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THE EUROPEAN PARLIAMENT

THE COUNCIL

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## LEGISLATIVE ACTS AND OTHER INSTRUMENTS

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Subject: DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)

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**DIRECTIVE 2011/.../EU**  
**OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**of**

**on standards for the qualification  
of third-country nationals or stateless persons  
as beneficiaries of international protection,  
for a uniform status for refugees  
or for persons eligible for subsidiary protection,  
and for the content of the protection granted  
(recast)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Acting in accordance with the ordinary legislative procedure<sup>2</sup>,

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<sup>1</sup> OJ C 18, 19.1.2011, p. 80.

<sup>2</sup> Position of the European Parliament of 27 October 2011 (not yet published in the Official Journal) and decision of the Council of ....

Whereas:

- (1) A number of substantive changes are to be made to Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted<sup>1</sup>. In the interests of clarity, that Directive should be recast.
- (2) A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of progressively establishing an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Union.
- (3) The European Council at its special meeting in Tampere on 15 and 16 October 1999 agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention of 28 July 1951 Relating to the Status of Refugees ("the Geneva Convention"), as supplemented by the New York Protocol of 31 January 1967 ("the Protocol"), thus affirming the principle of non-refoulement and ensuring that nobody is sent back to persecution.

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<sup>1</sup> OJ L 304, 30.9.2004, p. 12.

- (4) The Geneva Convention and the Protocol provide the cornerstone of the international legal regime for the protection of refugees.
- (5) The Tampere conclusions provide that a Common European Asylum System should include, in the short term, the approximation of rules on the recognition of refugees and the content of refugee status.
- (6) The Tampere conclusions also provide that rules regarding refugee status should be complemented by measures on subsidiary forms of protection, offering an appropriate status to any person in need of such protection.
- (7) The first phase in the creation of a Common European Asylum System has now been achieved. The European Council of 4 November 2004 adopted The Hague Programme, which sets the objectives to be implemented in the area of freedom, security and justice in the period 2005-2010. In this respect, the Hague Programme invited the European Commission to conclude the evaluation of the first-phase legal instruments and to submit the second-phase instruments and measures to the European Parliament and the Council, with a view to their adoption before the end of 2010.

- (8) In the European Pact on Immigration and Asylum, adopted on 15 and 16 October 2008, the European Council noted that considerable disparities remain between one Member State and another concerning the grant of protection and the forms that protection takes and called for new initiatives to complete the establishment of a Common European Asylum System, provided for in the Hague Programme, and thus to offer a higher degree of protection.
- (9) In the Stockholm Programme, the European Council reiterated its commitment to the objective of establishing a common area of protection and solidarity, based on a common asylum procedure and a uniform status, in accordance with Article 78 of the Treaty on the Functioning of the European Union (TFEU), for those granted international protection, by 2012 at the latest.
- (10) In the light of the results of the evaluations undertaken, it is appropriate, at this stage, to confirm the principles underlying Directive 2004/83/EC as well as to seek to achieve a higher level of approximation of the rules on the recognition and content of international protection on the basis of higher standards.

- (11) The resources of the European Refugee Fund and of the European Asylum Support Office should be mobilised to provide adequate support to Member States' efforts in implementing the standards set in the second phase of the Common European Asylum System, in particular to those Member States which are faced with specific and disproportionate pressure on their asylum systems, due in particular to their geographical or demographic situation.
- (12) The main objective of this Directive is, on the one hand, to ensure that Member States apply common criteria for the identification of persons genuinely in need of international protection, and, on the other hand, to ensure that a minimum level of benefits is available for those persons in all Member States.
- (13) The approximation of rules on the recognition and content of refugee and subsidiary protection status should help to limit the secondary movement of applicants for international protection between Member States, where such movement is purely caused by differences in legal frameworks.

- (14) Member States should have the power to introduce or maintain more favourable provisions than the standards laid down in this Directive for third-country nationals or stateless persons who request international protection from a Member State, where such a request is understood to be on the grounds that the person concerned is either a refugee within the meaning of Article 1(A) of the Geneva Convention, or a person eligible for subsidiary protection.
- (15) Those third-country nationals or stateless persons who are allowed to remain in the territories of the Member States for reasons not due to a need for international protection but on a discretionary basis on compassionate or humanitarian grounds fall outside the scope of this Directive.
- (16) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular this Directive seeks to ensure full respect for human dignity and the right to asylum of applicants for asylum and their accompanying family members and to promote the application of Articles 1, 7, 11, 14, 15, 16, 18, 21, 24, 34 and 35 of that Charter, and should therefore be implemented accordingly.

