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2016/0223 (COD)

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**

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE PROPOSAL**

#### **Context and reasons for the proposal**

The European Union is working towards an integrated, sustainable and holistic EU migration policy based on solidarity and fair sharing of responsibilities and which can function effectively both in times of calm and crisis. Since the adoption of the European Agenda on Migration,<sup>1</sup> the European Commission has been working to implement measures to address both the immediate and the long-term challenges of managing migration flows effectively and comprehensively.

The Common European Asylum System is based on rules determining the Member State responsible for applicants for international protection (including an asylum fingerprint database), common standards for asylum procedures, reception conditions, recognition and protection of beneficiaries of international protection. In addition, a European Asylum Support Office supports Member States in the implementation of the Common European Asylum System.

Notwithstanding the significant progress that has been made in the development of the Common European Asylum System, there are still notable differences between the Member States in the types of procedures used, the reception conditions provided to applicants, the recognition rates and the type of protection granted to beneficiaries of international protection. These divergences contribute to secondary movements and asylum shopping, create pull factors and ultimately lead to an uneven distribution among the Member States of the responsibility to offer protection to those in need.

Recent large scale arrivals have shown that Europe needs an effective and efficient asylum system able to assure a fair and sustainable sharing of responsibility between Member States, to provide sufficient and decent reception conditions throughout the EU, to process quickly and effectively asylum claims lodged in the EU, and to ensure the quality of the decisions made so that those who are in need of international protection effectively obtain it. At the same time, the EU needs to address irregular and dangerous movements and to put an end to the business model of smugglers. To this end asylum applications of those who are not entitled to international protection must, on the one hand, be dealt with quickly and these migrants must then be returned quickly. On the other hand, safe and legal ways to the EU for those from third countries who need protection need to be opened. It is also part of a wider partnership with priority countries of origin and transit.

On 6 April 2016, the Commission set out its priorities for a structural reform of the European asylum and migration framework in its Communication 'Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe',<sup>2</sup> outlining the different steps to be taken towards a more humane, fair and efficient European asylum policy as well as a better managed legal migration policy.

On 4 May 2016, the Commission presented a first set of proposals to reform the Common European Asylum System delivering on three priorities identified in its Communication: establishing a sustainable and fair Dublin system for determining the Member State

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<sup>1</sup> COM(2015) 240 final.

<sup>2</sup> COM(2016) 197 final.

responsible for examining asylum applications,<sup>3</sup> reinforcing the Eurodac system to better monitor secondary movements and facilitate the fight against irregular migration<sup>4</sup> and establishing a genuine European Agency for Asylum to ensure the well-functioning of the European asylum system.<sup>5</sup> These proposals were the first building blocks to reform the structure of the Common European Asylum System.

With the second package, the Commission is completing the reform of the Common European Asylum System by adopting four additional proposals: a proposal replacing the Asylum Procedures Directive with a Regulation,<sup>6</sup> harmonising the current disparate procedural arrangements in all Member States and creating a genuine common procedure; a proposal replacing the Qualification Directive<sup>7</sup> with a Regulation,<sup>8</sup> setting uniform standards for the recognition of persons in need of protection and the rights granted to beneficiaries of international protection as well as a proposal revising the Reception Conditions Directive<sup>9</sup> to further harmonise reception conditions in the EU, increase applicants' integration prospects and decrease secondary movements. Finally, following-up on the commitment to enhance legal avenues to the EU as announced on 6 April 2016, the Commission is also proposing a structured Union resettlement framework, moving towards a more managed approach to international protection within the EU, ensuring orderly and safe pathways to the EU for persons in need of international protection, with the aim of progressively reducing the incentives for irregular arrivals<sup>10</sup>.

These proposals are an indispensable part of the comprehensive reform of the Common European Asylum System and are closely interlinked. With this second stage of legislative proposals reforming the asylum *acquis*, all the elements of a solid, coherent and integrated Common European Asylum System, based on common, harmonised rules that are both effective and protective, fully in line with the Geneva Convention, are now on the table.

The Common European Asylum System that we are further developing is both effective and protective and is designed to ensure full convergence between the national asylum systems, decreasing incentives for secondary movements, strengthening mutual trust between Member States and leading overall to a well-functioning Dublin system.

It guarantees that, wherever they are in the EU, asylum seekers are treated in an equal and appropriate manner. It provides for the tools needed to ensure quick identification of persons in genuine need of international protection and return of those who do not have protection needs. It is generous to the most vulnerable and strict towards potential abuse, while always respecting fundamental rights. The common system is finally cost-effective and flexible enough to adapt to the complex challenges Member States have in this area.

### **Objectives of the present proposal**

The Qualification Directive sets out criteria for applicants to qualify for asylum and subsidiarity protection, and rights for persons who benefit from these statuses. While the

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<sup>3</sup> COM(2016) 270 final.

<sup>4</sup> COM(2016) 272 final.

<sup>5</sup> COM(2016) 271 final.

<sup>6</sup> OJ L 180, 29.6.2013, p. 60.

<sup>7</sup> OJ L 337, 20.12.2011, p. 9.

<sup>8</sup> OJ L [...], [...], p. [...].

<sup>9</sup> OJ L [...], [...], p. [...].

