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From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	11316/16
Subject:	Proposal for a Regulation 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 and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents

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At its meetings on 28 October and 8 November 2016, the Asylum Working Party examined the proposal for a Qualification Regulation.

The text of the proposal in Annex contains modifications suggested by the Presidency relating to Articles 1 and 3 to 12. Suggestions for modification are also made to certain recitals in relation to these Articles.

Suggested modifications are indicated in **bold** and [...].

Comments made by delegations on the Commission proposal text, orally and in writing, appear in the footnotes of the Annex.

2016/0223 (COD)

Proposal for a

**REGULATION<sup>1</sup> 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 and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents<sup>2</sup>**

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) and (a) of Article 79 (2) thereof,

Having regard to the proposal from the European Commission,

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

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

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<sup>1</sup> **CZ, EE:** the change from Directive to Regulation is not justified. **EE:** scrutiny reservation about the choice of the instrument. **MS** need flexibility when implementing. **ES:** doubts about the suitability of the legal basis for turning the act into a regulation. **NL:** The COM is proposing to keep differences between the rights attached to refugee status and subsidiary protection status. For NL, keeping the differences between both statuses will have the effect of considerable additional administrative burden for national systems. While understanding the COM's intention to stress the temporary nature of international protection with this proposal, NL feels it is ill-advised while the associated risks in terms of cost and inefficiency largely outstrip the potential advantages.

<sup>2</sup> **CZ, BG, FI, ES, IT, PT, FR, SI, SE:** general scrutiny reservation on the whole proposal. **SI:** parliamentary scrutiny reservation on the whole proposal.

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) A number of substantive changes are to be made to Council Directive 2011/95/EU of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted<sup>3</sup> (recast). To ensure harmonisation and more convergence in asylum decisions and as regards the content of international protection in order to reduce incentives to move within the European Union and ensure an equality of treatment of beneficiaries of international protection that Directive should be repealed and replaced by a Regulation.
- (2) A common policy on asylum, including a Common European Asylum System (CEAS) which is based on the full and inclusive application of the Geneva Convention Relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967 (**hereinafter referred as** Geneva Convention), is a constituent part of the European Union's objective of establishing progressively an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Union. Such a policy should be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States.
- (3) The CEAS is based on common standards for asylum procedures, recognition and protection offered at Union level, reception conditions and a system for determining the Member State responsible for asylum seekers. Notwithstanding progress achieved so far in the progressive development of the CEAS, there are still significant disparities between the Member States in the types of procedures used, the recognition rates, the type of protection granted, the level of material reception conditions and benefits given to applicants for and beneficiaries of international protection. These divergences are important drivers of secondary movements and undermine the objective of ensuring that all applicants are equally treated wherever they apply in the Union.

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<sup>3</sup> OJ L 337, 20.12.2011, p. 9.

- (4) In its Communication of 6 April 2016,<sup>4</sup> the Commission set out its options for improving the CEAS, namely to establish a sustainable and fair system for determining the Member State responsible for asylum seekers, to reinforce the Eurodac system, to achieve greater convergence in the EU asylum system, to prevent secondary movements within the European Union and a new mandate for the European Union Agency for Asylum agency. That Communication is in line with calls by the European Council on 18-19 February 2016<sup>5</sup> to make progress towards reforming the EU's existing framework so as to ensure a humane and efficient asylum policy. It also proposes a way forward in line with the holistic approach to migration set out by the European Parliament in its own initiative report of 12 April 2016.
- (5) For a well-functioning CEAS, including of the Dublin system, substantial progress should be made regarding the convergence of national asylum systems with special regard to differing recognition rates and type of protection status in the Member States. In addition, rules on status review should be strengthened to ensure that protection is only granted to those who need it and for so long as it continues to be needed. Moreover, divergent practices regarding the duration of the residence permits should be avoided, and the rights granted to beneficiaries of international protection should be further clarified and harmonised.
- (6) A Regulation is therefore necessary to ensure a more consistent level of harmonisation throughout the Union and to provide a higher degree of legal certainty and transparency.
- (7) The main objective of this Regulation 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 common set of rights is available for those persons in all Member States.

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<sup>4</sup> COM (2016) 197 final.

<sup>5</sup> EUCO 19.02.2016, SN 1/16.

- (8) The further approximation of rules on the recognition and content of refugee and subsidiary protection status should moreover help to limit the secondary movement of applicants for international protection and beneficiaries of international protection between Member States, where such movement may have been caused by any differences in the national legal measures taken to transpose the Qualification Directive replaced by this Regulation.
- (9) This Regulation does not apply to other [...] humanitarian statuses granted by Member States under their national law to those who do not qualify for the refugee status or the subsidiary protection status. These statuses, if issued, are to be issued in a way not to entail a risk of confusion with international protection.
- (10) Successful resettlement candidates should be granted international protection. Accordingly, the provisions of this Regulation on the content of international protection should apply, including the rules to discourage secondary movement.
- (11) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union (the Charter). In particular this Regulation 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 the Charter's Articles relating to human dignity, respect for private and family life, freedom of expression and information, right to education, freedom to choose an occupation and right to engage in work, freedom to conduct a business, right to asylum, non-discrimination, rights of the child, social security and social assistance, health care, and should therefore be implemented accordingly.
- (12) With respect to the treatment of persons falling within the scope of this Regulation, Member States are bound by obligations under instruments of international law to which they are party, including in particular those that prohibit discrimination.
- (13) The resources of the Asylum, Migration and Refugee Fund should be used to provide adequate support to Member States' efforts in implementing the standards set by the Regulation, 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.