- (17) With respect to the treatment of persons falling within the scope of this Directive, Member States are bound by obligations under instruments of international law to which they are party, including in particular those that prohibit discrimination.
- (18) The "best interests of the child" should be a primary consideration of Member States when implementing this Directive, in line with the 1989 United Nations Convention on the Rights of the Child. In assessing the best interests of the child, Member States should in particular take due account of the principle of family unity, the minor's well-being and social development, safety and security considerations and the views of the minor in accordance with his or her age and maturity.
- (19) It is necessary to broaden the notion of family members, taking into account the different particular circumstances of dependency and the special attention to be paid to the best interests of the child.



- (20) This Directive is without prejudice to the Protocol on asylum for nationals of Member States of the European Union as annexed to the Treaty on European Union (TEU) and the TFEU.
- (21) The recognition of refugee status is a declaratory act.
- (22) Consultations with the United Nations High Commissioner for Refugees may provide valuable guidance for Member States when determining refugee status according to Article 1 of the Geneva Convention.
- (23) Standards for the definition and content of refugee status should be laid down to guide the competent national bodies of Member States in the application of the Geneva Convention.
- (24) It is necessary to introduce common criteria for recognising applicants for asylum as refugees within the meaning of Article 1 of the Geneva Convention.
- (25) In particular, it is necessary to introduce common concepts of protection needs arising sur place, sources of harm and protection, internal protection and persecution, including the reasons for persecution.

- (26) Protection can be provided, where they are willing and able to offer protection, either by the State or by parties or organisations, including international organisations, meeting the conditions set out in this Directive, which control a region or a larger area within the territory of the State. Such protection should be effective and of a non-temporary nature.
- (27) Internal protection against persecution or serious harm should be effectively available to the applicant in a part of the country of origin where he or she can safely and legally travel to, gain admittance to and can reasonably be expected to settle. Where the State or agents of the State are the actors of persecution or serious harm, there should be a presumption that effective protection is not available to the applicant. When the applicant is an unaccompanied minor, the availability of appropriate care and custodial arrangements, which are in the best interest of the unaccompanied minor, should form part of the assessment as to whether that protection is effectively available.
- (28) It is necessary, when assessing applications from minors for international protection, that Member States should have regard to child-specific forms of persecution.

- (29) One of the conditions for qualification for refugee status within the meaning of Article 1(A) of the Geneva Convention is the existence of a causal link between the reasons for persecution, namely race, religion, nationality, political opinion or membership of a particular social group, and the acts of persecution or the absence of protection against such acts.
- (30) It is equally necessary to introduce a common concept of the persecution ground "membership of a particular social group". For the purposes of defining a particular social group, issues arising from an applicant's gender, including gender identity and sexual orientation, which may be related to certain legal traditions and customs, resulting in for example genital mutilation, forced sterilisation or forced abortion, should be given due consideration insofar as they are related to the applicant's well-founded fear of persecution.
- (31) Acts contrary to the purposes and principles of the United Nations are set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations and are, amongst others, embodied in the United Nations resolutions relating to measures combating terrorism, which declare that "acts, methods and practices of terrorism are contrary to the purposes and principles of the United Nations" and that "knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations".

- (32) As referred to in Article 14, "status" can also include refugee status.
- (33) Standards for the definition and content of subsidiary protection status should also be laid down. Subsidiary protection should be complementary and additional to the refugee protection enshrined in the Geneva Convention.
- (34) It is necessary to introduce common criteria on the basis of which applicants for international protection are to be recognised as eligible for subsidiary protection. Those criteria should be drawn from international obligations under human rights instruments and practices existing in Member States.
- (35) Risks to which a population of a country or a section of the population is generally exposed do normally not create in themselves an individual threat which would qualify as serious harm.
- (36) Family members, merely due to their relation to the refugee, will normally be vulnerable to acts of persecution in such a manner that could be the basis for refugee status.

- (37) The notion of national security and public order also covers cases in which a third-country national belongs to an association which supports international terrorism or supports such an association.
- (38) When deciding on entitlements to the benefits included in this Directive, Member States should take due account of the best interests of the child, as well as of the particular circumstances of the dependency on the beneficiary of international protection of close relatives who are already present in the Member State and who are not family members of that beneficiary. In exceptional circumstances, where the close relative of the beneficiary of international protection is a married minor but not accompanied by his or her spouse, the best interests of the minor may be seen to lie with his or her original family.
- (39) While responding to the call of the Stockholm programme for the establishment of a uniform status for refugees or for persons eligible for subsidiary protection, and with the exception of derogations which are necessary and objectively justified, beneficiaries of subsidiary protection status should be granted the same rights and benefits as those enjoyed by refugees under this Directive, and should be subject to the same conditions of eligibility.