<sup>10</sup> OJ L [...], [...], p. [...].

existing recast Qualification Directive<sup>11</sup> has contributed to some level of approximation of the national rules, it appears that recognition rates still vary between Member States and there is equally a lack of convergence as regards decisions on the type of protection status granted by each Member State<sup>12</sup>. In addition, there is a considerable variation among Member States' policies in the duration of the residence permits granted, as well as regards to access to rights. Moreover, the current provisions on cessation of status are not systematically used in practice, which means that Member States do not always ensure that international protection is granted only for so long as the risk of persecution or serious harm persists, even though EU law provides for this. Finally, some of the rules in the recast Qualification Directive, providing common criteria for recognising applicants, are optional by their nature (i.e.: the duty of the applicant to substantiate the application, the rules relating to an assessment of internal protection, optional withdrawal grounds) and allow Member States a wide degree of discretion.

The above **differences in recognition rates and in the level of rights in the national asylum systems attached to the protection status concerned** provide strong indication of the need for a more harmonised approach. These differences can create incentives for applicants for international protection to claim asylum in Member States where those rights and recognition levels are perceived to be higher than others rather than in the Member State which would be responsible for their applications under the Dublin rules. In addition there is also need to address possible secondary movements of beneficiaries of international protection by clarifying that they are to reside in the Member States which granted them protection.

The absence of checks on the continued need for protection gives the protection a de facto permanent nature, thereby creating an additional incentive for those in need of international protection to come to the EU rather than to seek refuge in other places, including in countries closer to their countries-of-origin.

Given the demonstrated need for harmonisation and the scope of proposed changes, it is proposed to replace the current Directive with a Regulation. Given its direct applicability this change in itself will contribute to further convergence and will ensure coherence with the proposed Asylum Procedures Regulation as well.

In view of the above, the proposal aims at:

1. **Further harmonisation of the common criteria** for recognising applicants for international protection by providing for more prescriptive rules and replacing the current optional ones as regards the duty of the applicant to substantiate the application, the assessment of internal protection alternatives and the grounds for withdrawal of the status in case the beneficiary of international protection represents

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<sup>11</sup> Directive 2011/95/EU 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) (hereafter the "recast Qualification Directive).

<sup>12</sup> For instance, during the period between January and September 2015, the recognition rates for asylum seekers from Afghanistan varied from almost 100% in Italy to 5.88% in Bulgaria (Eurostat). As regards the differences between the type of status granted, EASO data for the 2<sup>nd</sup> quarter of 2015 showed that Germany (99%), Greece (98%) and Bulgaria (85%) were giving refugee status to almost all Syrian nationals, whereas Malta (100%), Sweden (89%) Hungary (83%) and Czech Republic (80%) gave them subsidiary protection status. [https://easo.europa.eu/wp-content/uploads/Quarterly-Asylum-Report-2015\\_Q2\\_Final.pdf](https://easo.europa.eu/wp-content/uploads/Quarterly-Asylum-Report-2015_Q2_Final.pdf).

a danger to the security of the Member State or has been convicted of a particularly serious crime.

2. **More convergence of the asylum decisions** across the EU by obliging determining authorities of the Member States, when assessing applications, to take into account the common analysis and guidance on the situation in the country of origin, provided at Union level by the European Union Agency for Asylum and the European networks on country of origin information in accordance with the new provisions of the proposed Regulation on the European Union Agency for Asylum<sup>13</sup>.
  3. Ensuring protection is granted only for as long as the grounds for persecution or serious harm persist, without affecting person's integration prospects. The proposal imposes obligations upon Member States to carry out systematic and regular status reviews in case of significant changes in the situation in the country of origin as well as when they intend to renew the residence permits, for the first time for refugees and for the first and second time for beneficiaries of subsidiary protection. At the same time, within the framework of their entitlement to protection, it is essential that Member States promote the integration of beneficiaries into their societies. In this respect, the proposal clarifies the scope of the rights and obligations of beneficiaries of international protection. It also provides incentives for their active integration while protection is granted by allowing Member States to make the granting of certain social assistance conditional on effective participation in integration measures in line with the Action Plan on integration<sup>14</sup>. Finally, decisions ending refugee or subsidiary protection status shall take effect only after a period of three months providing persons whose status has been withdrawn with an effective opportunity to apply for another legal status, such as for work related purposes.
  4. **Addressing secondary movements of beneficiaries of international protection**, by clarifying the obligations of a beneficiary to stay in the Member State which has granted protection and providing for additional disincentives through the modification of the Long-term Residents Directive<sup>15</sup>, by restarting the calculation of legal residence required there in case the beneficiary is found in another Member States without the right to reside or stay.
  5. **Further harmonising the rights of beneficiaries of international protection**, in particular as regards the validity and format of the residence permits and by clarifying the scope of the rights and obligations of beneficiaries, in particular as regards social security and social assistance.
- **Consistency with existing policy provisions in the policy area**

This proposal, as was the case for its predecessor the recast Qualification Directive, is an essential part of the Common European Asylum System and is fully consistent with the first proposals to reform the Common European Asylum System presented on 4 May 2016 and with proposals for reforming the Asylum Procedures and Reception Conditions Directives, including a proposal to transform the former into a Regulation, and a proposal for the establishment of a structured Union resettlement system.

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<sup>13</sup> COM (2016) 271 final.

<sup>14</sup> COM (2016) 377 final.

<sup>15</sup> Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L 16, 23.1.2004, p. 44–53.