- (14) The European Union Agency for Asylum should provide adequate support in the application of this Regulation, in particular by providing experts to assist the Member State authorities to receive, register, and examine applications for international protection, providing updated information regarding third countries, including Country of Origin Information, and other relevant guidelines and tools. When applying this Regulation, Member States' authorities should take into account operational standards, indicative guidelines, and best practices developed by the European Union Agency for Asylum [the Agency]. When assessing applications for international protection, Member States' authorities should take particular account of the information, reports, common analysis and guidance on the situation in countries of origin developed at Union level by the Agency and the European networks on country of origin information in accordance with Articles 8 and 10 of Regulation<sup>6</sup>
- (15) When applying this Regulation the 'best interests of the child' should be a primary consideration, in line with the 1989 United Nations Convention on the Rights of the Child. In assessing the best interests of the child, Member States' authorities 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.
- (16) The notion of family members should take into account the different particular circumstances of dependency and the special attention to be paid to the best interests of the child. It should also reflect the reality of current migratory trends, according to which applicants often arrive to the territory of the Member States after a prolonged period of time in transit. The notion should therefore include families formed outside the country of origin, but before their arrival on the territory of the Member State.<sup>7</sup>

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<sup>6</sup> COM(2016)271 final.

<sup>7</sup> **EE** : see comment in Article 2 on the definition of 'family members'.

- (17) This Regulation 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.
- (18) The recognition of refugee status is a declaratory act.
- (19) Consultations with the United Nations High Commissioner for Refugees may provide valuable guidance for Member States' authorities when determining refugee status according to Article 1 of the Geneva Convention.
- (20) 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.
- (21) It is necessary to introduce common criteria for recognising applicants for asylum as refugees within the meaning of Article 1 of the Geneva Convention.
- (21a) In order to prevent secondary movements within the Union and abusive asylum applications in Member States, applicants should cooperate with the determining authority and remain present and available throughout the procedure, in accordance with the relevant provisions of the Dublin Regulation, the Asylum Procedures Regulation and the recast Reception Conditions Directive.**
- (22) 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.
- (23) Protection can be provided, where they are [...]able **and willing** 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.

- (24) 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. The assessment of whether such internal protection exists should be an inherent part of the assessment the application for international protection and should be carried out once it has been established by the determining authority that the qualification criteria would otherwise apply. The burden of demonstrating the availability of internal protection should fall on the determining authority.
- (25) 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 interests of the unaccompanied minor, should form part of the assessment as to whether that protection is effectively available.
- (26) It is necessary, when assessing applications from minors for international protection, that the determining authorities should have regard to child-specific forms of persecution.
- (27) 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.
- (28) It is equally necessary to introduce a common concept of the persecution ground ‘membership of a particular social group’. For the purposes of defining a particular social group, issues arising from an applicant’s gender, including gender identity and sexual orientation, which may be related to certain legal traditions and customs, resulting in for example genital mutilation, forced sterilisation or forced abortion, should be given due consideration in so far as they are related to the applicant’s well-founded fear of persecution.



- (28a) **As confirmed by the Court of Justice of the European Union, the circumstances in the country of origin, including for example the existence of criminal laws which specifically target homosexuals, can mean that those persons are to be regarded as forming a particular social group.**
- (29) [...] **As confirmed by** the Court of Justice of the European Union, when assessing applications for international protection, the competent authorities of the Member States should use methods for the assessment of the applicant's credibility in a manner that respects the individual's rights as guaranteed by the Charter, in particular the right to human dignity and the respect for private and family life. Specifically as regards homosexuality, the individual assessment of the applicant's credibility should not be based on stereotyped notions concerning homosexuals and the applicant should not be submitted to detailed questioning or tests as to his or her sexual practices.
- (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'.
- (31) Committing a political crime is not in principle a ground justifying exclusion from refugee status. However, [...] **as confirmed by** the Court of Justice of the European Union, particularly cruel actions, where the act in question is disproportionate to the alleged political objective, and terrorist acts which are characterised by their violence towards civilian populations, even if committed with a purportedly political objective, should be regarded as non-political crimes and therefore can give rise to exclusion from refugee status.
- (31a) **When assessing whether living in a part of the country of origin regarded as an internal protection alternative would not impose undue hardship on the applicant, the competent authorities of the Member States should verify whether the individual is in particular able to cater for the most basic needs, such as food, hygiene and shelter.**

- (32) 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.
- (33) 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.
- (34) For the purpose of assessing serious harm which may qualify applicants as eligible for subsidiary protection, the notion of indiscriminate violence, [...] **as confirmed by** the European Court of Justice, should include violence that may extend to people irrespective of their personal circumstances.
- (35) [...] **As confirmed by** the Court of Justice of the European Union [...], for the purpose of assessing serious harm, situations in which a third country's armed forces confront one or more armed groups, or in which two or more armed groups confront each other, should be considered an internal armed conflict. It is not necessary for that conflict to be categorised as an 'armed conflict not of an international character' under international humanitarian law; nor is it necessary to carry out, in addition to an appraisal of the level of violence present in the territory concerned, a separate assessment of the intensity of the armed confrontations, the level of organisation of the armed forces involved or the duration of the conflict.