- (40) Within the limits set out by international obligations, Member States may lay down that the granting of benefits with regard to access to employment, social welfare, health care and access to integration facilities requires the prior issue of a residence permit.
- (41) In order to enhance the effective exercise of the rights and benefits laid down in this Directive by beneficiaries of international protection, it is necessary to take into account their specific needs and the particular integration challenges with which they are confronted. Such taking into account should normally not result in a more favourable treatment than that provided to their own nationals, without prejudice to the possibility for Member States to introduce or retain more favourable standards.
- (42) In that context, efforts should be made in particular to address the problems which prevent beneficiaries of international protection from having effective access to employment-related educational opportunities and vocational training, inter alia, relating to financial constraints.
- (43) This Directive does not apply to financial benefits from the Member States which are granted to promote education.

- (44) Special measures need to be considered with a view to effectively addressing the practical difficulties encountered by beneficiaries of international protection concerning the authentication of their foreign diplomas, certificates or other evidence of formal qualifications, in particular due to the lack of documentary evidence and their inability to meet the costs related to the recognition procedures.
- (45) Especially to avoid social hardship, it is appropriate to provide beneficiaries of international protection with adequate social welfare and means of subsistence, without discrimination in the context of social assistance. With regard to social assistance, the modalities and detail of the provision of core benefits to beneficiaries of subsidiary protection status should be determined by national law. The possibility of limiting such assistance to core benefits is to be understood as covering at least minimum income support, assistance in the case of illness, or pregnancy, and parental assistance, insofar as those benefits are granted to nationals under national law.
- (46) Access to health care, including both physical and mental health care, should be ensured to beneficiaries of international protection.

- (47) The specific needs and particularities of the situation of beneficiaries of refugee status and of subsidiary protection status should be taken into account, as far as possible, in the integration programmes provided to them including, where appropriate, language training and the provision of information concerning individual rights and obligations relating to their protection status in the Member State concerned.
- (48) The implementation of this Directive should be evaluated at regular intervals, taking into consideration in particular the evolution of the international obligations of Member States regarding non-refoulement, the evolution of the labour markets in the Member States as well as the development of common basic principles for integration.
- (49) Since the objectives of this Directive, namely to establish standards for the granting of international protection to third-country nationals and stateless persons by Member States, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Directive, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the TEU. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.



- (50) In accordance with Articles 1, 2 and 4a(1) of the Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the TEU and to the TFEU, and without prejudice to Article 4 of that Protocol, the United Kingdom and Ireland are not taking part in the adoption of this Directive and are not bound by it or subject to its application.
- (51) In accordance with Articles 1 and 2 of the Protocol (No 22) on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.
- (52) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with Directive 2004/83/EC. The obligation to transpose the provisions which are unchanged arises under that Directive.
- (53) This Directive should be without prejudice to the obligations of the Member States relating to the time-limit for transposition into national law of Directive 2004/83/EC set out in Annex I, Part B,

HAVE ADOPTED THIS DIRECTIVE:

# CHAPTER I

## General provisions

### *Article 1*

#### *Purpose*

The purpose of this Directive is to lay down standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection-granted.

### *Article 2*

#### *Definitions*

For the purposes of this Directive the following definitions shall apply:

- (a) 'international protection' means refugee status and subsidiary protection status as defined in points (e) and (g);

- (b) 'beneficiary of international protection' means a person who has been granted refugee status or subsidiary protection status as defined in points (e) and (g);
- (c) 'Geneva Convention' means the Convention Relating to the Status of Refugees done at Geneva on 28 July 1951, as amended by the New York Protocol of 31 January 1967;
- (d) 'refugee' means a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 does not apply;
- (e) 'refugee status' means the recognition by a Member State of a third-country national or a stateless person as a refugee;

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

- (j) 'family members' means, insofar as the family already existed in the country of origin, the following members of the family of the beneficiary of international protection who are present in the same Member State in relation to the application for international protection:
- the spouse of the beneficiary of international protection or his or her unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to third-country nationals;
  - the minor children of the couples referred to in the first indent or of the beneficiary of international protection, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under national law;
  - the father, mother or another adult responsible for the beneficiary of international protection whether by law or by the practice of the Member State concerned, when that beneficiary is a minor and unmarried;

- (k) 'minor' means a third-country national or stateless person below the age of 18 years;
- (l) 'unaccompanied minor' means a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he or she has entered the territory of the Member States;
- (m) 'residence permit' means any permit or authorisation issued by the authorities of a Member State, in the form provided for under that State's law, allowing a third-country national or stateless person to reside on its territory;
- (n) 'country of origin' means the country or countries of nationality or, for stateless persons, of former habitual residence.