The proposal builds on the provisions of the proposal for a European Asylum Agency insofar as it obliges the determining authorities of the Member States to take into account, when assessing asylum applications, the country of origin information which it gathers and the common analysis and guidance to be issued by the Agency on such country of origin information. In addition, significant relevant changes in this common analysis and guidance are set as triggers for reviewing the status of beneficiaries on international protection.

With regards to the rights and obligations of applicants for international protection, the explicit obligation for them to substantiate the application with all the available elements and to cooperate mirrors the relevant provisions of the proposal to revise the Dublin Regulation<sup>16</sup>.

As regards the Asylum Procedures Regulation the two proposals are complementary to one other insofar the proposal sets the criteria for qualification and grounds for withdrawal while the Asylum Procedures Regulation provides for the procedural rules for the applications for international protection.

- **Consistency with other Union policies**

This proposal is consistent with the comprehensive long-term policy on better migration management as set out by the Commission in the European Agenda on Migration<sup>17</sup>, which developed President Juncker's Political Guidelines into a set of coherent and mutually reinforcing initiatives based on four pillars. Those pillars consist in reducing the incentive for irregular migration, securing the Union's external borders and saving lives, as well as ensuring a strong asylum policy and a new policy on legal migration. This proposal, which further implements the European Agenda on Migration as regards the objective of strengthening the Union's asylum policy should be seen as part of the broader policy at EU level towards building a robust and effective system for sustainable migration management for the future that is fair for host societies and EU citizens as well as for the third country nationals concerned and countries of origin and transit.

In addition, the proposed changes to the possible integration incentives can contribute to the objectives of the Integration Action Plan<sup>18</sup>.

- **LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

In view of the objective of the proposal to ensure, on the one hand, that Member States apply common criteria for the qualification of persons genuinely in need of international protection, and, on the other hand, that a common set of rights is available for those persons in all Member States, the legal basis is Article 78(2) (a) and (b) of the Treaty on the Functioning of the European Union (TFEU). These provisions establish that the EU enjoys powers to develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties.

Within these powers the EU can adopt measures providing for, *inter alia*:

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<sup>16</sup> COM(2016) 27 final.

<sup>17</sup> COM(2015)240 final.

<sup>18</sup> COM(2016)377 final.

(a) a uniform status of asylum for nationals of third countries, valid throughout the Union, and  
(b) a uniform status of subsidiary protection for nationals of third countries who, without obtaining European asylum, are in need of international protection.

Article 79 (2) (a) of the TFEU is added as a legal base due to the proposed amendment to the Long-Term Residents Directive 2003/109/EC related to beneficiaries of international protection.

- **Subsidiarity (for non-exclusive competence)**

The current lack of convergence in the recognition rates and the differing status of protection granted to asylum seekers with similar claims within the EU, the duration of the residence permits, as well as the level of rights ensured to those granted international protection can incentivise "asylum shopping" and secondary movements within the EU.

The objective is to replace the current Directive with a Regulation in view of facilitating greater convergence in the way similar asylum claims are decided and as regards the content of international protection granted, thus reducing incentives to move within the EU and ensuring that beneficiaries of international protection are treated equally across the EU.

Given that the Common European Asylum System entails common standards across the EU for all asylum seekers and beneficiaries of international protection, these objectives cannot be dealt with by Member States individually. Action at EU level is needed to help facilitate more convergence in terms of asylum decisions within the EU and mitigate these consequences.

Member States remain free to grant other forms of protection under national law.

- **Proportionality**

In accordance with the principle of proportionality, as set out in Article 5 of the Treaty on European Union, this Regulation does not go beyond what is necessary in order to achieve its objectives.

Despite the achievement of an important level of harmonisation by the adoption of Directives 2004/83/EC and 2011/95/EU, there is still considerable difference both as regards the recognition rates and type of protection status granted by each Member State as well as the content of the protection. Moreover, despite the obligation to withdraw the status when the risk of persecution or serious harm ceases, there are currently only few systematic status reviews by the Member States. Finally, the optional rules in the current Directive (i.e.: the duty of the applicant to substantiate the application, the rules relating to the assessment of internal protection, optional withdrawal grounds) provide for a degree of discretion in manner in which asylum claims are assessed.

More harmonised rules on qualification as well as on the content of protection will contribute to more convergence of the asylum decisions in the Member States and thereby to a better functioning of the Common European Asylum System, including a sustainable and fair system for determining the Member State responsible for asylum seekers as foreseen by the proposed revision of the Dublin Regulation.

The proposed changes do not go beyond what is necessary to achieve the purported objectives and concern areas where further harmonisation will have significant impact. In addition, the new provisions requesting the determining authorities in the Member States to take into account the common analysis and guidance provided by European Union Agency for Asylum on the situation in a given country of origin respond to the need to address a lack of adequate convergence as regards the asylum decisions adopted. The strengthening of the provisions on

the cessation of the refugee or subsidiary protection status intends to tackle the fact that such provisions were already contained in the recast Qualification Directive but were not systematically applied by Member States. It is also proposed to clarify the rules concerning both the qualification for international protection status and the content of such status in the light of the case law of the Court of Justice of the European Union (CJEU), to clarify the scope of the rights granted, and to provide for harmonisation where needed, in particular as regards the validity and format of the residence permits and to provide for integration incentives in relation to social assistance. Finally, the change to the EU Long-term Residents Directive is proposed in order to discourage irregular movements of beneficiaries of international protection within the EU, without going beyond what is necessary to obtain a deterrent effect.

