged once a form submitted by the applicant for asylum 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 asylum seeker and meets the definition of a family member set out in Article 2, point (i), shall be indissociable from that of his parent or guardian and shall be a matter for the Member State responsible for examining the application for asylum of that parent or guardian, even if the minor is not individually an asylum seeker. The same treatment shall be applied to children born after the asylum seeker arrives in the territory of the Member States, without the need to initiate a new procedure for taking charge of them.

4. Where an application for asylum is lodged with the competent authorities of a Member State by an applicant who is in 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 asylum was lodged.

The applicant shall be informed in writing of this transfer and of the date on which it took place.

5. An asylum seeker who is present in another Member State and there lodges an application for asylum after withdrawing his application during the process of determining the Member State responsible shall be taken back, under the conditions laid down in Article 20, by the Member State with which that application for asylum was
lodged, with a view to completing the process of determining the Member State responsible for examining the application for asylum.

This obligation shall cease, if the asylum seeker has in the meantime left the territories of the Member States for a period of at least three months or has obtained a residence document from a Member State.

**CHAPTER III**

**HIERARCHY OF CRITERIA**

**Article 5**

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 shall be determined on the basis of the situation obtaining when the asylum seeker first lodged his application with a Member State.

**Article 6**

Where the applicant for asylum is an unaccompanied minor, the Member State responsible for examining the application shall be that where a member of his or her family is legally present, provided that this is in the best interest of the minor.

In the absence of a family member, the Member State responsible for examining the application shall be that where the minor has lodged his or her application for asylum.

**Article 7**

Where the asylum seeker 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 refugee in a Member State, that Member State shall be responsible for examining the application for asylum, provided that the persons concerned so desire.

**Article 8**

If the asylum seeker has a family member in a Member State whose application has not yet been the subject of a first decision regarding the substance, that Member State shall be responsible for examining the application for asylum, provided that the persons concerned so desire.

**Article 9**

1. Where the asylum seeker is in possession of a valid residence document, the Member State which issued the document shall be responsible for examining the application for asylum.
2. Where the asylum seeker is in possession of a valid visa, the Member State which issued the visa shall be responsible for examining the application for asylum, unless the
visa was issued when acting for or on the written authorisation of another Member State. In such a case, the latter Member State shall be responsible for examining the application for asylum. Where a Member State first consults the central authority of another Member State, in particular for security reasons, the latter’s reply to the consultation shall not constitute written authorisation within the meaning of this provision.

3. Where the asylum seeker is in possession of more than one valid residence document or visa issued by different Member States, the responsibility for examining the application for asylum 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 asylum seeker 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 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 asylum seeker 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 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 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 10

1. Where it is established, on the basis of proof or circumstantial evidence as described in the two lists mentioned in Article 18(3), including the data referred to in Chapter III of Regulation (EC) No 2725/2000, that an asylum seeker 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 asylum. This 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, and where it is established, on the basis of proof or circumstantial evidence as described in the two lists mentioned in Article 18(3), that the asylum seeker – who has entered the territories of the Member States irregularly or whose circumstances of entry cannot be established – at the time of lodging the application has
been previously living for a continuous period of at least five months in a Member State, that Member State shall be responsible for examining the application for asylum.

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

Article 11

1. If a third-country national 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 asylum.

2. The principle set out in paragraph 1 does not apply, if the third-country national lodges his or her application for asylum 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 this case, the latter Member State shall be responsible for examining the application for asylum.

Article 12

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

Article 13

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

Article 14

Where several members of a family submit applications for asylum 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 them being separated, the Member State responsible shall be determined on the basis of the following provisions:

(a) responsibility for examining the applications for asylum of all the members of the family shall lie with the Member State which the criteria indicate is responsible for taking charge of the largest number of family members;

(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.
CHAPTER IV
HUMANITARIAN CLAUSE

Article 15

1. Any Member State, even where it is not responsible under the criteria set out in this Regulation, may bring together family members, as well as other dependent relatives, on humanitarian grounds based in particular on family or cultural considerations. In this case that Member State shall, at the request of another Member State, examine the application for asylum of the person concerned. The persons concerned must consent.
2. In cases in which the person concerned is dependent on the assistance of the other on account of pregnancy or a newborn child, serious illness, severe handicap or old age, Member States shall normally keep or bring together the asylum seeker with another relative present in the territory of one of the Member States, provided that family ties existed in the country of origin.
3. If the asylum seeker is an unaccompanied minor who has a relative or relatives in another Member State who can take care of him or her, Member States shall if possible unite the minor with his or her relative or relatives, unless this is not in the best interests of the minor.
4. Where the Member State thus approached accedes to the request, responsibility for examining the application shall be transferred to it.
5. The conditions and procedures for implementing this Article including, where appropriate, conciliation mechanisms for settling differences between Member States concerning the need to unite the persons in question, or the place where this should be done, shall be adopted in accordance with the procedure referred to in Article 27(2).

CHAPTER V
TAKING CHARGE AND TAKING BACK

Article 16

1. The Member State responsible for examining an application for asylum under this Regulation shall be obliged to:
   (a) take charge, under the conditions laid down in Articles 17 to 19, of an asylum seeker who has lodged an application in a different Member State;
   (b) complete the examination of the application for asylum;
   (c) take back, under the conditions laid down in Article 20, an applicant whose application is under examination and who is in the territory of another Member State without permission;
   (d) take back, under the conditions laid down in Article 20, an applicant who has withdrawn the application under examination and made an application in another Member State;
   (e) take back, under the conditions laid down in Article 20, a third-country national whose application it has rejected and who is in the territory of another Member State without permission.
2. Where a Member State issues a residence document to the applicant, the obligations specified in paragraph 1 shall be transferred to that Member State.
3. The obligations specified in paragraph 1 shall cease where the third-country national has left the territory of the Member States for at least three months, unless the third-country national is in possession of a valid residence document issued by the Member State responsible.

4. The obligations specified in paragraph 1(d) and (e) shall likewise cease once the Member State responsible for examining the application has adopted and actually implemented, following the withdrawal or rejection of the application, the provisions that are necessary before the third-country national can go to his country of origin or to another country to which he may lawfully travel.

Article 17

1. Where a Member State with which an application for asylum has been lodged considers that another Member State is responsible for examining the application, it may, as quickly as possible and in any case within three months of the date on which the application was lodged within the meaning of Article 4(2), call upon the other Member State to take charge of the applicant.

   Where the request to take charge of an applicant is not made within the period of three months, responsibility for examining the application for asylum 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 asylum 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 and/or where the asylum seeker is held in detention.

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

3. In both cases, 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 18(3) and/or relevant elements from the asylum seeker’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 rules on the preparation of and the procedures for transmitting requests shall be adopted in accordance with the procedure referred to in Article 27(2).

Article 18

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 the date on which the request was received.

2. In the procedure for determining the Member State responsible for examining the application for asylum established in this Regulation, elements of proof and circumstantial evidence shall be used.

3. In accordance with the procedure referred to in Article 27(2) two lists shall be established and periodically reviewed, indicating the elements of proof and circumstantial evidence in accordance with the following criteria:

(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 27 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 asylum 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 17(2), the requested Member State shall make every effort to conform to 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 the reply after the time limit requested, but in any case 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 provisions for proper arrangements for arrival.

**Article 19**

1. Where the requested Member State accepts that it should take charge of an applicant, the Member State in which the application for asylum was lodged shall notify the applicant of the decision not to examine the application, and of the obligation to transfer the applicant to the responsible Member State.
2. The decision referred to in paragraph 1 shall set out the grounds on which it is based. It shall contain details of the time limit for carrying out the transfer and shall, if necessary, contain information on the place and date at which the applicant should appear, if he is travelling to the Member State responsible by his own means. This decision may be subject to an appeal or a review. Appeal or review concerning this decision shall not suspend the implementation of the transfer unless the courts or competent bodies so decide on a case by case basis if national legislation allows for this.
3. The transfer of the applicant from the Member State in which the application for asylum was lodged to the Member State responsible shall be carried out in accordance with the national law of the first 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 that charge be taken or of the decision on an appeal or review where there is a suspensive effect.