### *Article 3*

#### *More favourable standards*

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

## CHAPTER II

### Assessment of applications for international protection

#### *Article 4*

#### *Assessment of facts and circumstances*

1. Member States may consider it the duty of the applicant to submit as soon as possible all the elements needed to substantiate the application for international protection. In cooperation with the applicant, it is the duty of the Member State to assess the relevant elements of the application.
2. The elements referred to in paragraph 1 consist of the applicant's statements and all the documentation at the applicant's disposal regarding the applicant's age, background, including that of relevant relatives, identity, nationality(ies), country(ies) and place(s) of previous residence, previous asylum applications, travel routes, travel documents and the reasons for applying for international protection.

3. The assessment of an application for international protection is to be carried out on an individual basis and includes taking into account:
- (a) all relevant facts as they relate to the country of origin at the time of taking a decision on the application, including laws and regulations of the country of origin and the manner in which they are applied;
  - (b) the relevant statements and documentation presented by the applicant including information on whether the applicant has been or may be subject to persecution or serious harm;
  - (c) the individual position and personal circumstances of the applicant, including factors such as background, gender and age, so as to assess whether, on the basis of the applicant's personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious harm;
  - (d) whether the applicant's activities since leaving the country of origin were engaged in for the sole or main purpose of creating the necessary conditions for applying for international protection, so as to assess whether those activities would expose the applicant to persecution or serious harm if returned to that country;



- (e) whether the applicant could reasonably be expected to avail himself or herself of the protection of another country where he or she could assert citizenship.
4. The fact that an applicant has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, is a serious indication of the applicant's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.
5. Where Member States apply the principle according to which it is the duty of the applicant to substantiate the application for international protection and where aspects of the applicant's statements are not supported by documentary or other evidence, those aspects shall not need confirmation when the following conditions are met:
- (a) the applicant has made a genuine effort to substantiate his application;
  - (b) all relevant elements at the applicant's disposal have been submitted, and a satisfactory explanation has been given regarding any lack of other relevant elements;
  - (c) the applicant's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant's case;

- (d) the applicant has applied for international protection at the earliest possible time, unless the applicant can demonstrate good reason for not having done so; and
- (e) the general credibility of the applicant has been established.

*Article 5*

*International protection needs arising sur place*

1. A well-founded fear of being persecuted or a real risk of suffering serious harm may be based on events which have taken place since the applicant left the country of origin.
2. A well-founded fear of being persecuted or a real risk of suffering serious harm may be based on activities which the applicant has engaged in since he or she left the country of origin, in particular where it is established that the activities relied upon constitute the expression and continuation of convictions or orientations held in the country of origin.
3. Without prejudice to the Geneva Convention, Member States may determine that an applicant who files a subsequent application shall not normally be granted refugee status if the risk of persecution is based on circumstances which the applicant has created by his or her own decision since leaving the country of origin.

*Article 6*

*Actors of persecution or serious harm*

Actors of persecution or serious harm include:

- (a) the State;
- (b) parties or organisations controlling the State or a substantial part of the territory of the State;
- (c) non-State actors, if it can be demonstrated that the actors mentioned in points (a) and (b), including international organisations, are unable or unwilling to provide protection against persecution or serious harm as defined in Article 7.

*Article 7*  
*Actors of protection*

1. Protection against persecution or serious harm can only be provided by:
  - (a) the State; or
  - (b) parties or organisations, including international organisations, controlling the State or a substantial part of the territory of the State,provided they are willing and able to offer protection in accordance with paragraph 2.
2. Protection against persecution or serious harm must be effective and of a non-temporary nature. Such protection is generally provided when the actors mentioned under points (a) and (b) of paragraph 1 take reasonable steps to prevent the persecution or suffering of serious harm, inter alia by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and when the applicant has access to such protection.
3. When assessing whether an international organisation controls a State or a substantial part of its territory and provides protection as described in paragraph 2, Member States shall take into account any guidance which may be provided in relevant Union acts.

*Article 8*  
*Internal protection*

1. As part of the assessment of the application for international protection, Member States may determine that an applicant is not in need of international protection if in a part of the country of origin, he or she:
  - (a) has no well-founded fear of being persecuted or is not at real risk of suffering serious harm; or
  - (b) has access to protection against persecution or serious harm as defined in Article 7, and he or she can safely and legally travel to and gain admittance to that part of the country and can reasonably be expected to settle there.
  
2. In examining whether an applicant has a well-founded fear of being persecuted or is at real risk of suffering serious harm, or has access to protection against persecution or serious harm in a part of the country of origin in accordance with paragraph 1, Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant in accordance with Article 4. To that end, Member States shall ensure that precise and up-to-date information is obtained from relevant sources, such as the United Nations High Commissioner for Refugees and the European Asylum Support Office.