- **Variable geometry**

The United Kingdom and Ireland are bound by the first Qualification Directive (Directive 2004/83/EC) following the notification of their wish to take part in the adoption and application of that Directive based on the Protocol 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. They have not opted in to the recast Qualification Directive (Directive 2011/95/EU). In accordance with the above-mentioned Protocol, the United Kingdom and Ireland may decide to take part in the adoption of this proposal. They also have this option after adoption of the proposal.

Under the Protocol on the position of Denmark, annexed to the TEU and the TFEU, Denmark does not take part in the adoption by the Council of the measures pursuant to Title V of the TFEU (with the exception of "measures determining the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States, or measures relating to a uniform format for visas").

The participation of the United Kingdom, Ireland and Denmark in the arrangements laid down in this proposal repealing the recast Qualification Directive 2011/95/EU, will be determined in the course of negotiations in accordance with these Protocols. These Protocols notably allow the United Kingdom and Ireland, but do not require them, to opt into initiatives in the policy area of freedom, security and justice while respecting their operability.

- **Choice of the instrument**

It is proposed to replace the current recast Qualification Directive with a Regulation, in view of achieving more convergence in asylum decision-making, by changing the present optional rules providing common criteria for recognising asylum applicants to obligatory rules, by further clarifying and specifying the content of international protection (in particular as regards the duration of residence permits and social rights) and by establishing rules aimed at preventing secondary movements.

The original Qualification Directive 2004/83/EC had already been recast, which resulted in the present recast Qualification Directive (2011/95/EU). While the instrument of a Directive has contributed to a considerable degree of approximation of the national rules, it appears nevertheless that recognition rates still vary between Member States and there is equally a lack of adequate convergence as regards the type of protection status granted.



In line with what has been announced in the Commission Communication of 6 April 2016 "Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe", in addition to the substantive changes to the current recast Qualification Directive, the form of the legal instrument is changed to a Regulation. This change in itself will contribute to further convergence by removing differences in transposition and ensuring direct applicability of the rules. Moreover this change will ensure coherence with the proposed Asylum Procedures Regulation, which is also proposed to be transformed into a Regulation.

### **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

#### **• Ex-post evaluations of existing legislation**

The European Commission commissioned two external studies in 2015<sup>19</sup>, one of which is focusing on the application of the present Qualification Directive by the Member States, and the other examining implementation problems, identifying shortcomings and assessing whether the current recast Qualification Directive has led to greater convergence in Europe. The Commission has been liaising closely with the contractors during the carrying out of this study, and has been able to draw on some of its tentative findings for the purposes of preparing the present proposal.

The study on implementation has found that the current recast Qualification Directive has in some areas contributed to a higher level of approximation of the national rules. However, it appears that in other fields, its practical application still varies significantly, leading to different outcomes from asylum applications across Member States in terms of recognition rates, even when applicants come from the same country of origin. Significant differences in the application of the recast Qualification Directive's provisions are noted regarding the way facts and circumstances of applications are assessed, the assessment of '*sur place*' applications and of protection alternatives and the application of the cessation clauses.

Furthermore, the set-up and application of country of origin information and safe country of origin lists, as well as the assessment of the credibility of the applicant during the examination of his or her well-founded fear of persecution or serious harm is noted as one of the main reasons behind the differences in recognition rates within the EU. The study also concludes that a higher level of harmonisation has been achieved with regard to aligning the content of rights granted to subsidiary protection beneficiaries with refugees (e.g. concerning access to employment, access to education or access to healthcare). However, variation among Member States' practices in granting rights to refugees and beneficiaries of subsidiary protection remains in some countries regarding the granting of residence permits, travel documents, social assistance, the type and quality of integration programmes as well as repatriation assistance. Such differences are, on the one hand, the result of different interpretations of the provisions and, on the other hand, related to the extent to which Member States had transposed certain 'may' clauses - in the form of optional limitations or the possibility for more favourable rules - into national legislation.

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<sup>19</sup> To be published shortly.

- **Stakeholder consultations**

Following its Communication of 6 April 2016, 'Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe'<sup>20</sup>, the Commission launched a debate on the options for the future reform of the EU asylum rules.

In that context the Commission services discussed the Communication with Member States, non-governmental organisations (NGOs) and UNHCR in May, with the coordinators of the European Parliament's Committee on Civil Liberties in June 2016. The European Parliament has equally held a debate on the Communication in its plenary session on 11 May. Written contributions were also received.

Member States generally expressed support for further harmonisation. As regards the ways to achieve more convergence in relation to recognition rates and types of protection status granted, the focus was put on the importance of practical cooperation and the Agency guidelines.

As regards review of the protection status after it has been granted, there has been support in particular as regards a review triggered by a change in EU level Country of origin information. At the same time some Member States warned of the administrative burden it could entail if there were to be a general and explicit obligation to do a cessation check each time a residence permit is renewed.

There has been also support for further harmonising the duration of the permits issued. However, a number of Member States indicated that the possibility to issue residence permits on other grounds (humanitarian or legal migration ground) upon cessation of the protection status should not be undermined, and of the importance of not unduly undermining integration prospects via the perception that the protection may only be temporary.

On the level of rights granted to beneficiaries, Member States did not generally support the idea of further differentiating between the two international protection statuses. Some Member States has asked for more flexibility as regards social welfare and health care while others stressed that there is room for further harmonisation as regard family reunification of subsidiary protection beneficiaries.

