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of:	Asylum Working Party
on:	19 July 2010
No Cion proposal:	14863/09 ASILE 81 CODEC 1224 + ADD 1, 2,3
No prev.doc.:	11999/10 ASILE 55 CODEC 669
Subject:	Proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted (recast)

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At its meetings on 19 July 2010, the Asylum Working Party examined document 11999/10 containing Presidency suggestions regarding the recast of above mentioned Directive. The result of this examination is set out below with delegations' comments in the footnotes.

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Ⓒ 2004/83/EC

new

2009/0164 (COD)

Proposal for a

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

**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~~ beneficiaries of international protection and the content of the protection granted**

THE EUROPEAN PARLIAMENT AND 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 the first paragraph of Article 63 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>3</sup>,

Whereas:

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<sup>1</sup> OJ C [...], [...], p. [...].

<sup>2</sup> OJ C [...], [...], p. [...].

<sup>3</sup> OJ C [...], [...], p. [...].

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new

- (1) A number of substantive changes are to be made to Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted<sup>4</sup>. In the interests of clarity, that Directive should be recast.

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Ⓔ 2004/83/EC recital 1

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

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Ⓔ 2004/83/EC recital 2

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

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<sup>4</sup> OJ L 304, 30.9.2004, p. 12

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Ⓔ 2004/83/EC recital 3

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

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Ⓔ 2004/83/EC recital 4

- (5) The Tampere Conclusions provide that a Common European Asylum System should include, in the short term, the approximation of rules on the recognition of refugees and the content of refugee status.

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Ⓔ 2004/83/EC recital 5

- (6) The Tampere Conclusions also provide that rules regarding refugee status should be complemented by measures on subsidiary forms of protection, offering an appropriate status to any person in need of such protection.

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new

- (7) The first phase in the creation of a Common European Asylum System has now been achieved. The European Council of 4 November 2004 adopted The Hague Programme, which sets the objectives to be implemented in the area of freedom, security and justice in the period 2005-2010. In this respect the Hague Programme invited the European Commission to conclude the evaluation of the first-phase legal instruments and to submit the second-phase instruments and measures to the Council and the European Parliament, with a view to their adoption before the end of 2010. In accordance with the Hague programme, the objective to be pursued for the creation of the Common European Asylum System is the establishment of a common asylum procedure and a uniform status valid throughout the Union.
- (8) In the European Pact on Immigration and Asylum, adopted on 16 October 2008, the European Council noted that considerable disparities remain between one Member State

and another concerning the grant of protection and the forms that protection takes and called for new initiatives to complete the establishment of a Common European Asylum System, provided for in the Hague Programme, and thus to offer a higher degree of protection.

- (9) In the light of the results of the evaluations undertaken, it is appropriate, at this stage, to confirm the principles underlying Directive 2004/83/EC as well as to seek to achieve a higher level of approximation of the rules on the recognition and content of international protection on the basis of higher standards, with a view to progressing towards the establishment of a uniform protection status valid throughout the Union, in accordance with the objective set by the Hague Programme.
- (10) The resources of the European Refugee Fund and of the European Asylum Support Office should be mobilised to provide adequate support to the Member States' efforts relating to the implementation of the standards set in the second phase of the Common European Asylum System, in particular to those Member States which are faced with specific and disproportionate pressures on their asylum systems, due in particular to their geographical or demographic situation.

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Ⓔ 2004/83/EC recital 6

- (11) 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.

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Ⓔ 2004/83/EC recital 7

new

- (12) 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~~

international protection between Member States, where such movement is purely caused by differences in legal frameworks.

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☒ 2004/83/EC recital 8

- (13) 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.
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☒ 2004/83/EC recital 9

- (14) 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.
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☒ 2004/83/EC recital 10 (adapted)

new

- (15) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union<sup>5</sup>. In particular this Directive seeks to ensure full respect for human dignity and the right to asylum of applicants for asylum and their accompanying family members and to promote the application of Articles 1, 7, 14, 15, 16, 18, 21, 24, 34 and 35 of the Charter and should be implemented accordingly.
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<sup>5</sup> OJ C 364, 18.12.2000, p. 1

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Ⓒ 2004/83/EC recital 11

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

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Ⓒ 2004/83/EC recital 12

new

- (17) The "best interests of the child" should be a primary consideration of Member States when implementing this Directive , in line with the 1989 United Nations Convention on the Rights of the Child .

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new

- (18) It is necessary to broaden the notion of family members, taking into account the different particular circumstances of dependency and the special attention to be paid to best interests of the child.

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Ⓔ 2004/83/EC recital 13

- (19) 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.

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Ⓔ 2004/83/EC recital 14

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

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Ⓔ 2004/83/EC recital 15

- (21) 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.

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Ⓔ 2004/83/EC recital 16

- (22) 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.



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Ⓔ 2004/83/EC recital 17

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

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Ⓔ 2004/83/EC recital 18

- (24) 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.

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Ⓔ 2004/83/EC recital 19

new

- (25) 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 and are willing and able to enforce the rule of law. Such protection should be effective and of a durable nature .

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new

- (26) Internal protection should be effectively available to the applicant in a part of the country of origin where he or she can safely and legally travel, gain admittance and settle.