## CHAPTER III

### Qualification for being a refugee

#### *Article 9*

#### *Acts of persecution*

1. In order to be regarded as an act of persecution within the meaning of Article 1A of the Geneva Convention, an act must:
  - (a) be sufficiently serious by its nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; or
  - (b) be an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as mentioned in point (a).

2. Acts of persecution as qualified in paragraph 1 can, inter alia, take the form of:
  - (a) acts of physical or mental violence, including acts of sexual violence;
  - (b) legal, administrative, police, and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner;
  - (c) prosecution or punishment which is disproportionate or discriminatory;
  - (d) denial of judicial redress resulting in a disproportionate or discriminatory punishment;
  - (e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling within the scope of the grounds for exclusion as set out in Article 12(2);
  - (f) acts of a gender-specific or child-specific nature.
  
3. In accordance with point (d) of Article 2, there must be a connection between the reasons mentioned in Article 10 and the acts of persecution as qualified in paragraph 1 of this Article or the absence of protection against such acts.

*Article 10*  
*Reasons for persecution*

1. Member States shall take the following elements into account when assessing the reasons for persecution:
  - (a) the concept of race shall, in particular, include considerations of colour, descent, or membership of a particular ethnic group;
  - (b) the concept of religion shall in particular include the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief;
  - (c) the concept of nationality shall not be confined to citizenship or lack thereof but shall, in particular, include membership of a group determined by its cultural, ethnic, or linguistic identity, common geographical or political origins or its relationship with the population of another State;



- (d) a group shall be considered to form a particular social group where in particular:
- members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it; and
  - that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society.

Depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sexual orientation. Sexual orientation cannot be understood to include acts considered to be criminal in accordance with national law of the Member States. Gender related aspects, including gender identity, shall be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group;

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

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

*Article 11*

*Cessation*

1. A third-country national or a stateless person shall cease to be a refugee if he or she:
  - (a) has voluntarily re-availed himself or herself of the protection of the country of nationality; or
  - (b) having lost his or her nationality, has voluntarily re-acquired it; or
  - (c) has acquired a new nationality, and enjoys the protection of the country of his or her new nationality; or
  - (d) has voluntarily re-established himself or herself in the country which he or she left or outside which he or she remained owing to fear of persecution; or

- (e) can no longer, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of nationality; or
- (f) being a stateless person, he or she is able, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, to return to the country of former habitual residence.

2. In considering points (e) and (f) of paragraph 1, Member States shall have regard to whether the change of circumstances is of such a significant and non-temporary nature that the refugee's fear of persecution can no longer be regarded as well-founded.
3. Points (e) and (f) of paragraph 1 shall not apply to a refugee who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself or herself of the protection of the country of nationality or, being a stateless person, of the country of former habitual residence.

*Article 12*  
*Exclusion*

1. A third-country national or a stateless person is excluded from being a refugee if:
  - (a) he or she falls within the scope of Article 1 D of the Geneva Convention, relating to protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees. When such protection or assistance has ceased for any reason, without the position of such persons being definitely settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, those persons shall ipso facto be entitled to the benefits of this Directive;
  - (b) he or she is recognised by the competent authorities of the country in which he or she has taken up residence as having the rights and obligations which are attached to the possession of the nationality of that country, or rights and obligations equivalent to those.

2. A third-country national or a stateless person is excluded from being a refugee where there are serious reasons for considering that:
  - (a) he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
  - (b) he or she has committed a serious non-political crime outside the country of refuge prior to his or her admission as a refugee, which means the time of issuing a residence permit based on the granting of refugee status; particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes;
  - (c) he or she has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations.
3. Paragraph 2 applies to persons who incite or otherwise participate in the commission of the crimes or acts mentioned therein.

## CHAPTER IV

### Refugee status

#### *Article 13*

#### *Granting of refugee status*

Member States shall grant refugee status to a third-country national or a stateless person who qualifies as a refugee in accordance with Chapters II and III.

#### *Article 14*

#### *Revocation of, ending of or refusal to renew refugee status*

1. Concerning applications for international protection filed after the entry into force of Directive 2004/83/EC, Member States shall revoke, end or refuse to renew the refugee status of a third-country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body if he or she has ceased to be a refugee in accordance with Article 11.

2. Without prejudice to the duty of the refugee in accordance with Article 4(1) to disclose all relevant facts and provide all relevant documentation at his or her disposal, the Member State which has granted refugee status shall, on an individual basis, demonstrate that the person concerned has ceased to be or has never been a refugee in accordance with paragraph 1 of this Article.
3. Member States shall revoke, end or refuse to renew the refugee status of a third-country national or a stateless person if, after he or she has been granted refugee status, it is established by the Member State concerned that:
  - (a) he or she should have been or is excluded from being a refugee in accordance with Article 12;
  - (b) his or her misrepresentation or omission of facts, including the use of false documents, was decisive for the granting of refugee status.
4. Member States may revoke, end or refuse to renew the status granted to a refugee by a governmental, administrative, judicial or quasi-judicial body, when:
  - (a) there are reasonable grounds for regarding him or her as a danger to the security of the Member State in which he or she is present;
  - (b) he or she, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that Member State.