- (36) As regards the required proof in relation to the existence of a serious and individual threat to the life or person of an applicant, [...] **as confirmed by** the Court of Justice of the European Union [...], determining authorities should not require the applicant to adduce evidence that he is specifically targeted by reason of factors particular to his personal circumstances. However, the level of indiscriminate violence required to substantiate the application is lower if the applicant is able to show that he is specifically affected by reason of factors particular to his personal circumstance. Moreover, the existence of a serious and individual threat should exceptionally be established by the determining authorities solely on account of the presence of the applicant on the territory or relevant part of the territory of the country of origin provided the degree of indiscriminate violence characterising the armed conflict taking place reaches such a high level that there are substantial grounds for believing that a civilian, returned to the country or origin or to the relevant part of country of origin, would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to the serious threat.
- (37) The residence permit and the travel documents issued to beneficiaries of international protection for the first time or renewed following the entry into force of this Regulation should comply with the rules laid down by Regulation (EC) No 1030/2002 and Council Regulation (EC) No 2252/2004 respectively.
- (38) Family members, due to their close relationship to the refugee, will normally be vulnerable to acts of persecution in such a manner that could be the basis for international protection. Provided they do not qualify for international protection, for the purpose of maintaining family unity, they shall be entitled to claim a residence permit and the same rights accorded to beneficiaries of international protection. Without prejudice to the provisions related to maintaining family unity in this Regulation, where the situation falls within the scope of Directive 2003/86/EC on the right to family reunification and the conditions for reunification set out thereof are fulfilled, family members of the beneficiary of international protection who do not individually qualify for such protection should be granted residence permits and rights in accordance with that Directive. This Regulation shall be applied without prejudice to Directive 2004/38/EC.

- (39) With a view to ascertaining whether beneficiaries of international protection are still in need of that protection, determining authorities should review the granted status when the residence permit has to be renewed, for the first time in the case of refugees, and for the first and second time in the case of beneficiaries of subsidiary protection, as well as when a significant relevant change in the beneficiaries' country of origin occurs as indicated by common analysis and guidance on the situation in the country of origin provided at Union level by the Agency and the European networks on country of origin information in accordance with Articles 8 and 10 of Regulation<sup>8</sup>.
- (40) When assessing a change of circumstances in the third country concerned, the competent authorities of the Member States shall verify, having regard to the refugee's individual situation, that the actor or actors of protection in that country have taken reasonable steps to prevent the persecution, that they therefore operate, inter alia, an effective legal system for the detection, prosecution and punishment of acts constituting persecution and that the national concerned will have access to such protection if the refugee status ceases to exist.
- (41) When the refugee status or the subsidiary protection status ceases to exist, the application of the decision by which the determining authority of a Member State revokes, ends or does not renew the status should be deferred for a reasonable period of time after adoption, in order to give the third-country national or stateless person concerned the possibility to apply for residence on the basis of other grounds than those having justified the granting of international protection, such as family reasons, or reasons related to employment or to education, in accordance with relevant Union and national law.

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<sup>8</sup> COM(2016)271 final.

- (42) Beneficiaries of international protection should reside in the Member State which granted them protection. Those beneficiaries who are in possession of a valid travel document and a residence permit issued by a Member State applying the Schengen acquis in full, should be allowed to enter into and move freely within the territory of the Member States applying the Schengen acquis in full, for a period up to 90 days in any 180-day period in accordance with Schengen Borders Code<sup>9</sup> and with Article 21 of the Convention implementing the Schengen Agreement<sup>10</sup>. Beneficiaries of international protection can equally apply to reside in a Member State other than the Member State which granted protection, in accordance with relevant EU rules, notably on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment<sup>11</sup> and national rules; however, this does not imply any transfer of the international protection and related rights.
- (43) In order to prevent secondary movements within the European Union, beneficiaries of international protection, if found in a Member State other than the Member State having granted them protection without fulfilling the conditions of stay or reside, should be taken back by the Member State responsible in accordance with the procedure laid down by Regulation.<sup>12</sup>
- (44) In order to discourage secondary movements within the European Union, the Long Term Residence Directive 2003/109/EC should be amended to provide that the 5-year period after which beneficiaries of international protection are eligible for the Long Term Resident status should be restarted each time the person is found in a Member State, other than the one that granted international protection, without a right to stay or to reside there in accordance with relevant Union or national law.

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<sup>9</sup> Regulation 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders.

<sup>10</sup> Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders.

<sup>11</sup> COM (2016) 378 final.

<sup>12</sup> (EU) No [xxx/xxxx New Dublin Regulation].

- (45) **Subject to individual assessment of the specific facts, 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.
- (46) When deciding on entitlements to the benefits included in this Regulation, the competent authorities 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.
- (47) Within the limits set out by international obligations, the granting of benefits with regard to access to employment and social security requires the prior issuing of a residence permit.
- (48) Competent authorities may restrict the access to employed or self-employed activities as regard posts which involve the exercise of public authority, and responsibility for safeguarding the general interest of the State or other public authorities. In the context of exercising their right equal treatment as regards membership of an organisation representing workers or engaging in a specific occupation, beneficiaries of international protection may likewise be excluded from taking part in the management of bodies governed by public law and from holding an office governed by public law
- (49) In order to enhance the effective exercise of the rights and benefits laid down in this Regulation 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, and facilitate their access to integration related rights in particular as regards employment-related educational opportunities and vocational training and access to recognition procedures for foreign diplomas, certificates and 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.

- (50) Equal treatment should be provided for beneficiaries of international protection with nationals of the Member State granting protection as regards social security.
- (51) In addition, especially to avoid social hardship, it is appropriate to provide beneficiaries of international protection with social assistance without discrimination. However, as regards beneficiaries of subsidiary protection, Member States should be given some flexibility, to limit such rights to core benefits, which is to be understood as covering at least minimum income support, assistance in the case of illness, or pregnancy, and parental assistance, in so far as those benefits are granted to nationals under national law. In order to facilitate their integration, Member States should be given the possibility to make the access to certain type of social assistances specified in national law, for both refugees and beneficiaries of subsidiary protection, conditional on the effective participation of the beneficiary of international protection in integration measures.
- (52) Access to healthcare, including both physical and mental healthcare, should be ensured to beneficiaries of international protection.
- (53) In order to facilitate the integration of beneficiaries of international protection into society, beneficiaries of international protection shall have access to integration measures, modalities to be set by the Member States. Member States may make the participation in such integration measures, such as language courses, civic integration courses, vocational training and other employment-related courses compulsory.
- (54) The effective monitoring of the application of this Regulation requires that it be evaluated at regular intervals.