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Ⓔ 2004/83/EC recital 20

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

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new

- (28) One of the conditions for qualification for refugee status within the meaning of Article 1(A) of the Geneva Convention is the existence of a causal link between the act of persecution and reasons of race, religion, nationality, political opinion or membership of a particular social group. Where the persecution emanates from a non-State actor, it suffices if a causal link exists between the absence of State protection against the act of persecution and one of these reasons.

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Ⓔ 2004/83/EC recital 21

new

- (29) It is equally necessary to introduce a common concept of the persecution ground "membership of a particular social group". For the purposes of defining a particular social group, issues arising from an applicant's gender should be given due consideration.

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Ⓔ 2004/83/EC recital 22

- (30) 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".

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Ⓔ 2004/83/EC recital 23

- (31) As referred to in Article 14, "status" can also include refugee status.

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Ⓔ 2004/83/EC recital 24

- (32) 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.

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Ⓔ 2004/83/EC recital 25

- (33) 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.

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Ⓔ 2004/83/EC recital 26

- (34) 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.

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Ⓔ 2004/83/EC recital 27

- (35) 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.

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Ⓔ 2004/83/EC recital 28

- (36) 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.

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Ⓔ 2004/83/EC recital 29

~~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.~~

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new

- (37) It is necessary to ensure full respect for the principle of non-discrimination, while responding to the call of the Hague programme for the establishment of a uniform status. To that effect, and with the exception of derogations which are necessary and objectively justified, beneficiaries of subsidiary protection should be granted the same rights and benefits as refugees, and should be subject to the same conditions of eligibility.
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Ⓔ 2004/83/EC recital 30

- (38) 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.
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new

- (39) In order to enhance the effective exercise of the rights and benefits laid down in the Directive by beneficiaries of international protection, it is necessary to take into account their specific needs and the particular integration challenges they are confronted with.
- (40) In that context, efforts should be made in particular to address the problems related to the financial constraints which prevent beneficiaries of international protection from effective access to employment-related educational opportunities and vocational training.

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Ⓔ 2004/83/EC recital 31

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

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Ⓔ 2004/83/EC recital 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~~

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new

- (42) Special measures need to be considered with a view to effectively addressing the practical difficulties encountered by beneficiaries of international protection concerning the authentication of their foreign diplomas, certificates or other evidence of formal qualifications, in particular due to the lack of documentary evidence and their inability to meet the costs related to the recognition procedures.

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Ⓔ 2004/83/EC recital 33

new

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

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Ⓔ 2004/83/EC recital 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, insofar as they are granted to nationals according to the legislation of the Member State concerned.~~

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Ⓔ 2004/83/EC recital 35

new

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

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new

- (45) The specific needs and particularities of the situation of beneficiaries of international protection should be taken into account, as far as possible, in the integration programmes provided to them.

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Ⓔ 2004/83/EC recital 36

- (46) 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.

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Ⓔ 2004/83/EC recital 37

- (47) 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.
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Ⓔ 2004/83/EC recital 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.~~

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Ⓔ 2004/83/EC recital 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.~~

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Ⓔ 2004/83/EC recital 40

- (48) 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.
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new

- (49) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with the earlier Directive. The obligation to transpose the provisions which are unchanged arises under the earlier Directive.
- (50) This Directive should be without prejudice to the obligations of the Member States relating to the time-limit for transposition into national law of the Directive set out in Annex I, Part B,<sup>6</sup>

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Ⓔ 2004/83/EC (adapted)

new

HAVE ADOPTED THIS DIRECTIVE:

## CHAPTER I

### General provisions

#### Article 1

<del>Subject matter and scope</del>	Purpose
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The purpose of this Directive is to lay down minimum standards for the qualification of third country nationals or stateless persons as beneficiaries of international protection

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<sup>6</sup> General scrutiny reservation: **DELETED**  
Parliamentary scrutiny reservation: **DELETED**  
Linguistic reservation: **DELETED**



~~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 the following definitions shall apply :

- (a) "international protection" means refugee status and subsidiary protection status as defined in ~~(d)~~(e) and ~~(f)~~(g);
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new

- (b) "beneficiaries of international protection" means persons who have been granted refugee status or subsidiary protection status as defined in (e) and (g);
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2004/83/EC

- ~~(b)~~(c) "Geneva Convention" means the Convention relating to the status of refugees done at Geneva on 28 July 1951, as amended by the New York Protocol of 31 January 1967;

- ~~(e)~~(d) "refugee" means a third country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 does not apply;

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

- ~~(e)~~(f) "person eligible for subsidiary protection" means a third country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) do not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country;
- ~~(f)~~(g) "subsidiary protection status" means the recognition by a Member State of a third country national or a stateless person as a person eligible for subsidiary protection;
- ~~(e)~~(h) "application for international protection" means a request made by a third country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status, and who does not explicitly request another kind of protection, outside the scope of this Directive, that can be applied for separately;
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new

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

~~(h)~~(j)<sup>7</sup> "family members" means, in so far as the family already existed in the country of origin, the following members of the family of the beneficiary of ~~refugee or subsidiary~~ ~~international~~ protection ~~status~~ who are present in the same Member State in relation to the application for international protection<sup>8</sup>:

- the spouse of the beneficiary of ~~refugee or subsidiary~~ ~~international~~ 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<sup>9</sup>;

