

Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (repealed)

CHAPTER I

**GENERAL PROVISIONS**

*Article 1*

**Purpose**

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

*Article 2*

**Definitions**

For the purposes of this Directive:

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