- (55) In order to ensure uniform conditions for the implementation of the provisions of this Regulation in respect of the form and content of the information to be provided, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers<sup>13</sup>.
- (56) Since the objectives of this Regulation, 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 Regulation, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the TEU. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives
- (57) [In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, those Member States have notified their wish to take part in the adoption and application of this Regulation]

OR

*[In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption of this Regulation and are not bound by it or subject to its application.]*

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<sup>13</sup> OJ L 55, 28.2.2011, p. 13.



OR

*[(XX) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, the United Kingdom is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.*

*(XX) In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Ireland has notified (, by letter of ...,) its wish to take part in the adoption and application of this Regulation.]*

OR

*[(XX) In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom has notified (, by letter of ...,) its wish to take part in the adoption and application of this Regulation.*

*(XX) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.]*

(58) 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 Regulation and is not bound by it or subject to its application,

HAVE ADOPTED THIS REGULATION:

# CHAPTER I

## GENERAL PROVISIONS<sup>14</sup>

### *Article 1*

#### *Subject matter*

This Regulation lays down standards for:

- (a) the qualification of third-country nationals or stateless persons as beneficiaries of international protection;
- (b) a uniform status for refugees or for persons eligible for subsidiary protection;
- (c) the content of the international protection granted.

### *Article 1a [ex-Article 3 modified]*

#### *Material scope*

- 1. This Regulation applies to the qualification of third-country nationals or stateless persons as beneficiaries of international protection and to the content of the international protection granted.**

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<sup>14</sup> **SE:** The sequence and logic of the proposal is not ideal from a legal and practical perspective. Matters relating to eligibility are mixed with procedural aspects.

2. **National humanitarian statuses, if issued, shall be issued in such a way so as not to entail a risk of confusion with international protection.**<sup>15</sup>

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<sup>15</sup> **CZ, DE, IT, HU:** scrutiny reservation. **BG:** the distinction would be problematic, as according to national legislation there are no other national humanitarian statuses. It should be left the possibility for MS to apply in more broadly aspect the subsidiary protection. This is of particular importance for the MS that do not provide other national humanitarian statuses n. As well, when national humanitarian status and subsidiary protection in a broader sense are provided, the procedural rules and standards set at EU level should be applied. **CZ:** national protection statuses not in line with the QR. **DE:** after the deletion of the provision allowing MS to grant more favourable treatment, major concerns that national regulations, such as family asylum provided for in German law, cannot be maintained in its current form. the application of the provisions of the QR should not be undermined by any national protection status. Further restrictions should not be imposed on MSs, however. Granting family asylum, for example, should remain possible. **IT:** does not see how to avoid confusion with international protection.

[Article 2  
**Definitions**<sup>16</sup>

<sup>16</sup> **LV:** need for alignment of definitions between all proposals. **NL:** a definition of 'public order' lacks. During the recent period in which high numbers of applicants arrived in the EU, several MS were confronted with applicants who have committed criminal offences. In response, some MS, including NL, have reviewed their policy on public order with regard to applicants and beneficiaries of international protection in order to be able to refuse or withdraw the residence permit, of course while fully respecting the principle of non-refoulement. In this context, NL is concerned about the judgment of the CJ of the EU of 24 June 2015 regarding the interpretation of the term public order. In this judgment, the Court states that it is of the opinion that the concept of public order contained in Directive 2004/38, in particular in Art. 27 and 28 thereof, has been interpreted in the case-law of the Court as follows. Recourse to public order presupposes, in any event, the existence - in addition to the perturbation of the social order which any infringement of the law involves - of a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society (see, to that effect, judgment in *Byankov*, C 249/11, EU:C:2012:608, para 40 and the case-law cited). The Court applies the same interpretation of public order to refugees and beneficiaries of subsidiary protection as to European citizens. NL however feels that a differentiation is justified. The Court notes that the term public order is not defined either by the provisions themselves or by any other provision of the current QD. By stating this the Court acknowledges that the provisions can hold a definition of 'public order' from which follows that it is up to the legislative body of the EU to lay down an definition.

Art. 14(4) of the QD is based on Art. 33(2) of the Geneva Convention, according to which, the fact that a refugee has been convicted by final judgment of a particularly serious crime is sufficient in itself to conclude that the person constitutes a danger to the community. In other words, the disturbance of public order which the infringement of the law involves, is sufficient in itself to allow for the termination of the legal residence. NL thinks it is undesirable that the QD or the QR would go beyond the Geneva Convention in this respect. The criterion set out by the Court is, in its effect, more stringent than Article 14 (1e) of the QD. The case law of the Court, based on Directive 2013/32, raises the question whether there is a difference in which definitions are applied between refusing a residence permit and the withdrawal of such permit. The new Regulation should leave no doubt that there is only one definition for both situations that should be applied in the same manner.