<sup>7</sup> Reservation: **DELETED** advocating a definition covering the core family (spouses and unmarried minor children) with a view to avoiding abuse and unworkable situations in practice, as well as coherent definitions in the various legislative acts in the field of asylum. Scrutiny reservation: **DELETED**  
Parliamentary scrutiny reservation: **DELETED**  
**DELETED** requested to clarify that the Qualification Directive does not intend to affect the provisions on maintaining family unity (Article 23) and family reunification (Article 31(5)). In this context, a proposal to amend Article 23(1) was circulated.  
**CION** argued first of all that a more extended definition of family members than in other asylum legislative acts would be appropriate considering that the Qualifications Directive concerns beneficiaries of international protection. Moreover, **CION** pointed out that only family members who are already on the Member States' territory are covered. Furthermore, **CION** questioned whether deleting the third indent of Article 2(j) of the Commission proposal would be in accordance with Article 24 of the Charter of Fundamental Rights of the EU which provides that "in all actions relating to children.. the child's best interests must be a primary consideration".

<sup>8</sup> **DELETED** proposed to add: "at the time of submitting the application".

<sup>9</sup> **DELETED** proposed "third country nationals" instead of "aliens" as in the Dublin Regulation.

- the minor children of the ~~couple~~ couples referred to in the first indent or of the beneficiary of ~~refugee or subsidiary~~ international protection ~~status~~, on condition that they are unmarried ~~and dependent~~<sup>10</sup> and regardless of whether they were born in or out of wedlock or adopted as defined under the national law;

new

Council

- [...] ;

- the father, mother or another adult [...] responsible for the beneficiary of international protection whether by law or by the national practice of the Member State concerned , when the latter is a minor and unmarried  
[...]

- the minor unmarried siblings of the beneficiary of international protection, when the latter is a minor and unmarried [...]

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

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<sup>10</sup> **DELETED**: scrutiny reservation on proposed deletion of the phrase "and dependent".

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Ⓔ 2004/83/EC (adapted)

new

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- (l) "unaccompanied minors" means ~~third-country nationals or stateless persons below the age of eighteen~~ a minor who ~~arrive~~ arrives on the territory of the Member States unaccompanied by an adult responsible for him/her ~~them~~ whether by law or the national practice of the Member State concerned, and for as long as ~~they are~~ he/she is not effectively taken into the care of such a person; it includes a minor~~s~~ who ~~are~~ is left unaccompanied after he/she has ~~they have~~ entered the territory of the Member States;
- (m) "residence permit" means any permit or authorisation issued by the authorities of a Member State, in the form provided for under that State's legislation, allowing a third country national or stateless person to reside on its territory;
- (n) "country of origin" means the country or countries of nationality or, for stateless persons, of former habitual residence.

### *Article 3*

#### **More favourable standards**

Member States may introduce or retain more favourable standards for determining who qualifies as a refugee or as a person eligible for subsidiary protection, and for determining the content of international protection, in so far as those standards are compatible with this Directive.

## CHAPTER II

### Assessment of applications for international protection

#### Article 4

##### Assessment of facts and circumstances

1. Member States may consider it the duty of the applicant to submit as soon as possible all 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 of paragraph 1 consist of the applicant's statements and all documentation at the applicant's disposal regarding the applicant's age, background, including that of relevant relatives, identity, nationality(ies), country(ies) and place(s) of previous residence, previous asylum applications, travel routes, [...] travel documents and the reasons for applying for international protection.
3. The assessment of an application for international protection is to be carried out on an individual basis and includes taking into account:
  - (a) all relevant facts as they relate to the country of origin at the time of taking a decision on the application; including laws and regulations of the country of origin and the manner in which they are applied;
  - (b) the relevant statements and documentation presented by the applicant including information on whether the applicant has been or may be subject to persecution or serious harm;
  - (c) the individual position and personal circumstances of the applicant, including factors such as background, gender and age, so as to assess whether, on the basis of the applicant's personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious harm;

- (d) whether the applicant's activities since leaving the country of origin were engaged in for the sole or main purpose of creating the necessary conditions for applying for international protection, so as to assess whether 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.



### Actors of protection

1. <sup>12</sup>Protection against persecution or serious harm must be effective <sup>13</sup>and of a non-temporary nature<sup>1415</sup> and can only<sup>16</sup> be provided by:
  - (a) the State; or
  - (b) parties or organisations, including international organisations, controlling the State or a substantial part of the territory of the State provided these are willing and able to offer protection in accordance with paragraph 2 <sup>17</sup>.
2. Protection is generally provided when the actors mentioned under the points (a) and (b) of paragraph 1 take reasonable steps to prevent the persecution or suffering of serious harm inter alia by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.

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<sup>11</sup> Reservation: **DELETED** preferring the provision contained in document 8569/10. **DELETED** considered the provision an unclear mix between specifying who are actors of protection and what is protection requesting to separate these two elements more clearly.

<sup>12</sup> Scrutiny reservation: **DELETED**

<sup>13</sup> **DELETED** proposed to delete "and be guaranteed for the immediately foreseeable future" considering this to be already covered by "effective". In response **CIION** indicated that the proposed phrase is in line with case C-175/09 Salahadin Abdullah of 2 March 2010 and provides a link with Article 11.

<sup>14</sup> **DELETED** proposed "provided" instead of "guaranteed".

<sup>15</sup> **DELETED** proposed to replace "of a non-temporary nature" with "be provided for the foreseeable future".