If necessary, the asylum seeker shall be supplied by the requesting Member State with a 
\textit{laissez passer} of the design adopted in accordance with the procedure referred to in Article 27(2).

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

4. Where the transfer does not take place within the six months’ time limit, responsibility shall lie with the Member State in which the application for asylum was lodged. 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 asylum seeker or up to a maximum of eighteen months if the asylum seeker absconds.

5. Supplementary rules on carrying out transfers may be adopted in accordance with the procedure referred to in Article 27(2).

\textit{Article 20}

1. An asylum seeker shall be taken back in accordance with Article 4(5) and Article 16(1)(c), (d) and (e) as follows:

(a) the request for the applicant to be taken back must contain information enabling the requested Member State to check that it is responsible;

(b) the Member State called upon to take back the applicant shall be obliged to make the necessary checks and reply to the request addressed to it as quickly as possible and under no circumstances exceeding a period of one month from the referral. When the request is based on data obtained from the Eurodac system, this time limit is reduced to two weeks;

(c) where the requested Member State does not communicate its decision within the one month period or the two weeks period mentioned in subparagraph (b), it shall be considered to have agreed to take back the asylum seeker;

(d) a Member State which agrees to take back an asylum seeker shall be obliged to readmit that person to its territory. The transfer 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 that charge be taken by another Member State or of the decision on an appeal or review where there is a suspensive effect;

(e) the requesting Member State shall notify the asylum seeker of the decision concerning his being taken back by the Member State responsible. The decision shall set out the grounds on which it is based. It shall contain details of the time limit on carrying out the transfer and shall, if necessary, contain information on the place and date at which the applicant should appear, if he is travelling to the Member State responsible by his own means. This decision may be subject to an appeal or a review. Appeal or review concerning this decision shall not suspend the implementation of the transfer except when the courts or competent bodies so decide in a case-by-case basis if the national legislation allows for this.
If necessary, the asylum seeker shall be supplied by the requesting Member State with a *laissez passer* of the design adopted in accordance with the procedure referred to in Article 27(2).

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

2. Where the transfer does not take place within the six months’ time limit, responsibility shall lie with the Member State in which the application for asylum was lodged. This time limit may be extended up to a maximum of one year if the transfer or the examination of the application could not be carried out due to imprisonment of the asylum seeker or up to a maximum of eighteen months if the asylum seeker absconds.

3. The rules of proof and evidence and their interpretation, and on the preparation of and the procedures for transmitting requests, shall be adopted in accordance with the procedure referred to in Article 27(2).

4. Supplementary rules on carrying out transfers may be adopted in accordance with the procedure referred to in Article 27(2).

**CHAPTER VI
ADMINISTRATIVE COOPERATION**

**Article 21**

1. Each Member State shall communicate to any Member State that so requests such personal data concerning the asylum seeker as is appropriate, relevant and non-excessive for:
   (a) the determination of the Member State responsible for examining the application for asylum;
   (b) examining the application for asylum;
   (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, the members of his family (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 (EC) No 2725/2000;
   (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 any previous application for asylum was lodged, the date 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 asylum, the Member State responsible may request another Member State to let it know on what grounds the asylum seeker bases his application and, where applicable, the grounds for any decisions taken concerning the applicant. The Member State may
refuse to respond to the request submitted to it, if the communication of such information is likely to harm the essential interests of the Member State 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 asylum.

4. Any request for information 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 asylum seekers 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 the individual asylum seeker.

5. The requested Member State shall be obliged to reply within six weeks.

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, which shall inform the other Member States thereof.

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) the determination of the Member State responsible for examining the application for asylum;
(b) examining the application for asylum;
(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 that Member State 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 asylum seeker shall have the right to be informed, on request, of any data that is processed concerning him.

If he finds that this information has been processed in breach of this Regulation or of Directive 95/46/EC of the European Parliament and the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, in particular because it is incomplete or inaccurate, he is entitled to have it corrected, erased or blocked.

The authority correcting, erasing or blocking the data shall inform, as appropriate, the Member State transmitting or receiving the information.

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 it is exchanged.
12. Where the data is not processed automatically or is not contained, or intended to be entered, in a file, each Member State should take appropriate measures to ensure compliance with this Article through effective checks.

Article 22

1. Member States shall notify the Commission of the authorities responsible for fulfilling the obligations arising under this Regulation and 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 asylum seekers.
2. Rules relating to the establishment of secure electronic transmission channels between the authorities mentioned in paragraph 1 for transmitting requests and ensuring that senders automatically receive an electronic proof of delivery shall be established in accordance with the procedure referred to in Article 27(2).

Article 23

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 asylum seekers;
2. The arrangements referred to in paragraph 1 shall be communicated to the Commission. The Commission shall verify that the arrangements referred to in paragraph 1(b) do not infringe this Regulation.

Chapter VII

Article 24

1. This Regulation shall replace the Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities, signed in Dublin on 15 June 1990 (Dublin Convention).
2. However, to ensure continuity of the arrangements for determining the Member State responsible for an application for asylum, where an application has been lodged after the date mentioned in the second paragraph of Article 29, 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 10(2).
3. Where, in Regulation (EC) No 2725/2000 reference is made to the Dublin Convention, such reference shall be taken to be a reference made to this Regulation.
Article 25

1. 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.

2. Requests and replies shall be sent using any method that provides proof of receipt.

Article 26

As far as the French Republic is concerned, this Regulation shall apply only to its European territory.

Article 27

1. The Commission shall be assisted by a committee.
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.
   The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.
3. The Committee shall draw up its rules of procedure.

Article 28

At the latest three years after the date mentioned in the first paragraph of Article 29, the Commission shall report to the European Parliament and 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.

Having submitted that report, the Commission shall report to the European Parliament and 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 24(5) of Regulation (EC) No 2725/2000.

Article 29

This Regulation shall enter into force on the 20th day following that of its publication in the Official Journal of the European Union.
It shall apply to asylum applications 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 asylum seekers, irrespective of the date on which the application was made. The Member State responsible for the examination of an asylum application submitted before that date shall be determined in accordance with the criteria set out in the Dublin Convention.

This Regulation shall be binding in its entirety and directly applicable in the Member States in conformity with the Treaty establishing the European Community.

Done at Brussels, 18 February 2003...


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,

Having regard to the opinion of the European Parliament,

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

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

Whereas:

(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

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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 the objectives defined at Tampere have been reaffirmed by the Laeken European Council on 14 and 15 December 2001.

(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.

(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;
(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:
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
PE NALTIES 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...

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*The Council of the European Union,*

Having regard to the Treaty establishing the European Community, and in particular points 1(c), 2(a) and 3(a) of Article 63 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

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

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

Whereas:

(1) 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 Community.

(2) The European Council at its special meeting in Tampere on 15 and 16 October 1999 agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention relating to the Status of Refugees of 28 July 1951 (Geneva Convention), as supplemented by the New York Protocol of 31 January 1967 (Protocol), thus affirming the

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*EU 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* of the European Union 30.9.2004 L 304/12 (footnotes omitted).*
principle of non-refoulement and ensuring that nobody is sent back to persecution.

(3) The Geneva Convention and Protocol provide the cornerstone of the international legal regime for the protection of refugees.

(4) 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.

(5) 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.

(6) 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 these persons in all Member States.

(7) The approximation of rules on the recognition and content of refugee and subsidiary protection status should help to limit the secondary movements of applicants for asylum between Member States, where such movement is purely caused by differences in legal frameworks.

(8) It is in the very nature of minimum standards that Member States should have the power to introduce or maintain more favourable provisions for third country nationals or stateless persons who 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 who otherwise needs international protection.

(9) 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.

(10) 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.

(11) With respect to the treatment of persons falling within the scope of this Directive, Member States are bound by obligations under instruments of international law to which they are party and which prohibit discrimination.

(12) The ‘best interests of the child’ should be a primary consideration of Member States when implementing this Directive.

(13) This Directive is without prejudice to the Protocol on asylum for nationals of Member States of the European Union as annexed to the Treaty Establishing the European Community.

(14) The recognition of refugee status is a declaratory act.