- Option 1: abstain from using the phrase 'public order' in the proposed regulation, and instead only refer to the definitions laid down in articles 12(2), 14(1) under d) and e) and 18 (1) of the proposal. Therefore NL suggests to strike the term 'public order' in Art. 25(4), 26(2) and 27(3) and replace this by references to Art. 12(2), 14(1) under d) and e) and 18(1) of the proposal.
- Option 2: introduce a definition of 'public order' in Art. 2 of the QR, as follows:  
**"(20) 'Compelling reasons of public order' in the context of this directive means a situation to which article 12(2) article 14(1) under d) and e) or article 18(1) is applicable."**

- (1) 'international protection' means refugee status and <sup>17</sup> subsidiary protection status as defined in points (4) and (6);
- (2) 'beneficiary of international protection' means a person who has been granted refugee status or subsidiary protection status as defined in points (4) and (6);<sup>18</sup>
- (3) '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, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 does not apply;
- (4) 'refugee status' means the recognition by a Member State of a third-country national or a stateless person as a refugee;
- (5) '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 16, and to whom Article 18(1) and (2) does not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country;

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<sup>17</sup> **BE, NL:** "*or*" instead of "and". **COM:** "and" does not imply "at the same time"; "and" because it covers both types of protection. **NL:** modify as follows: " 'international protection' means *the [...]* status as defined in points (4) and (6);".

<sup>18</sup> **NL:** modify the definition as follows: "'beneficiary of international protection' means a person who has been granted *international protection*[...];".

- (6) '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;
- (7) '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<sup>19</sup>
- (8) '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;
- (9) 'family members' means, in so far as the family already existed before the applicant arrived on the territory of the Member States<sup>20</sup>, 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:

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<sup>19</sup> **SE:** what kind of protection remains at national level? need to define "humanitarian international protection".

<sup>20</sup> Scrutiny reservations (**BG, DE, HU, AT, PT, FI**) and reservations (**CZ, EE, IE, AT, SI**) were expressed on the extension of the scope of the definition of 'family members'. **BG:** the expansion of the definition would be a precondition for abuse with the right of international protection and would complicate the implementation of checks. Such a situation should be regulated by the procedure for family reunification. **CZ:** definition to be aligned with other instruments (the definition is not the same as in Dublin). **EE:** the widening of the scope entails an increase of the administrative burden, as the determination of family member statuses which arouse "en route" might pose additional challenges. **AT:** suggests to read the definition as follows: " 'family members' means, in so far as the family already existed *in the country of origin* [...], the following members ...". **PT:** these notions should be the same in all national legislations; sceptical on how this can work. **SI:** the extension of the scope will make more difficult the proof of family membership. **FI:** the definition of a 'family member' is already stabilised in Finland and it is the same for all migrant groups. Different definitions for different migrant groups would cause problems on how to apply them and would add costs. **SE:** welcomes the extension but suggests to specify on when the family members referred to shall be present in the MS, at the time of application for asylum or at the time of the decision?

- (a) 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;
  - (b) the minor children of the couples referred to in point (a) 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;
  - (c) 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;
- (10) ‘minor’ means a third-country national or stateless person below the age of 18 years;<sup>21</sup>
- (11) ‘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, including a minor who is left unaccompanied after he or she has entered the territory of the Member States;
- (12) ‘residence permit’ means any permit or authorisation issued by the authorities of a Member State, in a form provided by Council Regulation (EC) No 1030/2002<sup>22</sup>, allowing a third-country national or stateless person to reside on its territory;<sup>23</sup>

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<sup>21</sup> **LU**: agrees in principle; however, scrutiny reservation given the link with Art. 21 APR.

<sup>22</sup> OJ L157, 15.6.2002, p.1.

<sup>23</sup> **DE, HU, MT, SE**: scrutiny reservation. **DE**: the definition in Council Regulation (EC) No 1030/2002 is different. Need to specify that it is not only the technical format. **COM**: the definition in 1030/2002 is to be used as regards the format.

- (13) 'country of origin' means the country or countries of nationality or, for stateless persons, of former habitual residence;
- (14) 'withdrawal of international protection' means the decision by a competent authority to revoke, end or refuse to renew the refugee or subsidiary protection status;<sup>24</sup>
- (15) 'subsequent application' means a further application for international protection made in any Member State after a final decision has been taken on a previous application, including where the applicant has explicitly withdrawn his or her application or where the determining authority has rejected an application as abandoned following its implicit withdrawal;<sup>25</sup>
- (16) 'determining authority' means any quasi-judicial or administrative body in a Member State responsible for examining applications for international protection and competent to take decisions at first instance in such cases;<sup>26</sup>

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<sup>24</sup> **BE:** refusal to renew should refer to permit not to status. **COM:** will come back to this. **IT:** definition not appropriate. **PL:** clarify definition of revoke, end and refuse to renew the refugee or subsidiary protection status. Considers that in the current version of QR, conceptual chaos is observed concerning withdrawal of international protection. **SE:** scrutiny reservation: need to clarify further "to revoke, end or refuse to renew". The terms relating to withdrawal of status that is used in the proposal (revocation ending of and refusal to renew) refugee status and status for subsidiary protection should be explained and added to the definition chapter. If "revokes" seeks to be a collective term for revocation regardless of the grounds for revoking a status (cessation or exclusion) this has to be clarified and the term used consistently throughout the proposal and not used interchangeably with withdrawal, end or refuse to renew. The terms "end" and "refusal to renew" are misleading. How do they relate to cessation or cancellation? These terms should not be used at all, given that all the grounds for withdrawing status are limited to grounds related to exclusion or cessation as per Art. 11 and 12. Refugee status and subsidiary status is valid until it has either ceased or has been cancelled based on application of any of the criteria for cessation or exclusion are met.