<sup>16</sup> **DELETED** proposed to delete "only" so as to make it possible that also for instance tribal groups can provide protection. In response, **CIION** indicated that Article 7(1) contains an exhaustive list of actors of protection as is the case in the Directive currently in force.

<sup>17</sup> **Presidency** clarified that the phrase "provided these are willing and able to offer protection in accordance with paragraph 2" should be linked to both point (a) and point (b). **DELETED** considered the phrase ""in accordance with paragraph 2" to provide no added value.

Scrutiny reservation: **DELETED**

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<sup>18</sup>

1. <sup>19</sup>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~~<sup>20</sup> he or she has access to protection against persecution or serious harm as defined in Article 7 in a part of the country of origin and<sup>21</sup> ~~the applicant can reasonably be expected to stay~~ he or she can safely and legally travel, gain admittance and settle<sup>22</sup> in that part of the country.

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<sup>18</sup> Reservation: **DELETED**

Scrutiny reservation: **DELETED**

**DELETED** preferred the provision contained in document 8569/10..

<sup>19</sup> Reservation: **DELETED** preferring the provision in the Directive currently in force and **DELETED** in particular as regards the terms "legally travel", "settle" and the reference to Article 7. In response, CION indicated that the terms "safely and legally" are needed to be sure that a transfer to the part of the country where the applicant would enjoy internal protection is possible. Furthermore, CION indicated that the reference to Article 7 is appropriate as Article 8 contains an exception to the general rule of Article 7.

<sup>20</sup> **DELETED** opposed the proposed deletion of this phrase.

<sup>21</sup> **DELETED** proposed to replace the phrase after "and" with the following: "...he or she is able to travel to, gain admittance to and can reasonably be expected to settle in that part of the country" with a view to approaching the text of the provision more closely to the Salaah Sheek ruling of the Court of Human Rights of 11 January 2007.

<sup>22</sup> **DELETED**, supported by **DELETED**, expressed concerns that "settle" could be interpreted as entailing an obligation for the Member States to support the denied applicant for international protection financially. In this context, **DELETED** proposed "reside" instead of "settle". CION, referring to the case Salah Sheekh vs Netherlands, responded that "settle" would not impose additional requirements compared to the current "can reasonably be expected to stay".

2. <sup>23</sup>In examining whether an applicant has access to protection against persecution or serious harm in 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. To this end, Member States shall ensure that precise and up-to-date information is obtained from relevant sources, such as the United Nations High Commissioner for Refugees (UNHCR) and the European Asylum Support Office<sup>24</sup>.<sup>25</sup>

3. <sup>26</sup> [...]

### CHAPTER III

#### Qualification for being a refugee

##### Article 9

##### Acts of persecution

1. In order to be regarded as an ~~Acts~~ of persecution within the meaning of ~~Article~~ Article 1 A of the Geneva Convention, an act must:

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<sup>23</sup> Scrutiny reservation: **DELETED**

<sup>24</sup> **DELETED** suggested to delete the references to UNHCR and EASO. In response, CION indicated that these references are appropriate in the light of point 136 of the Salah Sheekh ruling.

<sup>25</sup> Scrutiny reservation: **DELETED** in the light of Article 4.

<sup>26</sup> Reservation on the proposed deletion of the paragraph which specified that internal protection would also be possible if temporary technical obstacles for accession to the part of the country would exist.: **DELETED**  
**DELETED**, supported by **DELETED**, remarked that the proposed deletion is not needed because a distinction should be made to the decision that an applicant is not in need of international protection because he has access to internal protection and the actual implementation of such decision which can be delayed for instance because of the closure of an airport for several weeks. Such distinction would be in line with the Return Directive. CION indicated that a delay sending an applicant to part of a country where he would have internal protection can better be regulated through Article 27 of the Procedures Directive.

- (a) be sufficiently serious by ~~their~~ its nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; or
- (b) be an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as mentioned in (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 ( d ), there must be a connection between the reasons mentioned in Article 10 and the acts of persecution as qualified in paragraph 1 or the absence of protection against such acts <sup>27</sup>.

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<sup>27</sup> Scrutiny reservation: **DELETED** fearing a widening of the scope of acts of persecution.

**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<sup>5</sup>.

~~4~~ 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 **should be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group** ~~might be considered, without by themselves alone creating a presumption for the applicability of this Article.~~<sup>28</sup>

(e) the concept of political opinion shall in particular include the holding of an opinion, thought or belief on a matter related to the potential actors of persecution mentioned in Article 6 and to their policies or methods, whether or not that opinion, thought or belief has been acted upon by the applicant.

2. When assessing if an applicant has a well-founded fear of being persecuted it is immaterial whether the applicant actually possesses the racial, religious, national, social or political characteristic which attracts the persecution, provided that such a characteristic is attributed to the applicant by the actor of persecution.

### *Article 11*

#### **Cessation**

1. A third country national or a stateless person shall cease to be a refugee, if he or she:
  - (a) has voluntarily re-availed himself or herself of the protection of the country of nationality; or
  - (b) having lost his or her nationality, has voluntarily re-acquired it; or

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<sup>28</sup> **DELETED** proposed to add at the end of recital (29) "Gender as such is not sufficient as a criterion for the definition of a particular social group". In response, **CION** indicated that gender should not automatically give right to international protection but considered, supported by **DELETED**, at the same time that gender can sometimes be used as a criterion for belonging to a certain group.