On secondary movements, there was some support for enhancing the provision of information regarding the obligation to remain resident in the Member State granting protection, so that the consequences of secondary movement are clear to the beneficiary.

On integration measures, the possibility of obliging beneficiaries to take part in offered language/civic orientation courses was referred to.

The coordinators of the Committee on Civil Liberties of the European Parliament cautioned against any lowering of standards. As regards the proposed status review, concerns were expressed as to its effect on integration prospects of beneficiaries. It has been also stressed that any measure to be taken must be proportionate and in conformity with the European Convention of Human Rights and the Charter of Fundamental Rights. Finally as regards free movement rights, it has been mentioned that beneficiaries should be eligible to the EU-long-term resident status (Directive 2003/109) before the current five years period, in order to enable them to enjoy free movement rights.

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<sup>20</sup> COM (2016) 197 final.

NGOs in general were not in favour of further harmonisation, fearing a lowering of standards, and expressed preference for better implementation of the current provisions and setting guidelines by the Agency. In the event of changing the current provisions, NGO's have expressed the need to fortify the applicants' rights.

On convergence, NGOs in general showed no support for the idea of making the application of the internal protection clause obligatory and did not support plans on obligatory cessation reviews, warning of negative effects to integration prospects and of creating an unnecessary administrative burden.

On rights, NGOs advocated to keep the more favourable treatment possibilities, including as regards the duration of permits and arguing against any further differentiation between refugee and subsidiary protection statuses.

On secondary movements, NGOs were not supportive of introducing sanctions, but instead underlined the need to better understand the reasons for secondary movement first and consider incentives. On plans to spell out more the information obligations of Member States, they supported more detailed rules.

On family reunification, NGOs stressed the need to assimilate the rights of subsidiary protection beneficiaries to those of refugees.

- **Collection and use of expertise**

In addition to the Commission studies on the application and implementation of the recast Qualification Directive, relevant publications of EASO have been used for the preparation of this proposal, in particular the data collection as part of the "Quality matrix" on eligibility and exclusion, as well as EASO practical guide on Article 15 (c) and judicial analysis on the Article 12 and 17 of the recast Qualification Directive.

- **Fundamental rights**

The proposed 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. The proposal respects the prohibition of refoulement, as spelled out by Article 19 of the EU Charter, also when assessing asylum applications in relation to internal protection. The proposal strengthens the procedural guarantees, by spelling out the burden of demonstrating that the availability of internal protection rest on the determining authority and that the assessment is to be carried out once it has been established that the qualification criteria would otherwise apply.

The proposal equally respects the provisions on social assistance as provided for in Article 34 (3) of the Charter and Article 23 of the Geneva Convention, when allowing Member States to condition the granting of certain social assistance upon effective participation in integration measures and to impose residence conditions in relation to receiving certain social benefits, albeit requiring that such conditions can only be applied with the objective of facilitating the integration of beneficiaries of international protection.

The rights of women and babies during pregnancy, delivery and post-partum have in particular been taken into account. The proposal also takes into account Member States obligations under the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention). In the light of the Commission's proposals for Council decisions for the signing and conclusion of the Istanbul Convention, and in view of guaranteeing women in need of international protection who have been subject to gender-based violence with a suitable level of protection, a gender-sensitive approach should be adopted when interpreting and applying this Regulation and will in any event be required after the conclusion of the Istanbul Convention by the EU.

#### **4. BUDGETARY IMPLICATIONS**

This proposal does not impose any financial or administrative burden on the Union. Therefore it has no impact on the Union budget.

#### **5. OTHER ELEMENTS**

- **Monitoring, evaluation and reporting arrangements**

The Commission shall report on the application of this Regulation to the European Parliament and to the Council within two years from its entry into force and every five years after that. Member States shall be required to send relevant information for drafting that report to the Commission and to the European Union Agency for Asylum. The Agency will also be monitoring compliance with this Regulation by Member States through the monitoring mechanism which the Commission proposed to establish in its revision of the mandate of the Agency.<sup>21</sup>

- **Detailed explanation of the specific provisions of the proposal**

It is proposed to replace the current recast Qualification Directive with a Regulation. However, the content of the Directive is only changed a) in view of the political objectives listed in point 1, b) to the extent it was necessary to adapt its language to enable it to be directly applicable and c) to the extent that the existing provisions may need to be clarified in the light of relevant case law. Therefore the explanations below only concern those provisions where substantive changes have been introduced compared to the current recast Qualification Directive.

1. Further harmonisation of the common criteria for recognising applicants for international protection

#### **Article 3 -Material scope**

The scope of the Regulation continues to be twofold: on the one hand, setting out the standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection and on the other setting out the content of the international protection which they are granted. Given that the choice of instrument of this proposal is a Regulation, there is no longer a provision allowing Member States to grant more favourable treatment. However Article 3 (2) states that Member States are free to grant a national humanitarian status to those who do not qualify under the present Regulation. In addition it is clarified, in a corresponding recital, that Member States can introduce national measures

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<sup>21</sup> COM (2016) 271 final.

beyond what is regulated by the current Regulation, but only in a way which does not undermine the application of its provisions.

#### **Article 4 -Assessments of the facts**

Article 4 (1) establishes the obligation of the applicant for international protection to substantiate the application; therefore the applicant is explicitly obliged to provide all the elements available to him or her, to cooperate and - mirroring the relevant provisions of the Dublin proposal<sup>22</sup> and that of the proposal for an Asylum Procedures Regulation - to remain present on the territory of the Member State throughout the procedure.