<sup>25</sup> **DE:** suggests that procedural provisions (e. g. definitions in Art. 2 concerning the subsequent application) be regulated exclusively in the APR, and not be repeated in the QR. **SE:** not entirely in line with Art. 4(2)(i) APR. **COM:** indeed, not in line with APR but should be in line, yes.

<sup>26</sup> **BE, PT:** clarify "at first instance" **COM:** better to say "administrative stage". **SE:** not entirely in line with Art. 4(2)(e) in APR.



- (17) 'social security' means the branches of social security as defined in Regulation (EC) No 883/2004 of the European Parliament and of the Council<sup>27</sup> covering sickness benefits; maternity and equivalent paternity benefits; invalidity benefits; old-age benefits; survivors' benefits; benefits in respect of accidents at work and occupational diseases; death grants; unemployment benefits, pre-retirement benefits and family benefits;<sup>28</sup>

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<sup>27</sup> Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (*OJ L 166, 30.4.2004, p. 1*).

<sup>28</sup> **BG, DE, IE, IT, LV, MT, NL, AT, FI, SE:** scrutiny reservation. **BG:** persons who are subject to equal treatment should be covered by Reg (EC) 883/2004 and Reg (EU) 1231/2010, regarding issues of coordination of social security systems. BG has repeatedly stated position on these issues in the field of legal migration that has been for adherence to the existing framework. **DE:** the term "social security" needs to be (more) clearly distinguished from the term "social assistance". This applies in particular to special non-contributory cash benefits, which, by definition pursuant to Art. 70 (1) of Reg 883/2004, have characteristics both of the social security legislation and of social assistance. DE cannot accept a provision in which the term "social security" covers special non-contributory cash benefits. It should be clarified that social security benefits granted in accordance with Art. 2 (17) cover neither benefits having characteristics of both social security and social assistance, nor active benefits granted for the purpose of improving integration and financed from public funds. **LV:** list not useful since there are different situations in MSs. Will refugees/beneficiaries of subsidiary protection have access to benefits which are not based on contributions (see Reg 883/2004)? **MT:** any reference to the definition of 'social security' in Reg (EC) No 883/2004 should be done with caution in view of the fact that the QR applies to all beneficiaries of international protection, while the Reg on the coordination of social security systems applies to refugees but not beneficiaries of subsidiary protection. MT does not agree with the newly introduced term 'social security' and would prefer if no reference to it is made in the proposal, and reference to 'social welfare' akin to the current QD is maintained. Therefore, MT would prefer if the definition of 'social security' and 'social assistance' is replaced with a definition of 'social welfare'.

- (18) 'social assistance' means benefits granted in addition to or beyond social security benefits as defined in point (16), with the objective of ensuring that the basic needs of those who lack sufficient resources are met;<sup>29</sup>
- (19) 'guardian' means a person or an organisation appointed by the competent bodies in order to assist and represent an unaccompanied minor in procedures provided for in this Regulation with a view to ensuring the best interests of the child and exercising legal capacity for the minor where necessary.]<sup>30</sup>

[...]

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<sup>29</sup> **BG, DE, IE, IT, LV, HU, MT, AT, FI, SE:** scrutiny reservation. **DE:** clarify that this assistance is granted by public bodies and is not conditional upon the beneficiary's own contributions. **MT:** prefers if the definition of 'social security' and 'social assistance' is replaced with a definition of 'social welfare'. **NL:** delete "in addition to or". **PT:** clarify what does 'social assistance' cover and how it fits in this text. **FI:** the wording seems to be in contradiction to the usual practice; usually the social assistance benefits are of last resort, whereas here it means benefits granted in addition to or beyond social security benefits.

<sup>30</sup> **BG, DE, AT, FI:** scrutiny reservation. **BG:** see position on Article 36. **DE:** clarify what is meant by "organisation". In addition, keep the term "legal representative"; MS should remain free to decide how representation is practised, especially in order to take sufficient account of practical requirements. The concept of "representation" without the immediate requirement of appointing a guardian ensures that the unaccompanied minor is legally represented already at an early stage at which for a lack of time alone a guardian could not have been appointed yet. **DE** proposes to address this issue in the broader context of reforming the CEAS and independently from the individual proposals for legislation. Also, the question of the appropriate regulatory place should be discussed. **ES:** does "guardian" apply to national realities? **FR:** "tuteur" (in French) to be translated by "representative" instead of "guardian" in English. **LU:** substantial reservation on the term "guardian"; prefers "representative" like in the current Directive. **HU:** to be aligned with APR definition. **NL:** 'guardian' is different from 'legal representative' who has a separate role in NL. **FI:** still examining; probably the term "representative" should be used in exchange for "guardian". **SE:** the description of the guardian's role has changed compared to the current Directive; does this mean greater requirements? **COM:** in the framework of this proposal, "guardian" is a representative for a person who has already received international protection; in the APR, "representative" is for a person who does not have protection yet; thus, different moments, different obligations.

# CHAPTER II

## ASSESSMENT OF APPLICATIONS FOR INTERNATIONAL PROTECTION

### *Article 4*

#### *Submission of information and assessment of facts and circumstances*

1. The applicant shall submit all the elements available to him or her which substantiate the application for international protection. **For that purpose, he** [...] or she shall cooperate with the determining authority and shall remain present and available throughout the procedure.<sup>31</sup>
2. The elements referred to in paragraph 1 shall consist of the applicant's statements and all the documentation at the applicant's disposal, **including as regards** [...] the applicant's age, background, including that of **family members and other** relevant relatives, identity, nationality(ies), country(ies) and place(s) of previous residence, previous applications [for international protection and results of any expedited resettlement procedure as defined by Regulation (EU) no XXX/XX [Resettlement regulation]], travel routes, travel documents and the reasons for applying for international protection.
3. The determining authority shall assess the relevant elements of the application in accordance with Article 33 of Regulation (EU)XXX/XXX [Procedures regulation].