- (c) has acquired a new nationality, and enjoys the protection of the country of his or her new nationality; or
- (d) has voluntarily re-established himself or herself in the country which he or she left or outside which he or she remained owing to fear of persecution; or
- (e) can no longer, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of nationality; or
- (f) being a stateless person ~~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.

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new

3. Points (e) and (f) of paragraph 1 shall not apply to a refugee who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality or, being a stateless person, of the country of former habitual residence.<sup>29</sup>

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<sup>29</sup> Scrutiny reservation: **DELETED**

*Article 12*

**Exclusion**

1. A third country national or a stateless person is excluded from being a refugee, if:
  - (a) he or she falls within the scope of Article 1 D of the Geneva Convention, relating to protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees. When such protection or assistance has ceased for any reason, without the position of such persons being definitely settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, 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 2004/83/EC, Member States shall revoke, end or refuse to renew the refugee status of a third country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body, if he or she has ceased to be a refugee in accordance with Article 11.

2. Without prejudice to the duty of the refugee in accordance with Article 4(1) to disclose all relevant facts and provide all relevant documentation at his/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 insofar 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.

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new

3. Paragraph 1 shall not apply to a beneficiary of subsidiary protection who is able to invoke compelling reasons arising out of previous serious harm for refusing to avail himself of the protection of the country of nationality or, being a stateless person with no nationality, of the country of former habitual residence.<sup>30</sup>
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Ⓔ 2004/83/EC

new

Council

#### *Article 17*

#### **Exclusion**

1. A third country national or a stateless person is excluded from being eligible for subsidiary protection where there are serious reasons for considering that:
- (a) he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
  - (b) he or she has committed a serious crime;
  - (c) he or she has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations;

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<sup>30</sup> Scrutiny reservation: **DELETED**

- (d) he or she constitutes a danger to the community or to the security of the Member State in which he or she is present.
2. Paragraph 1 applies to persons who instigate or otherwise participate in the commission of the crimes or acts mentioned therein.
  3. Member States may exclude a third country national or a stateless person from being eligible for subsidiary protection, if he or she prior to his or her admission to the Member State has committed one or more crimes, outside the scope of paragraph 1, which would be punishable by imprisonment, had they been committed in the Member State concerned, and if he or she left his or her country of origin solely in order to avoid sanctions resulting from these crimes.

## *CHAPTER VI*

### **Subsidiary Protection Status**

#### *Article 18*

#### **Granting of subsidiary protection status**

Member States shall grant subsidiary protection status to a third country national or a stateless person eligible for subsidiary protection in accordance with Chapters II and V.

#### *Article 19*

#### **Revocation of, ending of or refusal to renew subsidiary protection status**

1. Concerning applications for international protection filed after the entry into force of 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.

## CHAPTER VII<sup>31</sup>

### Content of international protection

#### Article 20<sup>32</sup>

##### 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. <sup>33</sup>When implementing this Chapter, Member States shall take into account the specific situation of [...] persons with special needs such as <sup>34</sup>minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of trafficking, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.
4. Paragraph 3 shall apply only to persons found to have special needs after an individual evaluation of their situation.
5. The best interest of the child shall be a primary consideration for Member States when implementing the provisions of this Chapter that involve minors.

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<sup>31</sup> Reservation on proposed approximation of rights of refugees and beneficiaries of subsidiary protection: **DELETED**

<sup>32</sup> Reservation on deletion paragraphs (6) and (7): **DELETED** considering that these paragraphs have been useful in tackling manufactured claims. CION responded that only 3 Member States have implemented the possibility provided in these paragraphs in national law. CION further considered that these provisions could be contentious in the light of the now binding Charter of Fundamental Rights.

<sup>33</sup> Reservation: **DELETED**

Scrutiny reservation: **DELETED**

<sup>34</sup> **DELETED** proposed to further clarify that the list is non exhaustive by inserting "for example".

~~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 beneficiaries ~~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 that they are reasonably supposed to understand likely to be understood by them, on the rights and obligations relating to that status.

### Article 23

#### Maintaining family unity

[...]

<sup>35</sup> 1. While respecting the general principle of family unity, Member States shall ensure that family members of the beneficiary of ~~refugee or subsidiary~~ international protection status, who are present in the same Member State and who do not individually qualify for ~~such status~~ this protection, 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.

~~<sup>36</sup> Insofar 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.~~

2. Paragraphs 1 and 2 are not applicable where the family member is or would be excluded from ~~refugee or subsidiary~~ international protection status pursuant to Chapters III and V.

3. Notwithstanding paragraphs 1 and 2, Member States may refuse, reduce or withdraw the benefits referred therein for reasons of national security or public order.

4. 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

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<sup>35</sup> Scrutiny reservation: **DELETED**

<sup>36</sup> Reservation: **DELETED** wanting to retain the possibility to differentiate the conditions for family members of a beneficiary of international protection.

mainly dependent on the beneficiary of ~~refugee or subsidiary protection status~~ international protection at that time.

#### Article 24

### Residence permits

1. As soon as possible after international protection has been granted, Member States shall issue to beneficiaries of ~~refugee status~~ 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~~ refugee status may be valid for less than three years and renewable.