(15) 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.
Minimum 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.

It is necessary to introduce common criteria for recognising applicants for asylum as refugees within the meaning of Article 1 of the Geneva Convention.

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.

Protection can be provided not only by the State but also by parties or organisations, including international organisations, meeting the conditions of this Directive, which control a region or a larger area within the territory of the State.

It is necessary, when assessing applications from minors for international protection, that Member States should have regard to child-specific forms of persecution.

It is equally necessary to introduce a common concept of the persecution ground ‘membership of a particular social group’.

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’.

As referred to in Article 14, ‘status’ can also include refugee status.

Minimum 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.

It is necessary to introduce 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.

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.

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.

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.

While the benefits provided to family members of beneficiaries of subsidiary protection status do not necessarily have to be the same as those provided to the qualifying beneficiary, they need to be fair in comparison to those enjoyed by beneficiaries of subsidiary protection status.

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, health care and access to integration facilities requires the prior issue of a residence permit.

(31) This Directive does not apply to financial benefits from the Member States which are granted to promote education and training.

(32) The practical difficulties encountered by beneficiaries of refugee or subsidiary protection status concerning the authentication of their foreign diplomas, certificates or other evidence of formal qualification should be taken into account.

(33) Especially to avoid social hardship, it is appropriate, for beneficiaries of refugee or subsidiary protection status, to provide without discrimination in the context of social assistance the adequate social welfare and means of subsistence.

(34) With regard to social assistance and health care, 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 the benefits for beneficiaries of subsidiary protection status to core benefits is to be understood in the sense that this notion covers at least minimum income support, assistance in case of illness, pregnancy and parental assistance, in so far as they are granted to nationals according to the legislation of the Member State concerned.

(35) Access to health care, including both physical and mental health care, should be ensured to beneficiaries of refugee or subsidiary protection status.

(36) 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.

(37) Since the objectives of the proposed Directive, namely to establish minimum standards for the granting of international protection to third country nationals and stateless persons by Member States and 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 the Directive, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(38) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom has notified, by letter of 28 January 2002, its wish to take part in the adoption and application of this Directive.

(39) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Ireland has notified, by letter of 13 February 2002, its wish to take part in the adoption and application of this Directive.

(40) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the
European Community, Denmark is not taking 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 – Subject matter and scope

The purpose of this Directive is to lay down minimum standards for the qualification of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

Article 2 – Definitions

For the purposes of this Directive:
(a) ‘international protection’ means the refugee and subsidiary protection status as defined in (d) and (f);
(c) ‘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;
(d) ‘refugee status’ means the recognition by a Member State of a third country national or a stateless person as a refugee;
(e) ‘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) do not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country;
(f) ‘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;
(g) ‘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;

(h) ‘family members’ means, insofar as the family already existed in the country of origin, the following members of the family of the beneficiary of refugee or subsidiary protection status who are present in the same Member State in relation to the application for international protection:
   – the spouse of the beneficiary of refugee or subsidiary protection status or his or her unmarried partner in a stable relationship, where the legislation or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to aliens,
   – the minor children of the couple referred to in the first indent or of the beneficiary of refugee or subsidiary protection status, on condition that they are unmarried and dependent and regardless of whether they were born in or out of wedlock or adopted as defined under the national law;

(i) ‘unaccompanied minors’ means third-country nationals or stateless persons below the age of 18, who arrive on the territory of the Member States unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person; it includes minors who are left unaccompanied after they have entered the territory of the Member States;

(j) ‘residence permit’ means any permit or authorisation issued by the authorities of a Member State, in the form provided for under that State’s legislation, allowing a third country national or stateless person to reside on its territory;

(k) ‘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 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 documentation at the applicants 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, identity and 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 these activities will expose the applicant to persecution or serious harm if returned to that country;
(e) whether the applicant could reasonably be expected to avail himself of the protection of another country where he 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 regarding any lack of other relevant elements has been given;
(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 have been engaged in by the applicant since he 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 normally not be granted refugee status, if the risk of persecution is based on circumstances which the applicant has created by his 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 (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 can 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.
2. Protection is generally provided when the actors mentioned in 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 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 Council 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 there is no well-founded fear of being persecuted or no real risk of suffering serious harm and the applicant can reasonably be expected to stay in that part of the country.
2. In examining whether a part of the country of origin is 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.
3. Paragraph 1 may apply notwithstanding technical obstacles to return to the country of origin.
CHAPTER III
QUALIFICATION FOR BEING A REFUGEE

Article 9 – Acts of persecution

1. Acts of persecution within the meaning of article 1 A of the Geneva Convention must:
   (a) be sufficiently serious by their 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 (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 under the exclusion clauses as set out in Article 12(2);
   (f) acts of a gender-specific or child-specific nature.

3. In accordance with Article 2(c), there must be a connection between the reasons mentioned in Article 10 and the acts of persecution as qualified in paragraph 1.

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 might be considered, without by themselves alone creating a presumption for the applicability of this Article;
(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 reacquired 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;
   (f) being a stateless person with no nationality, 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.

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 1D 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, these 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 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 instigate 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 this Directive, 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/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, were 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 judgement 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 and 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) 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 of 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.

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;
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 this Directive, 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, were 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/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.
Article 20 – General rules

1. This Chapter shall be without prejudice to the rights laid down in the Geneva Convention. 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 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 interest of the child shall be a primary consideration for Member States when implementing the provisions of this Chapter that involve minors.
6. Within the limits set out by the Geneva Convention, Member States may reduce the benefits of this Chapter, granted to a refugee whose refugee status has been obtained on the basis of activities engaged in for the sole or main purpose of creating the necessary conditions for being recognised as a refugee.
7. Within the limits set out by international obligations of Member States, Member States may reduce the benefits of this Chapter, granted to a person eligible for subsidiary protection, whose subsidiary protection status has been obtained on the basis of activities engaged in for the sole or main purpose of creating the necessary conditions for being recognised as a person eligible for subsidiary protection.

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 judgement 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.

Article 22 – Information

Member States shall provide persons recognised as being in need of international protection, as soon as possible after the respective protection status has been granted, with access to information, in a language likely to be understood by them, 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 refugee or subsidiary protection status, who do not individually qualify for such status, are entitled to claim the benefits referred to in Articles 24 to 34, in accordance with national procedures and as far as it is compatible with the personal legal status of the family member.

   In so far as the family members of beneficiaries of subsidiary protection status are concerned, Member States may define the conditions applicable to such benefits.

   In these cases, Member States shall ensure that any benefits provided guarantee an adequate standard of living.
3. Paragraphs 1 and 2 are not applicable where the family member is or would be excluded from refugee or subsidiary protection status pursuant to Chapters III and V.
4. Notwithstanding paragraphs 1 and 2, Member States may refuse, reduce or withdraw the benefits referred 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 refugee or subsidiary protection status at that time.

**Article 24 – Residence permits**

1. As soon as possible after their status has been granted, Member States shall issue to beneficiaries of refugee status a residence permit which must be valid for at least three 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 three years and renewable.
2. As soon as possible after the status has been granted, Member States shall issue to beneficiaries of subsidiary protection status a residence permit which must be valid for at least one year and renewable, 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, at least when serious humanitarian reasons arise that require their presence in another State, unless compelling reasons of national security or public order otherwise require.
**Article 26 – Access to employment**

1. Member States shall authorise beneficiaries of refugee status to engage in employed or self-employed activities subject to rules generally applicable to the profession and to the public service, immediately after the refugee status has been granted.
2. Member States shall ensure that activities such as employment-related education opportunities for adults, vocational training and practical workplace experience are offered to beneficiaries of refugee status, under equivalent conditions as nationals.
3. Member States shall authorise beneficiaries of subsidiary protection status to engage in employed or self-employed activities subject to rules generally applicable to the profession and to the public service immediately after the subsidiary protection status has been granted. The situation of the labour market in the Member States may be taken into account, including for possible prioritisation of access to employment for a limited period of time to be determined in accordance with national law. Member States shall ensure that the beneficiary of subsidiary protection status has access to a post for which the beneficiary has received an offer in accordance with national rules on prioritisation in the labour market.
4. Member States shall ensure that beneficiaries of subsidiary protection status have access to activities such as employment-related education opportunities for adults, vocational training and practical workplace experience, under conditions to be decided by the Member States.
5. 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 refugee or subsidiary protection status, under the same conditions as nationals.
2. Member States shall allow adults granted refugee or subsidiary protection status access to the general education system, further training or retraining, under the same conditions as third country nationals legally resident.
3. Member States shall ensure equal treatment between beneficiaries of refugee or subsidiary protection status and nationals in the context of the existing recognition procedures for foreign diplomas, certificates and other evidence of formal qualifications.