#### **Article 5- International protection needs arising sur place**

Article 5 (3) has now been extended to permit Member States not to grant subsidiary protection status or refugee status, where an applicant for international protection files a subsequent application based on circumstances which he has created by his/her own decision since leaving the country of origin.

#### **Article 8- Internal protection**

Article 8 (1) provides for a new obligation to assess the possibility of internal protection and if the conditions that he or she can safely and legally travel to, gain admittance to and can reasonably be expected to settle in another part of the country of origin are fulfilled, to determine that the applicant is not in need of international protection. In addition to establishing the obligation related to the assessment of international protection, safeguards have been equally added by Article 8(4) to clarify how to assess the asylum application in this regard.

#### **Article 10- Reasons for persecution**

In accordance with relevant case law of the Court of Justice of the European Union<sup>23</sup> Article 10 (3) clarifies that a 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.

#### **Article 12-Exclusion**

More detailed provisions are added to Article 12 (5) on the basis of Court of Justice of the European Union<sup>24</sup> to clarify that the commitment of certain crimes (particular cruel actions and terrorist acts) are a basis for exclusion from being a refugee even if committed with a political objective.

Article 12 (6), also clarifies on the basis of the Court of Justice of the European Union<sup>25</sup> that the exclusion of a person from refugee status shall depend exclusively on whether the conditions under this Article are met and cannot be subject to any additional proportionality assessment.

2. More convergence of the asylum decisions across the EU by obliging determining authorities of the Member States to take into account the European Union Agency for Asylum guidance

#### **Article 7- Actors of protection**

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<sup>22</sup> COM (2016) 27 final.

<sup>23</sup> C-199/12.

<sup>24</sup> C-57/09.

<sup>25</sup> C-57/09.

As a means of reaching more convergence in asylum decision making practices across the EU, when assessing whether an international organisation controls a State or a substantial part of its territory, Article 7 (3) establishes the obligation for the determining authorities to base themselves on Union guidance in particular the common analysis and guidance on the situation in the country of origin provided by the European Union Agency for Asylum and the European networks on country of origin information. The proposal on the European Union Agency for Asylum (Articles 8 and 10 of Regulation<sup>26</sup> provides for competence to issue such common analysis and guidance, which is then cross-referred in Article 7(3). (hereinafter referred as the Agency guidance).

### **Article 8- Internal protection**

In order to ensure convergence of asylum decisions related to internal protection, similarly to the technique used in Article 7(3), the determining authorities of Member States are obliged to take into account, among other information, the Agency guidance.

### **Article 11 and 17 –Cessation of refugee and subsidiary protection status**

Article 11 (2) (b) as regards the cessation of the refugee status, and Article 17 (2) (b) as regards the subsidiary protection status provides for the obligation for determining authorities to base themselves on the Agency guidance when assessing whether refugees and beneficiaries of subsidiary protection respectively have ceased to be eligible to the international protection status granted to them.

#### 3. Introducing systematic and regular status reviews

### **Article 14 and Article 20 - Revocation of, ending of or refusal to renew refugee and subsidiary protection statuses respectively**

Article 14 (1) and Article 20 (1) oblige the determining authorities to revoke, end or refuse to renew the status when protection needs have ceased or when exclusion grounds become applicable after the protection has been granted. A status review is therefore needed in order to check whether the eligibility criteria (fear of persecution, indiscriminate violence) are still met.

### **Article 15 and Article 21 - Review of the refugee and subsidiary statuses respectively**

The proposal introduces triggers for such reviews, a substantive one and another one ensuring regularity. Therefore it is proposed to oblige determining authorities to perform such reviews, when there is a significant relevant change in the country of origin which is reflected in an EU level documents; i.e.: in the Agency guidance (Article 15 (1) (a) and Article 21 (1) (b)) and when they renew the residence permits for the first time for refugees and for the first and second time for beneficiaries of subsidiary protection (Article 15 (1) (a) and Article 21 (1) (b)). Such reviews should not cause additional administrative burden for the national administrations, given that they are well targeted and prescribed to situations where a decision on the renewal of the residence permit has in any event to be taken -or in cases of a reported significant change in the situation in a specific country of origin. Therefore this proposal will achieve a higher level of harmonisation and control while avoiding the creation of unnecessary burden for the Member States.

A three months' grace period is proposed (in Articles 14 (5) and 20 (3)) in case the status is revoked due to change of circumstances so to give the person the opportunity to try to change his/her status if other grounds justify it (family, work, study, humanitarian ground etc.).

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<sup>26</sup> COM(2016)271 final.

4. Addressing secondary movements, by clarifying the obligations of a beneficiary to stay in the Member State which has granted protection and providing for additional disincentives through the modification of the Long term resident Directive.

#### **Article 29 - Movement within the Union**

Article 29 provides that, as a general rule, a beneficiary of international protection is obliged to reside in the Member States which granted protection and together with Article 44 provides disincentives if the beneficiary is found in another Member State without the right to stay or reside there. Article 29 (2) makes reference to the proposed provisions of the Dublin Regulation (Article 20(1)e), in this regard. In addition it is proposed to amend the Long Term Residents Directive 2003/109/EC and to provide that the 5-year period after which beneficiaries of international protection are eligible for the Long Term Resident status should restart 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. It is expected that this proposed measure will be an incentive for beneficiaries of international protection to comply with the rules and to avoid unauthorised secondary movements, since otherwise they would risk prolonging the waiting period for the acquisition of the long-term resident status and the related right to intra-EU mobility.