2. As soon as possible after international protection has been granted, Member States shall issue to beneficiaries of subsidiary protection status a residence permit which must be valid for at least two years<sup>37</sup> and renewable, unless compelling reasons of national security or public order otherwise require

Without prejudice to Article 23(1), the residence permit to be issued to the family members of the beneficiaries of subsidiary protection status may be valid for less than two 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.~~

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<sup>37</sup> Reservation: **DELETED** requesting 1 year.  
**DELETED** preferred Commission proposal. CION advocated its proposal firstly by indicating it would reduce administrative costs; secondly by referring to the fact that most Member States have already aligned the duration of the residence permits of refugees and beneficiaries of subsidiary status; and thirdly by underlining that cessation of status is more relevant for determining whether a person can stay on the territory than the duration of the residence permit.

### 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 do not have a valid national passport or corresponding travel document and for objective reasons are unable to obtain such documents,~~ documents which enable them to travel  ~~outside their territory , 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.<sup>38</sup>

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<sup>38</sup> Reservation: **DELETED** expressing their preference for maintaining the provision currently in force which differentiates between refugees and beneficiaries of subsidiary protection.. **CIION** responded that only 3 Member States applied the provision so as to restrict travelling outside their territory to serious humanitarian reasons. **Presidency** indicated that there are no objective grounds for treating refugees and beneficiaries of subsidiary protection in a different manner.  
Scrutiny reservation: **DELETED**  
**DELETED** indicated that on the basis of **DELETED** national law only valid travelling documents are recognised.

### Access to employment

1. Member States shall authorise beneficiaries of ~~refugee status~~ international protection to engage in employed or self-employed activities subject to rules generally applicable to the profession and to the public service, immediately after ~~the refugee status~~ protection has been granted.
2. Member States shall ensure that activities such as employment-related education opportunities for adults, vocational training , including training courses for upgrading of skills, ~~and~~ practical workplace experience and counselling services afforded by employment offices are offered to beneficiaries of international protection ~~refugee status~~, under equivalent conditions as nationals.

new

Council

3. <sup>40</sup>Member States shall endeavour to facilitate full <sup>41</sup> access for beneficiaries of international protection to the employment-related education opportunities and vocational training referred to in paragraph 2 [...].

<sup>39</sup> Reservation: **DELETED**  
**DELETED** feared pressure on its national labour market and proposed to add in paragraphs 1 and 2 the phrase "under conditions set by the Member States".

Scrutiny reservation: **DELETED**

**DELETED** opposed the proposed deletion of paragraphs 3 and 4.

**DELETED** explained that Italian national law restricts access to employment in the public sector for beneficiaries of subsidiary protection.

Parliamentary scrutiny reservation: **DELETED**

<sup>40</sup> **DELETED**, supported by **DELETED**, proposed to delete paragraph (3) considering that education is sufficiently covered in Article 27. Moreover, **DELETED** rejected this provision arguing it would offer better treatment to beneficiaries of international protection than to its own nationals. In response **CION** indicated that beneficiaries of international protection are not treated better considering their specific and often disadvantageous

~~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.~~

54. 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.

situation. Moreover, CION underlined that paragraph (3) is important as it aims to ensure effective access to the rights granted by Article 26.

41 **DELETED** requested clarification as to the relation between paragraph (3) and recital (41).  
Reservation: **DELETED**

Article 27<sup>42</sup>

**Access to education**

1. Member States shall grant full access to the education system to all minors granted ~~refugee or subsidiary~~ international protection status, under the same conditions as nationals.
  2. Member States shall allow adults granted international ~~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.<sup>43</sup>~~
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new

Article 28<sup>44</sup>

**Access to procedures for recognition of qualifications**

1. Member States shall ensure equal treatment between beneficiaries of international protection and nationals in the context of the existing recognition procedures for foreign diplomas, certificates and other evidence of formal qualifications.
2. <sup>45</sup>Member States shall endeavour to ensure that beneficiaries of international protection who cannot provide documentary evidence of their qualifications have access to

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<sup>42</sup> Scrutiny reservation: **DELETED**  
**DELETED** requested clarification as to the relation between Article 27 and recital (41).

<sup>43</sup> Reservation: **DELETED** on proposed deletion paragraph (3)

<sup>44</sup> Scrutiny reservation: **DELETED**

<sup>45</sup> Reservation: **DELETED**

appropriate schemes for the assessment, validation and accreditation of their prior learning. Any such measures shall respect Articles 2(2) and 3(3) of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications<sup>46</sup>.

3. <sup>47</sup>Member States shall endeavour to ensure that beneficiaries of international protection are not prevented from seeking either recognition of their foreign diplomas, certificates or other evidence of formal qualifications or accreditation of their prior learning because of the costs involved.

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**DELETED** expressed concerns that beneficiaries of international protection would receive better treatment than own nationals.

**DELETED** expressed concerns about implementation of the Article considering that local authorities may not be in a position to assess professional qualifications.

Scrutiny reservation: **DELETED**

**DELETED** suggested to clarify paragraph (2) and to use instead of "endeavour" stronger wording.

<sup>46</sup> OJ L 255, 30.9.2005, p. 22

<sup>47</sup> Reservation: **DELETED**

Scrutiny reservation: **DELETED**

**DELETED** proposed to delete paragraph (3) considering it a national competence to determine payment concerning recognition referred to in this paragraph.