**Article 28 – Social welfare**

1. Member States shall ensure that beneficiaries of refugee or subsidiary protection status receive, in the Member State that has granted such statuses, the necessary social assistance, as provided to nationals of that Member State.
2. By exception to 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 levels and under the same eligibility conditions as nationals.
Article 29 – Health care

1. Member States shall ensure that beneficiaries of refugee or subsidiary protection status have access to health care under the same eligibility conditions as nationals of the Member State that has granted such statuses.
2. By exception to the general rule laid down in paragraph 1, Member States may limit health care granted to beneficiaries of subsidiary protection to core benefits which will then be provided at the same levels and under the same eligibility conditions as nationals.
3. Member States shall provide, under the same eligibility conditions as nationals of the Member State that has granted the status, adequate health care to beneficiaries of refugee or subsidiary protection status 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 30 – Unaccompanied minors

1. As soon as possible after the granting of refugee or subsidiary protection status Member States shall take the necessary measures, to ensure the representation of unaccompanied minors by legal guardianship 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. Member States, protecting the unaccompanied minor’s best interests, shall endeavour to trace the members of the minor’s family as soon as possible. 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 or receive appropriate training concerning their needs.
Article 31 – Access to accommodation

The Member States shall ensure that beneficiaries of refugee or subsidiary protection status have access to accommodation under equivalent conditions as other third country nationals legally resident in their territories.

Article 32 – Freedom of movement within the Member State

Member States shall allow freedom of movement within their territory to beneficiaries of refugee or subsidiary protection status, under the same conditions and restrictions as those provided for other third country nationals legally resident in their territories.

Article 33 – Access to integration facilities

1. In order to facilitate the integration of refugees into society, Member States shall make provision for integration programmes which they consider to be appropriate or create pre-conditions which guarantee access to such programmes.
2. Where it is considered appropriate by Member States, beneficiaries of subsidiary protection status shall be granted access to integration programmes.

Article 34 – Repatriation

Member States may provide assistance to beneficiaries of refugee or subsidiary protection status who wish to repatriate.

Chapter VIII
Administrative Cooperation

Article 35 – Cooperation

Member States shall each appoint a national contact point, whose address they shall communicate to the Commission, which shall communicate it 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 36 – 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 37 – Reports

1. By 10 April 2008, 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. These proposals for amendments shall be made by way of priority in relation to Articles 15, 26 and 33. Member States shall send the Commission all the information that is appropriate for drawing up that report by 10 October 2007.
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 five years.

Article 38 – Transposition

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 10 October 2006. They shall forthwith inform the Commission thereof.
   When the Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.
2. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field covered by this Directive.

Article 39 – 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 40 – Addressees

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

Done at Luxembourg, 29 April 2004...

_The Council of the European Union,_

Having regard to the Treaty establishing the European Community, and in particular point (1)(d) of the first paragraph of Article 63 thereof,
Having regard to the proposal from the Commission,
Having regard to the opinion of the European Parliament,
Having regard to the opinion of the European Economic and Social Committee,

Whereas:

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

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

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

(4) The minimum standards laid down in this Directive on procedures in Member States for granting or withdrawing refugee status are therefore a first measure on asylum procedures.

(5) The main objective of this Directive is to introduce a minimum framework in the Community on procedures for granting and withdrawing refugee status.

(6) The approximation of rules on the procedures for granting and withdrawing refugee status should help to limit the secondary movements of applicants for asylum between Member States, where such movement would be caused by differences in legal frameworks.

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

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(8) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

(9) With respect to the treatment of persons falling within the scope of this Directive, Member States are bound by obligations under instruments of international law to which they are party and which prohibit discrimination.

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

(11) It is in the interest of both Member States and applicants for asylum to decide as soon as possible on applications for asylum. The organisation of the processing of applications for asylum should be left to the discretion of Member States, so that they may, in accordance with their national needs, prioritise or accelerate the processing of any application, taking into account the standards in this Directive.

(12) The notion of public order may cover a conviction for committing a serious crime.

(13) 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, every applicant should, subject to certain exceptions, have an effective access to procedures, the opportunity to cooperate and properly communicate with the competent authorities so as to present the relevant facts of his/her case and sufficient procedural guarantees to pursue his/her case throughout all stages of the procedure. Moreover, the procedure in which an application for asylum is examined should normally provide an applicant at least with the right to stay pending a decision by the determining authority, access to the services of an interpreter for submitting his/her case if interviewed by the authorities, the opportunity to communicate with a representative of the United Nations High Commissioner for Refugees (UNHCR) or with any organisation working on its behalf, the right to appropriate notification of a decision, a motivation of that decision in fact and in law, the opportunity to consult a legal adviser or other counsellor, and the right to be informed of his/her legal position at decisive moments in the course of the procedure, in a language he/she can reasonably be supposed to understand.

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

(15) Where an applicant makes a subsequent application without presenting new evidence or arguments, it would be disproportionate to oblige Member States to carry out a new full examination procedure. In these cases, Member States should have a choice of procedure involving exceptions to the guarantees normally enjoyed by the applicant.

(16) Many asylum applications 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 keep existing procedures adapted to the specific situation of these applicants at the border. Common rules should be defined on possible
exceptions made in these circumstances to the guarantees normally enjoyed by applicants. Border procedures should mainly apply to those applicants who do not meet the conditions for entry into the territory of the Member States.

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

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

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

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

(21) The designation of a third country as a safe country of origin for the purposes of this Directive cannot establish an absolute guarantee of safety for nationals of that country. By its very nature, the assessment underlying the designation can only take into account the general civil, legal and political circumstances in that country and whether actors of persecution, torture or inhuman or degrading treatment or punishment are subject to sanction in practice when found liable in the country concerned. For this reason, it is important that, where an applicant shows that there are serious reasons to consider the country not to be safe in his/her particular circumstances, the designation of the country as safe can no longer be considered relevant for him/her.

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

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

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

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

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

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

(28) In accordance with Article 64 of the Treaty, this Directive does not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.

(29) This Directive does not deal with procedures governed by 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.
(30) The implementation of this Directive should be evaluated at regular intervals not exceeding two years.

(31) Since the objective of this Directive, namely to establish minimum standards on procedures in Member States for granting and withdrawing refugee status cannot be sufficiently attained by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve this objective.

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

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

(34) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark does not take part in the adoption of this Directive and is not bound by it or subject to its application.

Has Adopted this Directive:

CHAPTER I
GENERAL PROVISIONS

Article 1 – Purpose

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

Article 2 – Definitions

For the purposes of this Directive:
(b) ‘application’ or ‘application for asylum’ means an application made by a third country national or stateless person which can be understood as a request for international protection from a Member State under the Geneva Convention. Any application for international protection is presumed to be an application for asylum, unless the person concerned explicitly requests another kind of protection that can be applied for separately;
(c) ‘applicant’ or ‘applicant for asylum’ means a third country national or stateless person who has made an application for asylum in respect of which a final decision has not yet been taken;

(d) ‘final decision’ means a decision on whether the third country national or stateless person be granted refugee status by virtue of Directive 2004/83/EC and which is no longer subject to a remedy within the framework of Chapter V of this Directive irrespective of whether such remedy has the effect of allowing applicants to remain in the Member States concerned pending its outcome, subject to Annex III to this Directive;

(e) ‘determining authority’ means any quasi-judicial or administrative body in a Member State responsible for examining applications for asylum and competent to take decisions at first instance in such cases, subject to Annex I;

(f) ‘refugee’ means a third country national or a stateless person who fulfils the requirements of Article 1 of the Geneva Convention as set out in Directive 2004/83/EC;

(g) ‘refugee status’ means the recognition by a Member State of a third country national or stateless person as a refugee;

(h) ‘unaccompanied minor’ means a person below the age of 18 who arrives in the territory of the Member States unaccompanied by an adult responsible for him/her whether by law or by custom, and for as long as he/she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he/she has entered the territory of the Member States;

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

(j) ‘withdrawal of refugee status’ means the decision by a competent authority to revoke, end or refuse to renew the refugee status of a person in accordance with Directive 2004/83/EC;

(k) ‘remain in the Member State’ means to remain in the territory, including at the border or in transit zones, of the Member State in which the application for asylum has been made or is being examined.