5. In situations described in paragraph 4, Member States may decide not to grant status to a refugee, where such a decision has not yet been taken.
6. Persons to whom paragraphs 4 or 5 apply are entitled to rights set out in or similar to those set out in Articles 3, 4, 16, 22, 31 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) the death penalty or execution; or
- (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin, or
- (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.



*Article 16*  
*Cessation*

1. A third-country national or a stateless person shall cease to be eligible for subsidiary protection when the circumstances which led to the granting of subsidiary protection status have ceased to exist or have changed to such a degree that protection is no longer required.
2. In applying paragraph 1, Member States shall have regard to whether the change in circumstances is of such a significant and non-temporary nature that the person eligible for subsidiary protection no longer faces a real risk of serious harm.
3. Paragraph 1 shall not apply to a beneficiary of subsidiary protection status who is able to invoke compelling reasons arising out of previous serious harm for refusing to avail himself or herself of the protection of the country of nationality or, being a stateless person, of the country of former habitual residence.

*Article 17*  
*Exclusion*

1. A third-country national or a stateless person is excluded from being eligible for subsidiary protection where there are serious reasons for considering that:
  - (a) he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
  - (b) he or she has committed a serious crime;
  - (c) he or she has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations;
  - (d) he or she constitutes a danger to the community or to the security of the Member State in which he or she is present.
  
2. Paragraph 1 applies to persons who incite or otherwise participate in the commission of the crimes or acts mentioned therein.

3. Member States may exclude a third-country national or a stateless person from being eligible for subsidiary protection if he or she, prior to his or her admission to the Member State concerned, has committed one or more crimes outside the scope of paragraph 1 which would be punishable by imprisonment, had they been committed in the Member State concerned, and if he or she left his or her country of origin solely in order to avoid sanctions resulting from those crimes.

## **CHAPTER VI**

### **Subsidiary protection status**

#### *Article 18*

#### *Granting of subsidiary protection status*

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

*Article 19*

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

1. Concerning applications for international protection filed after the entry into force of Directive 2004/83/EC, Member States shall revoke, end or refuse to renew the subsidiary protection status of a third-country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body if he or she has ceased to be eligible for subsidiary protection in accordance with Article 16.
2. Member States may revoke, end or refuse to renew the subsidiary protection status of a third-country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body, if after having been granted subsidiary protection status, he or she should have been excluded from being eligible for subsidiary protection in accordance with Article 17(3).
3. Member States shall revoke, end or refuse to renew the subsidiary protection status of a third-country national or a stateless person, if:
  - (a) he or she, after having been granted subsidiary protection status, should have been or is excluded from being eligible for subsidiary protection in accordance with Article 17(1) and (2);

(b) his or her misrepresentation or omission of facts, including the use of false documents, was decisive for the granting of subsidiary protection status.

4. Without prejudice to the duty of the third-country national or stateless person in accordance with Article 4(1) to disclose all relevant facts and provide all relevant documentation at his or her disposal, the Member State which has granted the subsidiary protection status shall, on an individual basis, demonstrate that the person concerned has ceased to be or is not eligible for subsidiary protection in accordance with paragraphs 1, 2 and 3 of this Article.

## **CHAPTER VII**

### **Content of international protection**

#### *Article 20*

#### *General rules*

1. This Chapter shall be without prejudice to the rights laid down in the Geneva Convention.
2. This Chapter shall apply both to refugees and persons eligible for subsidiary protection unless otherwise indicated.

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

*Article 21*

*Protection from refoulement*

1. Member States shall respect the principle of non-refoulement in accordance with their international obligations.

2. Where not prohibited by the international obligations mentioned in paragraph 1, Member States may refoule a refugee, whether formally recognised or not, when:
  - (a) there are reasonable grounds for considering him or her as a danger to the security of the Member State in which he or she is present; or
  - (b) he or she, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that Member State.
3. Member States may revoke, end or refuse to renew or to grant the residence permit of (or to) a refugee to whom paragraph 2 applies.

*Article 22*  
*Information*

Member States shall provide beneficiaries of international protection, as soon as possible after refugee status or subsidiary protection status has been granted, with access to information, in a language that they understand or are reasonably supposed to understand, on the rights and obligations relating to that status.