Article 29 also confirms that the relevant Schengen provisions allow the beneficiary to stay - when the conditions of Article 21 of the Convention Implementing the Schengen Agreement are fulfilled - in another Member State applying the Schengen acquis in full for a period of 90-days in any 180 day period. In addition the Article also clarifies that the beneficiary can apply to reside in another Member State under other applicable EU rules (as it is proposed in the proposal on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment<sup>27</sup> or if national rules of the Member States allow it.

#### **Article 24 - Information**

Article 24 provides for reinforced rules on information, in order to ensure that the beneficiary of international protection is aware of his/her rights and obligations and in particular as regards the provisions on movement within the Union. To this end, an implementing act is proposed to establish uniform rules on the content and form of the information to be provided across the EU.

5. Further harmonising the rights of beneficiaries of international protection

#### **Article 22 - General rules**

Chapter VII provides for the content of protection and displays the rights and obligations on three sections, as general provisions, residence related and integration related rights. Changes provide for more harmonisation by providing uniform rules with special regard to residence permits and travel documents, as well as, clarify the scope of the rights to be given access to with special regard to social rights.

While the recognition of the refugee status is a declaratory act, it is explicitly clarified in Article 22(3) that certain rights (access to employment and social security) can be made conditional on the presence of the residence permit.

#### **Article 25 - Family unity**

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<sup>27</sup> COM(2016) 378 final.

As regards family unity (Article 25), the scope of family members is extended to 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 corresponding recital on family unity clarifies that these provisions are *lex specialis* as regards to the rules of the Family Reunification Directive.

### **Article 26 - Residence permits**

As regards residence permits, Article 26 provides for a new explicit harmonisation of both the validity period and the format of the residence permit, but keeping the difference between beneficiaries of subsidiary protection and refugees. For subsidiary protection, the residence permit will be valid for 1 year renewable for 2 years (1+2+2 years formula) and for refugees the residence permit will be valid for 3 years renewable for 3 years (3+3+3 year formula).

### **Article 27 - Travel document**

The minimum security and biometric features of the travel documents are proposed to be harmonised as well under Article 27, by obliging the Member States to issue travel documents with a minimum one year validity, which makes such travel documents fall under the technical harmonisation rules of the regulation No 2252/2004.

### **Article 28 - Freedom of movement within the Member State**

As regards freedom of movement within a Member State, Article 28 (2) codifies case law of the Court of Justice of the European Union<sup>28</sup> by introducing the possibility for Member States to set residence conditions where those residence conditions are needed to facilitate integration.

### **Article 30 - Access to employment**

The Article on access to employment (Article 30) further clarifies employment related equal treatment rights, spelling out collective labour rights added and health and safety at the work place and facilitation obligation of the Member State are better articulated as well.

### **Article 32 - Access to procedures for recognition of qualifications and validation of skills**

As regards the provisions on recognition of qualification (Article 32 (1) and (2)), equal treatment and facilitation obligation are better articulated and as regards validation of skills, the equal treatment obligation is separately displayed to mark the difference between the two schemes.

### **Article 33 - Social security**

The scope of social security is clarified for the sake of legal clarity by a cross reference to the social security coordination regulation (Article 2 (17)).

6. Strengthening integration incentives for the beneficiaries of international protection

### **Article 34 - Social assistance**

Social assistance is now defined in Article 2(18) on the basis of case law<sup>29</sup>. The current possible limitation of the granting of social assistance to core benefits in respect of beneficiaries of subsidiary protection is kept. Core benefits are to be understood to cover at least minimum income support, assistance in case of illness, or pregnancy, and parental assistance if these benefits exist and granted to nationals.

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<sup>28</sup> Case C-443/14.

<sup>29</sup> Case C-140/12.



In addition to these limitations, as a measure to provide for integration incentives, it is proposed in Article 34 to allow Member States to condition the granting of certain social assistance to the effective participation in integration measures for all beneficiaries of international protection.

#### **Article 38 - Access to integration facilities**

Therefore, as a corresponding measure a possible obligation for the beneficiaries to participate in integration measures is established in Article 38. However, when obliging beneficiaries of international protection to effectively participate in integration measures in accordance with relevant case law of the Court of Justice of the European Union, Member States should take into account individual hardship<sup>30</sup>.

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<sup>30</sup> Case C-579/13.

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**

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,

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>31</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 (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

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<sup>31</sup> OJ L 337, 20.12.2011, p. 9.

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.

- (4) In its Communication of 6 April 2016,<sup>32</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>33</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.
- (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 national 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.

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<sup>32</sup> COM (2016) 197 final.

<sup>33</sup> EUCO 19.02.2016, SN 1/16.

- (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>34</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.
- (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.

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<sup>34</sup> COM(2016)271 final.

- (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.
- (22) In particular, it is necessary to introduce common concepts of protection needs arising from place, sources of harm and protection, internal protection and persecution, including the reasons for persecution.
- (23) 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.
- (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 of 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.

- (29) In accordance with relevant case law of 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, in accordance with relevant case law of 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.
- (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, in accordance with relevant case law of the European Court of Justice, should include violence that may extend to people irrespective of their personal circumstance.
- (35) In accordance with relevant case law of the Court of Justice of the European Union<sup>35</sup>, 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, in accordance with relevant case law of the

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<sup>35</sup> C-285/12.