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<sup>31</sup> LU: the obligation for the applicant to remain "present and available" throughout the whole procedure might need some derogations/exceptions to cover cases like illness, minors in school trip, etc.

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, shall be considered 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.<sup>32</sup>
5. Where aspects of the applicant's statements are not supported by documentary or other evidence, no additional evidence shall be required in respect of those aspects where the following conditions are met:
  - (a) the applicant has made a genuine effort to substantiate his or her 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;
  - (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<sup>33</sup> of suffering serious harm may be based on events which have taken place since the applicant left the country of origin.

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<sup>32</sup> **NL:** this paragraph should be moved to Art. 33 APR.

<sup>33</sup> **BE:** replace "risk" with "fear".

2. A well-founded fear of being persecuted or a real risk<sup>34</sup> 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.
- 2a. **When examining an application for international protection, the determining authority shall take into account whether the activities that the applicant has engaged in since leaving the country of origin were carried out by the applicant 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.**
3. [...]When carrying out the preliminary examination of a subsequent application [...] for international protection, the determining authority shall take due consideration whether an applicant's well-founded fear of being persecuted or the real risk of suffering serious harm is based on circumstances which the applicant has created by his or her own decision since leaving the country of origin **and therefore shall be subject to a more stringent assessment.**

#### *Article 6*

#### *Actors of persecution or serious harm*

Actors of persecution or serious harm can only be<sup>35</sup>:

- (a) the State;
- (b) parties or organisations controlling the State or a substantial part of the territory of the State;

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<sup>34</sup> **BE:** replace "risk" with "fear".

<sup>35</sup> **BE:** this is more than a lawyer-linguist change. **MT:** this list should not be exhaustive and the same wording as found in the current QD should be maintained.

- (c) non-State actors, if it can be demonstrated that the actors referred to in [...] **Article 7(1)** [...] are unable or unwilling to provide protection against persecution or serious harm [...].

*Article 7*

*Actors of protection*<sup>36</sup>

1. Protection against persecution or serious harm can only be provided by the following actors :
  - (a) the State;
  - (b) parties or organisations, including international organisations, controlling the State or a substantial part of the territory of the State,provided they are [...] **able** and [...] **willing** to offer protection in accordance with paragraph 2.
2. Protection against persecution or serious harm shall be effective and of a non-temporary nature. That protection shall be considered to be provided when the actors referred to in paragraph 1 take reasonable steps to prevent the persecution or suffering of serious harm, among others[...] 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 that protection.<sup>37</sup>

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<sup>36</sup> **FI:** scrutiny reservation.

<sup>37</sup> **SE:** add a sentence that clarifies that access to state protection is a presumption that may be reversed depending on the circumstances of the individual case.

3. When assessing whether **parties or organisations, including** international organisations, [...] **control** a State or a substantial part of its territory and provide[...] protection as referred to in paragraph 2, **the** determining [...] **authority** shall [...] **make sure to obtain precise and up-to-date information and guidance on the situation in the country of origin from all relevant available national, Union and international sources, including the European Union Agency for Asylum and UNHCR. The determining authority shall take into account available information on countries of origin at Union level, the common analysis of the situation in specific countries of origin and the guidance notes** referred to in Articles 8 and 10 of Regulation (EU) No XXX/XX [Regulation on the European Union Agency for Asylum].

*Article 8*

***Internal protection alternative***

1. As part of the assessment of the application for international protection, the determining authority shall<sup>38</sup> determine that an applicant is not in need of international protection if he or she can safely and legally travel to and gain admittance to a part of the country of origin and can reasonably be expected to settle there and if, in that part of the country, 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 **an effective and non-temporary** protection against persecution or serious harm.

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<sup>38</sup> **FR:** scrutiny reservation. The examination for internal protection has to remain optional in order to ensure that requests are assessed according to their own characteristics.

2. The assessment of the availability of internal protection shall be carried out once it has been established by the determining authority that the qualification criteria would otherwise apply.<sup>39</sup> The burden of demonstrating the availability of internal protection shall rest on the determining authority **without prejudice to the applicant's obligation to cooperate with the determining authority to this end. [...]**
3. 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, **the determining [...]** authority shall [...] **make sure to obtain precise and up-to-date information and guidance on the situation in the country of origin from all relevant available national, Union and international sources, including the European Union Agency for Asylum and UNHCR. The determining authority shall take into account available information on countries of origin at Union level, the common analysis on the situation in specific countries of origin and the guidance notes** referred to in Articles 8 and 10 of Regulation (EU) No XXX/XX [Regulation on the European Union Agency for Asylum] [...].
4. [...] When considering **the** personal circumstances of the applicant, [...] **the determining authority** shall [...] **take** into account **factors such as health, age, gender, including gender identity and sexual orientation, and social status of the applicant** together with an assessment of whether living in the part of the country of origin regarded as safe would impose undue hardship<sup>40</sup> on [...] **him or her**.

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<sup>39</sup> **DE**, supported by **BE**: reservation, as this provision stipulates an obligatory order of action. Pursuant to the present wording, refusal of international protection on grounds of the availability of internal protection always requires previous assessment and positive confirmation that the criteria for international protection are actually fulfilled. This seems to be inefficient, in particular in those cases in which it is obvious that generally there is an alternative possibility of internal protection in the country of origin.

<sup>40</sup> **BE, CZ, DE, AT**: delete text referring to "undue hardship".