*Article 23*  
*Maintaining family unity*

1. Member States shall ensure that family unity can be maintained.
2. Member States shall ensure that family members of the beneficiary of international protection who do not individually qualify for such protection are entitled to claim the benefits referred to in Articles 24 to 35, in accordance with national procedures and as far as is compatible with the personal legal status of the family member.
3. Paragraphs 1 and 2 are not applicable where the family member is or would be excluded from international protection pursuant to Chapters III and V.
4. Notwithstanding paragraphs 1 and 2, Member States may refuse, reduce or withdraw the benefits referred to therein for reasons of national security or public order.
5. Member States may decide that this Article also applies to other close relatives who lived together as part of the family at the time of leaving the country of origin, and who were wholly or mainly dependent on the beneficiary of international protection at that time.



*Article 24*  
*Residence permits*

1. As soon as possible after international protection has been granted, Member States shall issue to beneficiaries of refugee status a residence permit which must be valid for at least three years and renewable, unless compelling reasons of national security or public order otherwise require, and without prejudice to Article 21(3).

Without prejudice to Article 23(1), the residence permit to be issued to the family members of the beneficiaries of refugee status may be valid for less than three years and renewable.

2. As soon as possible after international protection has been granted, Member States shall issue to beneficiaries of subsidiary protection status and their family members a renewable residence permit which must be valid for at least one year and, in case of renewal, for at least two years, unless compelling reasons of national security or public order otherwise require.

*Article 25*

*Travel document*

1. Member States shall issue to beneficiaries of refugee status travel documents, in the form set out in the Schedule to the Geneva Convention, for the purpose of travel outside their territory unless compelling reasons of national security or public order otherwise require.
2. Member States shall issue to beneficiaries of subsidiary protection status who are unable to obtain a national passport, documents which enable them to travel outside their territory, unless compelling reasons of national security or public order otherwise require.

*Article 26*

*Access to employment*

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

3. Member States shall endeavour to facilitate full access for beneficiaries of international protection to the activities referred to in paragraph 2.
4. The law in force in the Member States applicable to remuneration, access to social security systems relating to employed or self-employed activities and other conditions of employment shall apply.

*Article 27*

*Access to education*

1. Member States shall grant full access to the education system to all minors granted international protection, under the same conditions as nationals.
2. Member States shall allow adults granted international protection access to the general education system, further training or retraining, under the same conditions as third-country nationals legally resident.

*Article 28*

*Access to procedures for recognition of qualifications*

1. Member States shall ensure equal treatment between beneficiaries of international protection and nationals in the context of the existing recognition procedures for foreign diplomas, certificates and other evidence of formal qualifications.

2. Member States shall endeavour to facilitate full access for beneficiaries of international protection who cannot provide documentary evidence of their qualifications to appropriate schemes for the assessment, validation and accreditation of their prior learning. Any such measures shall comply with Articles 2(2) and 3(3) of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications<sup>1</sup>.

*Article 29*

*Social welfare*

1. Member States shall ensure that beneficiaries of international protection receive, in the Member State that has granted such protection, the necessary social assistance as provided to nationals of that Member State.
2. By way of derogation from the general rule laid down in paragraph 1, Member States may limit social assistance granted to beneficiaries of subsidiary protection status to core benefits which will then be provided at the same level and under the same eligibility conditions as nationals.

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<sup>1</sup> OJ L 255, 30.9.2005, p. 22.

*Article 30*  
*Health care*

1. Member States shall ensure that beneficiaries of international protection have access to health care under the same eligibility conditions as nationals of the Member State that has granted such protection.
2. Member States shall provide, under the same eligibility conditions as nationals of the Member State that has granted protection, adequate health care, including treatment of mental disorders when needed, to beneficiaries of international protection who have special needs, such as pregnant women, disabled people, persons who have undergone torture, rape or other serious forms of psychological, physical or sexual violence or minors who have been victims of any form of abuse, neglect, exploitation, torture, cruel, inhuman and degrading treatment or who have suffered from armed conflict.

*Article 31*  
*Unaccompanied minors*

1. As soon as possible after the granting of international protection Member States shall take the necessary measures to ensure the representation of unaccompanied minors by a legal guardian or, where necessary, by an organisation responsible for the care and well-being of minors, or by any other appropriate representation including that based on legislation or court order.

2. Member States shall ensure that the minor's needs are duly met in the implementation of this Directive by the appointed guardian or representative. The appropriate authorities shall make regular assessments.
3. Member States shall ensure that unaccompanied minors are placed either:
  - (a) with adult relatives; or
  - (b) with a foster family; or
  - (c) in centres specialised in accommodation for minors; or
  - (d) in other accommodation suitable for minors.

In this context, the views of the child shall be taken into account in accordance with his or her age and degree of maturity.