Article ~~28~~29<sup>48</sup>

**Social Welfare**

1. Member States shall ensure that beneficiaries of ~~refugee or subsidiary~~ international protection ~~status~~ receive, in the Member State that has granted such ~~statuses~~ protection, the necessary social assistance, as provided to nationals of that Member State.
2. ~~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.~~

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48

Reservation: **DELETED**

**DELETED** proposed to specify that the costs should not be unacceptably high/prohibitive.

**DELETED** opposed the proposed deletion of paragraph (2) considering decisions on social assistance a competence of the Member States.

Scrutiny reservation: **DELETED**

In response, **CION** indicated that only two Member States apply the possibility to limit health care provided for in Article 28 (2) of the Directive currently in force.



## Health care

1. Member States shall ensure that beneficiaries of ~~refugee or subsidiary~~ international protection ~~status~~ have access to health care under the same eligibility conditions as nationals of the Member State that has granted such ~~statuses~~ protection .

~~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.~~

- ~~2.~~ Member States shall provide, under the same eligibility conditions as nationals of the Member State that has granted protection , adequate health care [...] <sup>50</sup> to beneficiaries of ~~refugee or subsidiary~~ international protection ~~status~~ with 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.

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<sup>49</sup> Reservation: **DELETED** and scrutiny reservation: **DELETED** opposing the proposed deletion of paragraph (2) of the Directive currently in force expressing concerns about the financial implications of giving the same rights for health care to refugees and beneficiaries of subsidiary protection. In response, **CION** indicated that only 4 Member States apply a different treatment for refugees and beneficiaries of subsidiary protection and that such differentiated treatment does not seem to be in line with international human rights law.

<sup>50</sup> **DELETED** suggested to use the same terms as in Article 20(3).

### Unaccompanied minors

1. <sup>51</sup>As soon as possible after the granting of ~~refugee or subsidiary~~ international 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.

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<sup>51</sup> **DELETED** remarked that the reference to granting international protection is not needed because an unaccompanied minor must always have a legal guardian.

5. <sup>52</sup>Member States shall establish mechanisms for tracing the members of the unaccompanied minor's family as soon as possible after the granting of international protection, whilst protecting the unaccompanied minor's best interests, shall endeavour to trace the members of the minor's family as soon as possible. Where the tracing of family members has already started according to Article 23(3) of Directive [...]/./EU [the Reception Conditions Directive], Member States shall continue implementing these mechanisms when necessary. 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. <sup>53</sup>Those working with unaccompanied minors shall have had and continue to receive appropriate training concerning their needs.

*Article ~~31~~32<sup>54</sup>*

**Access to accommodation**

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

<sup>55</sup> 2. While allowing for national dispersal practice of beneficiaries of international protection, Member States shall endeavour to implement policies aimed at preventing

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<sup>52</sup> **DELETED** found the proposed obligation too bureaucratic.  
Scrutiny reservation: **DELETED**  
**DELETED** requested to make more explicit that the provision does not imply an obligation of result for Member States. In response, CION confirmed that the provision is not an obligation of result.

<sup>53</sup> **DELETED** considered the proposal contained in paragraph 6 too far-reaching.

<sup>54</sup> Reservation: **DELETED**  
Scrutiny reservation: **DELETED**

discrimination of beneficiaries of international protection and at ensuring equal opportunities regarding access to accommodation.<sup>56</sup>

*Article ~~323~~33*

**Freedom of movement within the Member State**

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

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- 55 **DELETED**, supported by **DELETED**, suggested to delete the second paragraph but proposed as an alternative: " While allowing for national dispersal practice of beneficiaries of international protection and without prejudice to the freedom of contract in accordance with Union and national law, Member States shall endeavour...accommodation". **CION** opposed the **DELETED** proposal strongly arguing that applicability of the principle of non-discrimination is not dependent on the freedom of contract.  
**DELETED** also proposed to delete paragraph (2) considering the principle of non-discrimination already sufficiently covered by Union law.
- 56 **DELETED** proposed to add at the end of the sentence: "as other third country nationals legally resident in their territories".

### Access to integration facilities

1. In order to facilitate the integration of ~~refugees~~ beneficiaries of international protection into society, Member States shall ensure access to ~~make provision for~~ integration programmes<sup>58</sup> which they consider to be appropriate so as to take into account the specific needs of beneficiaries of ~~refugee status or of subsidiary protection status~~ or create pre-conditions which guarantee access to such programmes.

~~1. Where it is considered appropriate by Member States, beneficiaries of subsidiary protection status shall be granted access to integration programmes.~~

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Council

2. [...]

<sup>57</sup> Reservation: **DELETED**  
Scrutiny reservation: **DELETED**  
**DELETED** advocated to differentiate between the two statuses in order to concentrate the costly integration programmes on those who need it most. In this context, **DELETED**, supported by **DELETED**, proposed to re-insert the provision contained in document 8569/10.

**DELETED** advocated to align access to integration facilities for refugees and beneficiaries of subsidiary protection.

**CION** noted that more than 16 Member States do not make a differentiation between the two statuses, that differentiation goes against the aim of integration and that differentiation could result in discrimination.

<sup>58</sup> **DELETED** proposed to replace "integration programmes" with "integration facilities" throughout the text (as in the title of the article) indicating it could agree with the provision if such replacement were made.