# CHAPTER III

## QUALIFICATION FOR BEING A REFUGEE

### *Article 9*

#### *Acts of persecution*

1. An act shall be regarded as an act of persecution within the meaning of Article 1(A) of the **Geneva** Convention [...], where :
  - (a) it is 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) it is an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as referred to in point (a).
  
2. Acts of persecution as qualified in paragraph 1 may , among others, take the form of:
  - (a) acts of physical or mental violence, including acts of sexual violence;
  - (b) legal, administrative, police, [...]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 (3) 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. The following elements shall be taken 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) the concept of **membership of** a particular social group shall include, in particular<sup>41</sup>, **membership of** a group[...]:

- **whose** members 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
- [...] **which** 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, [...]that concept [...]may include **membership of** a group based on a common characteristic of sexual orientation [...]. Acts considered to be criminal in accordance with national law of the Member States **shall not be included under sexual orientation**.[...] 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.<sup>42</sup>

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<sup>41</sup> **BE:** considering the words "in particular", do MS have an option like they have under the current Directive?

<sup>42</sup> **SI:** scrutiny reservation.

3. When assessing if an applicant has a well-founded fear of being persecuted, the determining authority cannot reasonably expect an applicant to behave discreetly or abstain from certain practices, where such behaviour or practices are inherent to his or her identity, to avoid the risk of persecution in his or her country of origin.<sup>43</sup>

*Article 11*

*Cessation*<sup>44</sup>

1. A third-country national or a stateless person shall cease to be a refugee where one or more of the following apply:
- (a) the person has voluntarily re-availed<sup>45</sup> himself or herself of the protection of the country of nationality;
  - (b) having lost his or her nationality, the person has voluntarily re-acquired it;
  - (c) the person has acquired a new nationality, and enjoys the protection of the country of his or her new nationality;
  - (d) the person 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;

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<sup>43</sup> **ES:** scrutiny reservation on the impact of certain expressions, like "to behave discreetly", might have. **NL:** does this paragraph sufficiently cover the Case Law C-199/2012, especially for political activists? It could go against para (1)(e). **SE:** insert "(...) inherent to his or her identity *and constitute a manifestation of his or her human right*, to avoid (...)".

<sup>44</sup> **BG:** reservation on the whole article. Additional resources might be necessary for the review which could be difficult. **FR, AT:** scrutiny reservation. **IT:** this Art. is linked with Art. 8 and 14. Review creates administrative burden; establish a time-limit after which review cannot take place.

<sup>45</sup> **CZ:** specify the term "re-availed" so it could lead to a better application of the criteria for cessation.

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

Points (e) and (f) 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.<sup>46</sup>

2. When points (e) and (f) of paragraph 1 apply, the determining authority **shall:**
- (a) [...] 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;
  - (b) [...] **make sure to obtain precise and up-to-date information and guidance on the situation prevailing in the country of origin, from all relevant available national, Union and international sources, including the European Union Agency for Asylum and UNHCR;**
  - (ba) **take into account available information on countries of origin at Union level, the common analysis of the situation in specific countries of origin and the guidance notes referred to in Articles 8 and 10 of Regulation (EU) No XXX/XX [Regulation of the European Union Agency for Asylum].**

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<sup>46</sup> CZ: reservation.

*Article 12*  
***Exclusion***<sup>47</sup>

1. A third-country national or a stateless person shall be 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 Regulation;
  - (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 **equivalent** rights and obligations [...].
- 1a. **For the purposes of point (a) of paragraph 1, the determining authority shall verify whether the third-country national or stateless person has ever in fact availed himself or herself of the protection of organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees and that protection has ceased for reasons independent of his or her will. Those reasons may include personal security reasons or the impossibility, for such organs or agencies, of ensuring him or her minimum living conditions in accordance with their mandate.**

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<sup>47</sup> **EE, AT, RO:** scrutiny reservation on the whole Article. **AT:** Add further grounds for exclusion.

2. A third-country national or a stateless person shall be 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<sup>48</sup> 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 shall apply to persons who incite or otherwise participate in the commission of the crimes or acts mentioned therein.
4. [...]

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<sup>48</sup> **EL:** in accordance with the Geneva Convention the serious non-political crimes leading to exclusion from the refugee status are those committed outside the country of refuge. Serious non-political crimes committed within the country of refuge are to be dealt with in accordance with the penal system of the host country and should not lead to exclusion from international protection. This issue has been dealt with (by Greece) when transposing the recast Directive 2011/95 and a different phrasing was adopted, closer to the meaning of Art. 1 F of the Geneva Convention. EL suggests that this provision is rephrased as follows: "[...] outside the country of refuge prior to his or her admission as a refugee."

5. For the purposes of points (b) and (c)<sup>49</sup> of paragraph 2, [...]serious non-political crimes **shall include in particular:**<sup>50</sup>
- (a) particularly cruel actions when the act in question is disproportionate to the alleged political objective,
  - (b) terrorist acts, which are characterised by their violence towards civilian populations, even if committed with a purportedly political objective.
6. The exclusion of a person from refugee status shall depend exclusively on whether the conditions set out in paragraphs (1) to (5) are met and shall not be subject to any additional proportionality assessment in relation to the particular case.<sup>51</sup>
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<sup>49</sup> **EL:** scrutiny reservation. Clarification needed: what is the point of connecting the 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 with the serious crimes that have particularly cruel actions?

<sup>50</sup> **ES:** scrutiny reservation. To include the relevant case-law as this issue is particularly sensitive.

<sup>51</sup> **NL:** clarify whether these are objective criteria, not linked to the effects of the persecution.  
**FI:** scrutiny reservation.