Article 3 – Scope

1. This Directive shall apply to all applications for asylum made in the territory, including at the border or in the transit zones of the Member States, and to the withdrawal of refugee status.

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

3. Where Member States employ or introduce a procedure in which asylum applications are examined both as applications on the basis of the Geneva Convention and as applications for other kinds of international protection given under the circumstances defined by Article 15 of Directive 2004/83/EC, they shall apply this Directive throughout their procedure.

4. Moreover, Member States may decide to apply this Directive in procedures for deciding on applications for any kind of international protection.
Article 4 – Responsible authorities

1. Member States shall designate for all procedures a determining authority which will be responsible for an appropriate examination of the applications in accordance with this Directive, in particular Articles 8(2) and 9.

   In accordance with Article 4(4) of Regulation (EC) No 343/2003, applications for asylum made in a Member State to the authorities of another Member State carrying out immigration controls there shall be dealt with by the Member State in whose territory the application is made.

2. However, Member States may provide that another authority is responsible for the purposes of:

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

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

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

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

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

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

3. Where authorities are designated in accordance with paragraph 2, Member States shall ensure that the personnel of such authorities have the appropriate knowledge or receive the necessary training to fulfil their obligations when implementing this Directive.

Article 5 – More favourable provisions

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

Chapter II
Basic Principles and Guarantees

Article 6 – Access to the procedure

1. Member States may require that applications for asylum be made in person and/or at a designated place.
2. Member States shall ensure that each adult having legal capacity has the right to make an application for asylum on his/her own behalf.

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

   Consent shall be requested at the time the application is lodged or, at the latest, when the personal interview with the dependant adult is conducted.

4. Member States may determine in national legislation:
   (a) the cases in which a minor can make an application on his/her own behalf;
   (b) the cases in which the application of an unaccompanied minor has to be lodged by a representative as provided for in Article 17(1)(a);
   (c) the cases in which the lodging of an application for asylum is deemed to constitute also the lodging of an application for asylum for any unmarried minor.

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

**Article 7 – Right to remain in the Member State pending the examination of the application**

1. Applicants shall be allowed to remain in the Member State, for the sole purpose of the procedure, until the determining authority has made a decision in accordance with the procedures at first instance set out in Chapter III. This right to remain shall not constitute an entitlement to a residence permit.

2. Member States can make an exception only where, in accordance with Articles 32 and 34, a subsequent application will not be further examined or where they will surrender or extradite, as appropriate, a person either to another Member State pursuant to obligations in accordance with a European arrest warrant or otherwise, or to a third country, or to international criminal courts or tribunals.

**Article 8 – Requirements for the examination of applications**

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

2. Member States shall ensure that decisions by the determining authority on applications for asylum are taken after an appropriate examination. To that end, Member States shall ensure that:
   (a) applications are examined and decisions are taken individually, objectively and impartially;
   (b) precise and up-to-date information is obtained from various sources, such as the United Nations High Commissioner for Refugees (UNHCR), as to the general situation prevailing in the countries of origin of applicants for asylum and, where necessary, in countries through which they have transited, and that such
information is made available to the personnel responsible for examining applications and taking decisions;
(c) the personnel examining applications and taking decisions have the knowledge with respect to relevant standards applicable in the field of asylum and refugee law.

3. 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 2(b), necessary for the fulfilment of their task.

4. Member States may provide for rules concerning the translation of documents relevant for the examination of applications.

**Article 9 – Requirements for a decision by the determining authority**

1. Member States shall ensure that decisions on applications for asylum are given in writing.
2. Member States shall also ensure that, where an application is rejected, the reasons in fact and in law are stated in the decision and information on how to challenge a negative decision is given in writing.

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

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

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

**Article 10 – Guarantees for applicants for asylum**

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

   (a) they shall be informed in a language which they may reasonably be supposed to understand of the procedure to be followed and of their rights and obligations during the procedure and the possible consequences of not complying with their obligations and not cooperating with the authorities. They shall be informed of the time-frame, as well as the means at their disposal for fulfilling the obligation to submit the elements as referred to in Article 4 of Directive 2004/83/EC. This information shall be given in time to enable them to exercise the rights guaranteed in this Directive and to comply with the obligations described in Article 11;

   (b) they shall receive the services of an interpreter for submitting their case to the competent authorities whenever necessary. Member States shall consider it necessary to give these services at least when the determining authority calls
upon the applicant to be interviewed as referred to in Articles 12 and 13 and appropriate communication cannot be ensured without such services. In this case and in other cases where the competent authorities call upon the applicant, these services shall be paid for out of public funds;

(c) they shall not be denied the opportunity to communicate with the UNHCR or with any other organisation working on behalf of the UNHCR in the territory of the Member State pursuant to an agreement with that Member State;

(d) they shall be given notice in reasonable time of the decision by the determining authority on their application for asylum. If a legal adviser or other counsellor is legally representing the applicant, Member States may choose to give notice of the decision to him/her instead of to the applicant for asylum;

(e) they shall be informed of the result of the decision by the determining authority in a language that they may reasonably be supposed to understand when they are not assisted or represented by a legal adviser or other counsellor and when free legal assistance is not available. The information provided shall include information on how to challenge a negative decision in accordance with the provisions of Article 9(2).

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

Article 11 – Obligations of the applicants for asylum

1. Member States may impose upon applicants for asylum obligations to cooperate with the competent authorities insofar as these obligations are necessary for the processing of the application.

2. In particular, Member States may provide that:

(a) applicants for asylum are required to report to the competent authorities or to appear before them in person, either without delay or at a specified time;

(b) applicants for asylum have to hand over documents in their possession relevant to the examination of the application, such as their passports;

(c) applicants for asylum are required to inform the competent authorities of their current place of residence or address and of any changes thereof as soon as possible. Member States may provide that the applicant shall have to accept any communication at the most recent place of residence or address which he/she indicated accordingly;

(d) the competent authorities may search the applicant and the items he/she carries with him/her;

(e) the competent authorities may take a photograph of the applicant; and

(f) the competent authorities may record the applicant’s oral statements, provided he/she has previously been informed thereof.

Article 12 – Personal interview

1. Before a decision is taken by the determining authority, the applicant for asylum shall be given the opportunity of a personal interview on his/her application for asylum with a person competent under national law to conduct such an interview.
Member States may also give the opportunity of a personal interview to each dependant adult referred to in Article 6(3).

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 may be omitted where:
   (a) the determining authority is able to take a positive decision on the basis of evidence available; or
   (b) the competent authority has already had a meeting with the applicant for the purpose of assisting him/her with completing his/her application and submitting the essential information regarding the application, in terms of Article 4(2) of Directive 2004/83/EC; or
   (c) the determining authority, on the basis of a complete examination of information provided by the applicant, considers the application to be unfounded in cases where the circumstances mentioned in Article 23(4)(a), (c), (g), (h) and (j) apply.

3. The personal interview may also be omitted where it is not reasonably practicable, in particular where the competent authority is of the opinion that the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond his/her control.
   When in doubt, Member States may require a medical or psychological certificate.

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

4. The absence of a personal interview in accordance with this Article shall not prevent the determining authority from taking a decision on an application for asylum.

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

6. Irrespective of Article 20(1), Member States, when deciding on the application for asylum, may take into account the fact that the applicant failed to appear for the personal interview, unless he/she had good reasons for the failure to appear.