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

5. If an unaccompanied minor is granted international protection and the tracing of his or her family members has not already started, Member States shall start tracing them as soon as possible after the granting of international protection, whilst protecting the minor's best interests. If the tracing has already started, Member States shall continue the tracing process where appropriate. In cases where there may be a threat to the life or integrity of the minor or his or her close relatives, particularly if they have remained in the country of origin, care must be taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis.
6. Those working with unaccompanied minors shall have had and continue to receive appropriate training concerning their needs.

*Article 32*

*Access to accommodation*

1. Member States shall ensure that beneficiaries of international protection have access to accommodation under equivalent conditions as other third-country nationals legally resident in their territories.
2. While allowing for national practice of dispersal of beneficiaries of international protection, Member States shall endeavour to implement policies aimed at preventing discrimination of beneficiaries of international protection and at ensuring equal opportunities regarding access to accommodation.

*Article 33*

*Freedom of movement within the Member State*

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

*Article 34*

*Access to integration facilities*

In order to facilitate the integration of beneficiaries of international protection into society, Member States shall ensure access to integration programmes which they consider to be appropriate so as to take into account the specific needs of beneficiaries of refugee status or of subsidiary protection status, or create pre-conditions which guarantee access to such programmes.

*Article 35*

*Repatriation*

Member States may provide assistance to beneficiaries of international protection who wish to be repatriated.



## **CHAPTER VIII**

### **Administrative cooperation**

#### *Article 36* *Cooperation*

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

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

#### *Article 37* *Staff*

Member States shall ensure that authorities and other organisations implementing this Directive have received the necessary training and shall be bound by the confidentiality principle, as defined in the national law, in relation to any information they obtain in the course of their work.

## CHAPTER IX

### Final provisions

#### *Article 38*

#### *Reports*

1. By ...<sup>\*</sup>, the Commission shall report to the European Parliament and the Council on the application of this Directive and shall propose any amendments that are necessary. Those proposals for amendment shall be made by way of priority in Articles 2 and 7. Member States shall send the Commission all the information that is appropriate for drawing up that report by ...<sup>\*\*</sup>.
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.

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\* OJ please insert date: 42 months from the date of publication in the *Official Journal of the European Union*.

\*\* OJ please insert date: 36 months from the date of publication in the *Official Journal of the European Union*.

*Article 39*  
*Transposition*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 1, 2, 4, 7, 8, 9, 10, 11, 16, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35 by ...\*. They shall forthwith communicate to the Commission the text of those provisions.

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

2. Member States shall communicate to the Commission the text of the main provisions of national law covered by this Directive.

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\* OJ please insert date: 24 months from the date of publication in the *Official Journal of the European Union*.

*Article 40*

*Repeal*

Directive 2004/83/EC is repealed for the Member States bound by this Directive with effect from ...<sup>\*</sup>, without prejudice to the obligations of the Member States relating to the time-limit for transposition into national law of the Directive set out in Annex I, Part B.

For the Member States bound by this Directive, references to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex II.

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<sup>\*</sup> OJ please insert date: 24 months from the date of publication in the *Official Journal of the European Union*.

*Article 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*.

Articles 1, 2, 4, 7, 8, 9, 10, 11, 16, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35 shall apply from ...\*.

*Article 42*  
*Addressees*

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

Done at,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

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\* OJ please insert date: day after the date set out in the first subparagraph of paragraph 1 of Article 39 of this Directive.

## ANNEX I

### Part A

Repealed Directive  
(referred to in Article 40)

Council Directive 2004/83/EC

(OJ L 304, 30.9.2004, p. 12)

### Part B

Time-limit for transposition into national law  
(referred to in Article 39)

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

## ANNEX II

### Correlation Table

Directive 2004/83/EC	This Directive
Article 1	Article 1
Article 2, introductory words	Article 2, introductory words
Article 2(a)	Article 2(a)
-	Article 2(b)
Article 2(b) – (g)	Article 2(c) – (h)
-	Article 2(i)
Article 2(h)	Article 2(j) first and second indent
-	Article 2(j) third indent
-	Article 2(k)
Article 2(i)	Article 2(l)
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

Directive 2004/83/EC	This Directive
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)



Directive 2004/83/EC	This Directive
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(1)(2)
Article 27(3)	Article 28(1)
-	Article 28(2)(3)
Article 28(1)	Article 29(1)
-	Article 29(2)
Article 28(2)	-
Article 29(1)	Article 30(1)
Article 29(2)	-
Article 29(3)	Article 30(2)
Article 30	Article 31
Article 31	Article 32

Directive 2004/83/EC	This Directive
Article 32	Article 33
Article 33	Article 34
Article 34	Article 35
Article 35	Article 36
Article 36	Article 37
Article 37	Article 38
Article 38	Article 39
-	Article 40
Article 39	Article 41
Article 40	Article 42
-	Annex I
-	Annex II