**DELETED** proposed "classes" instead of "programmes".

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*Article ~~34~~35*

### **Repatriation**

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

## *CHAPTER VIII*

### **Administrative cooperation**

*Article ~~35~~36*

### **Cooperation**

Member States shall each appoint a national contact point ~~and communicate its~~  
~~whose address they shall communicate to the Commission, which~~ The  
Commission shall communicate ~~it~~ that information to the other Member States.

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

*Article ~~36~~37*

### **Staff**

Member States shall ensure that authorities and other organisations implementing this  
Directive have received the necessary training and shall be bound by the confidentiality

principle, as defined in the national law, in relation to any information they obtain in the course of their work.

## CHAPTER IX

### Final provisions

#### Article ~~37~~38

#### 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~~39<sup>59</sup>

#### 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~~ Articles [...] [The Articles which have been changed as to the substance by comparison with the earlier Directive] by [...] at the latest . They shall forthwith ~~inform~~ communicate to the Commission ~~thereof~~ the text of those provisions [ ... ] .

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<sup>59</sup> **DELETED** proposed a transposition period of 3 years.

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

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

2. Member States shall communicate to the Commission the text of the main provisions of national law ~~which they adopt in the field~~ covered by this Directive [...] <sup>60 61</sup>

☒

#### *Article 40*

#### **Repeal**

Directive 2004/83/EC is repealed with effect from [day after the date set out in the first subparagraph of paragraph 1 of Article ... of this Directive], without prejudice to the obligations of the Member States relating to the time-limit for transposition into national law of the Directive set out in Annex I, Part B.

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

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<sup>60</sup> **CION** opposes deletion of obligation for Member States to draw up a correlation table considering that, in the light of the principle of loyal cooperation, such a table enables it to carry out its role of monitoring the correct transposition and application of EU law.

<sup>61</sup> New recital to be inserted: "In accordance with point 34 of the Interinstitutional Agreement on better law-making (OJ C 321, 31.12.2003, p.1), Member States are encouraged to draw up, for themselves and in the interests of the Union, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public."



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Ⓔ 2004/83/EC (adapted)

*Article ~~39~~41*

*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.

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Ⓔ

Articles [...] shall apply from [day after the date set out in the first subparagraph of paragraph 1 of Article ...].

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Ⓔ 2004/83/EC (adapted)

*Article ~~40~~42*

*Addressees*

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

Done at [...]

*For the European Parliament*

*The President*

[...]

*For the Council*

*The President*

[...]



**ANNEX I**

**Part A**

**Repealed Directive**

(referred to in Article 40)

Council Directive 2004/83/EC

(OJ L 304, 30.9.2004, p. 12)

**Part B**

**Time-limit for transposition into national law**

(referred to in Article 39)

Directive	Time-limit for transposition
2004/83/EC	10 October 2006

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## ANNEX II

### CORRELATION TABLE

Directive 2004/83/EC	This Directive
Article 1	Article 1
Article 2, introductory words	Article 2, introductory words
Article 2(a)	Article 2(a)
-	Article 2(b)
Article 2(b) – (g)	Article 2(c) – (h)
-	Article 2 (i)
Article 2 (h)	Article 2 (j) first and second indent
-	Article 2 (j) third, fourth and fifth indent
-	Article 2(k)
Article 2(i)	Article 2(l)
Article 2 (j)	Article 2 (m)
Article 2(k)	Article 2(n)
Article 3	Article 3
Article 4	Article 4
Article 5	Article 5
Article 6	Article 6
Article 7	Article 7
Article 8 (1) (2)	Article 8 (1) (2)
Article 8 (3)	-
Article 9	Article 9

Article 10	Article 10
Article 11(1) (2)	Article 11 (1) (2)
-	Article 11 (3)
Article 12	Article 12
Article 13	Article 13
Article 14	Article 14
Article 15	Article 15
Article 16 (1) (2)	Article 16 (1) (2)
-	Article 16 (3)
Article 17	Article 17
Article 18	Article 18
Article 19	Article 19
Article 20 (1) – (5)	Article 20 (1) – (5)
Article 20 (6) (7)	-
Article 21	Article 21
Article 22	Article 22
Article 23 (1)	Article 23 (1)
Article 23 (2) first subparagraph	Article 23 (2) first subparagraph
Article 23 (2) second subparagraph	-
Article 23 (2) third subparagraph	-
Article 23 (3) - (5)	Article 23 (3) - (5)
Article 24 (1)	Article 24 (1)
Article 24 (2)	-
Article 25	Article 25
Article 26(1) - (3)	Article 26(1) - (3)
Article 26 (4)	-
Article 26 (5)	Article 26 (4)

Article 27 (1) (2)

Article 27 (3)

-

Article 28 (1)

Article 28 (2)

Article 29 (1)

Article 29(2)

Article 29 (3)

Article 30

Article 31

Article 32

Article 33

Article 34

Article 35

Article 36

Article 37

Article 38

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Article 39

Article 40

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Article 27 (1) (2)

Article 28 (1)

Article 28 (2) (3)

Article 29(1)

-

Article 30(1)

-

Article 30(2)

Article 31

Article 32

Article 33

Article 34

Article 35

Article 36

Article 37

Article 38

Article 39

Article 40

Article 41

Article 42

Annex I

Annex II