Article 13 – Requirements for a personal interview

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

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

3. Member States shall take appropriate steps to ensure that personal interviews are conducted under conditions which allow applicants to present the grounds for their applications in a comprehensive manner. To that end, Member States shall:
   (a) ensure that the person who conducts the interview is sufficiently competent to take account of the personal or general circumstances surrounding the application, including the applicant’s cultural origin or vulnerability, insofar as it is possible to do so; and
   (b) select an interpreter who is able to ensure appropriate communication between the applicant and the person who conducts the interview. The communication
need not necessarily take place in the language preferred by the applicant for asylum if there is another language which he/she may reasonably be supposed to understand and in which he/she is able to communicate.

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

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

Article 14 – Status of the report of a personal interview in the procedure

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

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

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

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

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

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

Article 15 – Right to legal assistance and representation

1. Member States shall allow applicants for asylum the opportunity, at their own cost, to consult in an effective manner a legal adviser or other counsellor, admitted or permitted as such under national law, on matters relating to their asylum applications.

2. In the event of a negative decision by a determining authority, Member States shall ensure that free legal assistance and/or representation be granted on request, subject to the provisions of paragraph 3.

3. Member States may provide in their national legislation that free legal assistance and/or representation is granted:
   (a) only for procedures before a court or tribunal in accordance with Chapter V and not for any onward appeals or reviews provided for under national law, including a rehearing of an appeal following an onward appeal or review; and/or
   (b) only to those who lack sufficient resources; and/or
   (c) only to legal advisers or other counsellors specifically designated by national law to assist and/or represent applicants for asylum; and/or
   (d) only if the appeal or review is likely to succeed.

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

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

5. Member States may also:
impose monetary and/or time-limits on the provision of free legal assistance and/or representation, provided that such limits do not arbitrarily restrict access to legal assistance and/or representation;

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

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

Article 16 – Scope of legal assistance and representation

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

Member States may make an exception where disclosure of information or sources would jeopardise national security, the security of the organisations or person(s) providing the information or the security of the person(s) to whom the information relates or where the investigative interests relating to the examination of applications of asylum by the competent authorities of the Member States or the international relations of the Member States would be compromised. In these cases, access to the information or sources in question shall be available to the authorities referred to in Chapter V, except where such access is precluded in cases of national security.

2. Member States shall ensure that the legal adviser or other counsellor who assists or represents an applicant for asylum has access to closed areas, such as detention facilities and transit zones, for the purpose of consulting that applicant. Member States may only limit the possibility of visiting applicants in closed areas where such limitation is, by virtue of national legislation, objectively necessary for the security, public order or administrative management of the area, or in order to ensure an efficient examination of the application, provided that access by the legal adviser or other counsellor is not thereby severely limited or rendered impossible.

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

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

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

The absence of a legal adviser or other counsellor shall not prevent the competent authority from conducting the personal interview with the applicant.
Article 17 – Guarantees for unaccompanied minors

1. With respect to all procedures provided for in this Directive and without prejudice to the provisions of Articles 12 and 14, Member States shall:
   (a) as soon as possible take measures to ensure that a representative represents and/or assists the unaccompanied minor with respect to the examination of the application. This representative can also be the representative referred to in Article 19 of Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers;
   (b) ensure that the representative is given the opportunity to inform the unaccompanied minor about the meaning and possible consequences of the personal interview and, where appropriate, how to prepare himself/herself for the personal interview. Member States shall allow the representative to be present at that interview and 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:
   (a) will in all likelihood reach the age of maturity before a decision at first instance is taken; or
   (b) can avail himself, free of charge, of a legal adviser or other counsellor, admitted as such under national law to fulfil the tasks assigned above to the representative; or
   (c) is married or has been married.

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

4. Member States shall ensure that:
   (a) if an unaccompanied minor has a personal interview on his/her application for asylum as referred to in Articles 12, 13 and 14, 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.

5. Member States may use medical examinations to determine the age of unaccompanied minors within the framework of the examination of an application for asylum. In cases where medical examinations are used, Member States shall ensure that:
   (a) unaccompanied minors are informed prior to the examination of their application for asylum, and in a language which they may reasonably be supposed to understand, of the possibility that their age may be determined by medical examination. This shall include information on the method of examination and the possible consequences of the result of the medical examination for the examination of the application for asylum, as well as the
consequences of refusal on the part of the unaccompanied minor to undergo the medical examination;

(b) unaccompanied minors and/or their representatives consent to carry out an examination to determine the age of the minors concerned; and

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

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

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

**Article 18 – Detention**

1. Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum.

2. Where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review.

**Article 19 – Procedure in case of withdrawal of the application**

1. Insofar as Member States provide for the possibility of explicit withdrawal of the application under national law, when an applicant for asylum explicitly withdraws his/her application for asylum, Member States shall ensure that the determining authority takes a decision to either discontinue the examination or reject the application.

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

**Article 20 – Procedure in the case of implicit withdrawal or abandonment of the application**

1. When there is reasonable cause to consider that an applicant for asylum has implicitly withdrawn or abandoned his/her application for asylum, Member States shall ensure that the determining authority takes a decision to either discontinue the examination or reject the application on the basis that the applicant has not established an entitlement to refugee status in accordance with Directive 2004/83/EC.

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

   (a) he/she has failed to respond to requests to provide information essential to his/her application in terms of Article 4 of Directive 2004/83/EC or has not appeared for a personal interview as provided for in Articles 12, 13 and 14, unless the applicant demonstrates within a reasonable time that his/her failure was due to circumstances beyond his control;

   (b) he/she has absconded or left without authorisation the place where he/she lived or was held, without contacting the competent authority within a reasonable
time, or he/she has not within a reasonable time complied with reporting duties or other obligations to communicate.

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

2. Member States shall ensure that the applicant who reports again to the competent authority after a decision to discontinue as referred to in paragraph 1 of this Article is taken, is entitled to request that his/her case be reopened, unless the request is examined in accordance with Articles 32 and 34.

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

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

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

Article 21 – The role of UNHCR

1. Member States shall allow the UNHCR:
   (a) to have access to applicants for asylum, including those in detention and in airport or port transit zones;
   (b) to have access to information on individual applications for asylum, on the course of the procedure and on the decisions taken, provided that the applicant for asylum agrees thereto;
   (c) to present its views, in the exercise of its supervisory responsibilities under Article 35 of the Geneva Convention, to any competent authorities regarding individual applications for asylum at any stage of the procedure.

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

Article 22 – Collection of information on individual cases

For the purposes of examining individual cases, Member States shall not:
   (a) directly disclose information regarding individual applications for asylum, or the fact that an application has been made, to the alleged actor(s) of persecution of the applicant for asylum;
   (b) obtain any information from the alleged actor(s) of persecution in a manner that would result in such actor(s) being directly informed of the fact that an application has been made by the applicant in question, and would jeopardise the physical integrity of the applicant and his/her dependants, or the liberty and security of his/her family members still living in the country of origin.
CHAPTER III
PROCEDURES AT FIRST INSTANCE
SECTION I

Article 23 – Examination procedure

1. Member States shall process applications for asylum in an examination procedure in accordance with the basic principles and guarantees of Chapter II.

2. Member States shall ensure that such a procedure is concluded as soon as possible, without prejudice to an adequate and complete examination.

   Member States shall ensure that, where a decision cannot be taken within six months, the applicant concerned shall either:
   (a) be informed of the delay; or
   (b) receive, upon his/her request, information on the time-frame within which the decision on his/her application is to be expected. Such information shall not constitute an obligation for the Member State towards the applicant concerned to take a decision within that time-frame.

3. Member States may prioritise or accelerate any examination in accordance with the basic principles and guarantees of Chapter II, including where the application is likely to be well-founded or where the applicant has special needs.

4. Member States may also provide that an examination procedure in accordance with the basic principles and guarantees of Chapter II be prioritised or accelerated if:
   (a) the applicant, in submitting his/her application and presenting the facts, has only raised issues that are not relevant or of minimal relevance to the examination of whether he/she qualifies as a refugee by virtue of Directive 2004/83/EC; or
   (b) the applicant clearly does not qualify as a refugee or for refugee status in a Member State under Directive 2004/83/EC; or
   (c) the application for asylum is considered to be unfounded:
      (i) because the applicant is from a safe country of origin within the meaning of Articles 29, 30 and 31, or
      (ii) because the country which is not a Member State, is considered to be a safe third country for the applicant, without prejudice to Article 28(1); or
   (d) the applicant has misled the authorities by presenting false information or documents or by withholding relevant information or documents with respect to his/her identity and/or nationality that could have had a negative impact on the decision; or
   (e) the applicant has filed another application for asylum stating other personal data; or
   (f) the applicant has not produced information establishing with a reasonable degree of certainty his/her identity or nationality, or it is likely that, in bad faith, he/she has destroyed or disposed of an identity or travel document that would have helped establish his/her identity or nationality; or
   (g) the applicant has made inconsistent, contradictory, improbable or insufficient representations which make his/her claim clearly unconvincing in relation to his/her having been the object of persecution referred to in Directive 2004/83/EC; or
the applicant has submitted a subsequent application which does not raise any relevant new elements with respect to his/her particular circumstances or to the situation in his/her country of origin; or
(i) the applicant has failed without reasonable cause to make his/her application earlier, having had opportunity to do so; or
(j) the applicant is making an application merely in order to delay or frustrate the enforcement of an earlier or imminent decision which would result in his/her removal; or
(k) the applicant has failed without good reason to comply with obligations referred to in Article 4(1) and (2) of Directive 2004/83/EC or in Articles 11(2)(a) and (b) and 20(1) of this Directive; or
(l) the applicant entered the territory of the Member State unlawfully or prolonged his/her stay unlawfully and, without good reason, has either not presented himself/herself to the authorities and/or filed an application for asylum as soon as possible, given the circumstances of his/her entry; or
(m) the applicant is a danger to the national security or public order of the Member State, or the applicant has been forcibly expelled for serious reasons of public security and public order under national law; or
(n) the applicant refuses to comply with an obligation to have his/her fingerprints taken in accordance with relevant Community and/or national legislation; or
(o) the application was made by an unmarried minor to whom Article 6(4)(c) applies, after the application of the parents or parent responsible for the minor has been rejected and no relevant new elements were raised with respect to his/her particular circumstances or to the situation in his/her country of origin.

Article 24 – Specific procedures

1. Member States may provide for the following specific procedures derogating from the basic principles and guarantees of Chapter II:
   (a) a preliminary examination for the purposes of processing cases considered within the framework set out in Section IV;
   (b) procedures for the purposes of processing cases considered within the framework set out in Section V.

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

Section II

Article 25: Inadmissible applications

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

2. Member States may consider an application for asylum as inadmissible pursuant to this Article if:
   (a) another Member State has granted refugee status;
(b) a country which is not a Member State is considered as a first country of asylum for the applicant, pursuant to Article 26;

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

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

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

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

(g) a dependant of the applicant lodges an application, after he/she has in accordance with Article 6(3) consented to have his/her case be part of an application made on his/her behalf, and there are no facts relating to the dependant’s situation, which justify a separate application.

Article 26 – The concept of first country of asylum

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

(a) he/she has been recognised in that country as a refugee and he/she can still avail himself/herself of that protection; or

(b) he/she otherwise enjoys sufficient protection in that country, including benefiting from the principle of non-refoulement;

provided that he/she will be re-admitted to that country.

In applying the concept of first country of asylum to the particular circumstances of an applicant for asylum Member States may take into account Article 27(1).

Article 27 – The safe third country concept

1. Member States may apply the safe third country concept only where the competent authorities are satisfied that a person seeking asylum 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) the principle of non-refoulement in accordance with the Geneva Convention is respected;

(c) the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected; and

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

2. The application of the safe third country concept shall be subject to rules laid down in national legislation, including:
(a) rules requiring a connection between the person seeking asylum and the third country concerned on the basis of which it would be reasonable for that person to go to that country;
(b) rules on the methodology by which the competent authorities satisfy themselves that the safe third country concept may be applied to a particular country or to a particular applicant. Such methodology shall include case-by-case consideration of the safety of the country for a particular applicant and/or national designation of countries considered to be generally safe;
(c) rules in accordance with international law, allowing an individual examination of whether the third country concerned is safe for a particular applicant which, as a minimum, shall permit the applicant to challenge the application of the safe third country concept on the grounds that he/she would be subjected to torture, cruel, inhuman or degrading treatment or punishment.

3. When implementing a decision solely based on this Article, Member States shall:
(a) inform the applicant accordingly; and
(b) provide him/her with a document informing the authorities of the third country, in the language of that country, that the application has not been examined in substance.

4. Where the third country does not permit the applicant for asylum to enter its territory, Member States shall ensure that access to a procedure is given in accordance with the basic principles and guarantees described in Chapter II.

5. Member States shall inform the Commission periodically of the countries to which this concept is applied in accordance with the provisions of this Article.

SECTION III

Article 28 – Unfounded applications

1. Without prejudice to Articles 19 and 20, Member States may only consider an application for asylum as unfounded if the determining authority has established that the applicant does not qualify for refugee status pursuant to Directive 2004/83/EC.
2. In the cases mentioned in Article 23(4)(b) and in cases of unfounded applications for asylum in which any of the circumstances listed in Article 23(4)(a) to (o) apply, Member States may also consider an application as manifestly unfounded, where it is defined as such in the national legislation.

Article 29 – Minimum common list of third countries regarded as safe countries of origin

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

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

4. Where the Council requests the Commission to submit a proposal for removing a third country from the minimum common list, the obligation of Member States pursuant to Article 31(2) shall be suspended with regard to this third country as of the day following the Council decision requesting such a submission.

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

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

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

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

**Article 30 – National designation of third countries as safe countries of origin**

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

2. By derogation from paragraph 1, Member States may retain legislation in force on 1 December 2005 that allows for the national designation of third countries, other than those appearing on the minimum common list, as safe countries of origin for the purposes of examining applications for asylum where they are satisfied that persons in the third countries concerned are generally neither subject to:
   (a) persecution as defined in Article 9 of Directive 2004/83/EC; nor
   (b) torture or inhuman or degrading treatment or punishment.

3. Member States may also retain legislation in force on 1 December 2005 that allows for the national designation of part of a country as safe, or a country or part of a country as safe for a specified group of persons in that country, where the conditions in paragraph 2 are fulfilled in relation to that part or group.
4. In assessing whether a country is a safe country of origin in accordance with paragraphs 2 and 3, Member States shall have regard to the legal situation, the application of the law and the general political circumstances in the third country concerned.

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

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

Article 31 – The safe country of origin concept

1. A third country designated as a safe country of origin in accordance with either Article 29 or 30 may, after an individual examination of the application, be considered as a safe country of origin for a particular applicant for asylum only if:
   (a) he/she has the nationality of that country; or
   (b) he/she is a stateless person and was formerly habitually resident in that country; and he/she has not submitted any serious grounds for considering the country not to be a safe country of origin in his/her particular circumstances and in terms of his/her qualification as a refugee in accordance with Directive 2004/83/EC.

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

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

SECTION IV

Article 32 – Subsequent application

1. Where a person who has applied for asylum in a Member State makes further representations or a subsequent application in the same Member State, that Member State may examine these further representations or the elements of the subsequent application in the framework of the examination of the previous application or in the framework of the examination of the decision under review or appeal, insofar as the competent authorities can take into account and consider all the elements underlying the further representations or subsequent application within this framework.

2. Moreover, Member States may apply a specific procedure as referred to in paragraph 3, where a person makes a subsequent application for asylum:
   (a) after his/her previous application has been withdrawn or abandoned by virtue of Articles 19 or 20;
   (b) after a decision has been taken on the previous application. Member States may also decide to apply this procedure only after a final decision has been taken.

3. A subsequent application for asylum shall be subject first to a preliminary examination as to whether, after the withdrawal of the previous application or after the decision referred to in paragraph 2(b) of this Article on this application has been
reached, new elements or findings relating to the examination of whether he/she qualifies as a refugee by virtue of Directive 2004/83/EC have arisen or have been presented by the applicant.

4. If, following the preliminary examination referred to in paragraph 3 of this Article, new elements or findings arise or are presented by the applicant which significantly add to the likelihood of the applicant qualifying as a refugee by virtue of Directive 2004/83/EC, the application shall be further examined in conformity with Chapter II.

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

6. Member States may decide to further examine the application only if the applicant concerned was, through no fault of his/her own, incapable of asserting the situations set forth in paragraphs 3, 4 and 5 of this Article in the previous procedure, in particular by exercising his/her right to an effective remedy pursuant to Article 39.

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

**Article 33 – Failure to appear**

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

**Article 34 – Procedural rules**

1. Member States shall ensure that applicants for asylum whose application is subject to a preliminary examination pursuant to Article 32 enjoy the guarantees provided for in Article 10(1).

2. Member States may lay down in national law rules on the preliminary examination pursuant to Article 32. Those rules may, *inter alia*:

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

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

   (c) permit the preliminary examination to be conducted on the sole basis of written submissions without a personal interview.

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

3. Member States shall ensure that:

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

(b) if one of the situations referred to in Article 32(2) applies, the determining authority shall further examine the subsequent application in conformity with the provisions of Chapter II as soon as possible.

**SECTION V**

**Article 35 – 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 applications made at such locations.

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

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

   (a) are allowed to remain at the border or transit zones of the Member State, without prejudice to Article 7;  
   (b) are be immediately informed of their rights and obligations, as described in Article 10(1) (a);  
   (c) have access, if necessary, to the services of an interpreter, as described in Article 10(1)(b);  
   (d) are interviewed, before the competent authority takes a decision in such procedures, in relation to their application for asylum by persons with appropriate knowledge of the relevant standards applicable in the field of asylum and refugee law, as described in Articles 12, 13 and 14;  
   (e) can consult a legal adviser or counsellor admitted or permitted as such under national law, as described in Article 15(1); and  
   (f) have a representative appointed in the case of unaccompanied minors, as described in Article 17(1), unless Article 17(2) or (3) applies.

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

4. Member States shall ensure that a decision in the framework of the procedures provided for in paragraph 2 is taken within a reasonable time. When a decision has not been taken within four weeks, the applicant for asylum shall be granted entry to the territory of the Member State in order for his/her application to be processed in accordance with the other provisions of this Directive.

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

SECTION VI

Article 36 – The European safe third countries concept

1. Member States may provide that no, or no full, examination of the asylum application and of the safety of the applicant in his/her particular circumstances as described in Chapter II, shall take place in cases where a competent authority has established, on the basis of the facts, that the applicant for asylum 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;
   (c) it has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms and observes its provisions, including the standards relating to effective remedies; and
   (d) it has been so designated by the Council in accordance with paragraph 3.

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

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 under the Geneva Convention, including providing for exceptions from the application of this Article for humanitarian or political reasons or for reasons of public international law.

5. When implementing a decision solely based on this Article, the Member States concerned shall:
   (a) inform the applicant accordingly; and
   (b) provide him/her with a document informing the authorities of the third country, in the language of that country, that the application has not been examined in substance.

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

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

Article 37 – Withdrawal of refugee status

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

Article 38 – Procedural rules

1. Member States shall ensure that, where the competent authority is considering withdrawing the refugee status of a third country national or stateless person in accordance with Article 14 of Directive 2004/83/EC, the person concerned shall enjoy the following guarantees:
   (a) to be informed in writing that the competent authority is reconsidering his or her qualification for refugee status and the reasons for such a reconsideration; and
   (b) to be given the opportunity to submit, in a personal interview in accordance with Article 10(1)(b) and Articles 12, 13 and 14 or in a written statement, reasons as to why his/her refugee status should not be withdrawn.

In addition, Member States shall ensure that within the framework of such a procedure:
   (c) the competent authority is able to obtain precise and up-to-date information from various sources, such as, where appropriate, from the UNHCR, as to the general situation prevailing in the countries of origin of the persons concerned; and
   (d) where information on an individual case is collected for the purposes of reconsidering the refugee status, it is not obtained from the actor(s) of persecution in a manner that would result in such actor(s) being directly informed of the fact that the person concerned is a refugee whose status is under reconsideration, nor jeopardise the physical integrity of the person and his/her dependants, or the liberty and security of his/her family members still living in the country of origin.

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

3. Once the competent authority has taken the decision to withdraw the refugee status, Article 15, paragraph 2, Article 16, paragraph 1 and Article 21 are equally applicable.

4. By derogation to paragraphs 1, 2 and 3 of this Article, Member States may decide that the refugee status shall lapse by law in case of cessation in accordance with Article 11(1)(a) to (d) of Directive 2004/83/EC or if the refugee has unequivocally renounced his/her recognition as a refugee.
Article 39 – The right to an effective remedy

1. Member States shall ensure that applicants for asylum have the right to an effective remedy before a court or tribunal, against the following:
   (a) a decision taken on their application for asylum, including a decision:
       (i) to consider an application inadmissible pursuant to Article 25(2),
       (ii) taken at the border or in the transit zones of a Member State as described in Article 35(1),
       (iii) not to conduct an examination pursuant to Article 36;
   (b) a refusal to re-open the examination of an application after its discontinuation pursuant to Articles 19 and 20;
   (c) a decision not to further examine the subsequent application pursuant to Articles 32 and 34;
   (d) a decision refusing entry within the framework of the procedures provided for under Article 35(2);
   (e) a decision to withdraw of refugee status pursuant to Article 38.

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

3. Member States shall, where appropriate, provide for rules in accordance with their international obligations dealing with:
   (a) the question of whether the remedy pursuant to paragraph 1 shall have the effect of allowing applicants to remain in the Member State concerned pending its outcome;
   (b) the possibility of legal remedy or protective measures where the remedy pursuant to paragraph 1 does not have the effect of allowing applicants to remain in the Member State concerned pending its outcome. Member States may also provide for an ex officio remedy; and
   (c) the grounds for challenging a decision under Article 25(2)(c) in accordance with the methodology applied under Article 27(2)(b) and (c).

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

5. Where an applicant has been granted a status which offers the same rights and benefits under national and Community law as the refugee status by virtue of Directive 2004/83/EC, the applicant may be considered as having an effective remedy where a court or tribunal decides that the remedy pursuant to paragraph 1 is inadmissible or unlikely to succeed on the basis of insufficient interest on the part of the applicant in maintaining the proceedings.

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

Article 40 – 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 41 – 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 42 – Report

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

Article 43 – Transposition

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 December 2007. Concerning Article 15, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 December 2008. They shall forthwith inform the Commission thereof.

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

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

Article 44 – Transition

Member States shall apply the laws, regulations and administrative provisions set out in Article 43 to applications for asylum lodged after 1 December 2007 and to procedures for the withdrawal of refugee status started after 1 December 2007.
Article 45 – Entry into force

This Directive shall enter into force on the 20th day following its publication in the Official Journal of the European Union.

Article 46 – Addressees

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

Done at Brussels, 1 December 2005...

ANNEX I

Definition of ‘determining authority’

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

– ‘determining authority’ provided for in Article 2(e) of this Directive shall, insofar as the examination of whether an applicant should or, as the case may be, should not be declared to be a refugee is concerned, mean the Office of the Refugee Applications Commissioner; and

– ‘decisions at first instance’ provided for in Article 2(e) of this Directive shall include recommendations of the Refugee Applications Commissioner as to whether an applicant should or, as the case may be, should not be declared to be a refugee.

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

ANNEX II

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

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

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

(a) the relevant laws and regulations of the country and the manner in which they are applied;

(b) observance of the rights and freedoms laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms and/or the International Covenant for Civil and Political Rights and/or the Convention
against Torture, in particular the rights from which derogation cannot be made under Article 15(2) of the said European Convention;

(c) respect of the non-refoulement principle according to the Geneva Convention;

(d) provision for a system of effective remedies against violations of these rights and freedoms.

**ANNEX III**

**DEFINITION OF ‘APPLICANT’ OR ‘APPLICANT FOR ASYLUM’**

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

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

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