Court of Justice of the European Union<sup>36</sup>, 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>37</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.

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<sup>36</sup> C-465/07.

<sup>37</sup> COM(2016)271 final.

- (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.
- (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>38</sup> and with Article 21 of the Convention implementing the Schengen Agreement<sup>39</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>40</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>41</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.
- (45) 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

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<sup>38</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>39</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>40</sup> COM (2016) 378 final.

<sup>41</sup> (EU) No [xxx/xxxx New Dublin Regulation].



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>42</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.]*

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*

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<sup>42</sup> OJ L 55, 28.2.2011, p. 13.

*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

### *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 2* *Definitions*

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

- (1) ‘international protection’ means refugee status and 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);
- (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;
- (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

- (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, 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:
- (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;
- (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>43</sup>, allowing a third-country national or stateless person to reside on its territory;
- (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;
- (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;
- (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;
- (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>44</sup> covering sickness

<sup>43</sup> OJ L157, 15.6.2002, p.1.

<sup>44</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*).

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;

- (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;
- (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.

### *Article 3*

#### ***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.
2. This Regulation does not apply to other national humanitarian statuses issued by Member States under their national law to those who do not qualify for refugee status or subsidiary protection status. These statuses, if issued, shall be issued in such a way as not to entail a risk of confusion with international protection.

## 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. He or she shall cooperate with the determining authority and shall remain present and available throughout the procedure.
2. The elements referred to in paragraph 1 shall 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 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.]
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.
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 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 and the European Convention on Human Rights, an applicant who files a subsequent application in accordance with Article 42 of Regulation (EU)XXX/XXX [Procedures regulation] shall not normally be granted refugee status or subsidiary protection status if the risk of persecution or the serious harm 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 can only be:

- (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 referred to in points (a) and (b), including international organisations, are unable or unwilling to provide protection against persecution or serious harm as referred to in Article 7.

#### *Article 7*

#### ***Actors of protection***

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 Stateprovided they are willing and able 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.
3. When assessing whether an international organisation controls a State or a substantial part of its territory and provides protection as referred to in paragraph 2, determining authorities shall base themselves on any guidance provided in relevant Union law, in



particular available Union level country of origin information and the common analysis of country of origin information 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***

1. As part of the assessment of the application for international protection, the determining authority shall 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 protection against persecution or serious harm.
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. The burden of demonstrating the availability of internal protection shall rest on the determining authority. The applicant shall not be required to prove that, before seeking international protection, he or she has exhausted all possibilities to obtain protection in his or her country of origin.
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, determining authorities 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, determining authorities shall ensure that precise and up-to-date information is obtained from all relevant sources, including available Union level country of origin information and the common analysis of country of origin information referred to in Articles 8 and 10 of Regulation (EU) No XXX/XX [Regulation on the European Union Agency for Asylum], as well as information and guidance issued by the United Nations High Commissioner for Refugees.
4. When considering the general circumstances prevailing in that part of the country which is the source of the protection as referred to in Article 7, the accessibility, effectiveness and durability of that protection shall be taken into account. When considering personal circumstances of the applicant, health, age, gender, sexual orientation, gender identity and social status shall in particular be taken into account together with an assessment of whether living in the part of the country of origin regarded as safe would not impose undue hardship on the applicant.

## 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 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 (hereinafter referred as 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, 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 (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 a particular social group shall include, in particular, a group where:
  - 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
  - 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, the concept might include a group based on a common characteristic of sexual orientation (a term which 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.
  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.

#### *Article 11* **Cessation**

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 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;

- (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.

2. When points (e) and (f) of paragraph 1 apply, the determining authority
  - (a) 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;
  - (b) shall base itself on precise and up-to-date information obtained from all relevant sources, including Union level country of origin information and common analysis of country of origin information referred to in Articles 8 and 10 of the Regulation (EU) No XXX/XX [Regulation on the European Union Agency for Asylum] or information and guidance issued by the United Nations High Commissioner for Refugee.

*Article 12*  
**Exclusion**

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 rights and obligations equivalent to those.
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 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. When considering whether the protection pursuant to point (a) of paragraph 1 has ceased to exist, the determining authority shall ascertain whether the person concerned was forced to leave the area of operations of the relevant organ or agency. This shall be the case where that person's personal safety was at serious risk and it was impossible for that organ or agency to guarantee that his or her living conditions in that area would be commensurate with the mission entrusted to that organ or agency.
  5. For the purposes of points (b) and (c) of paragraph 2, the following acts shall be classified as serious non-political crimes:
    - (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.

# CHAPTER IV

## REFUGEE STATUS

### *Article 13* *Granting of refugee status*

The determining authority 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. The determining authority shall revoke, end or refuse to renew the refugee status of a third-country national or stateless person where :
  - (a) he or she has ceased to be a refugee in accordance with Article 11;
  - (b) he or she should have been or is excluded from being a refugee in accordance with Article 12;
  - (c) his or her misrepresentation or omission of facts, including the use of false documents, was decisive for the granting of refugee status;
  - (d) 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;
  - (e) he or she, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the Member State in which he or she is present;
  - (f) Article 23(2) is applied.
2. In situations referred to in points (d) to (f) of paragraph 1, the determining authority may decide not to grant status to a refugee, where such a decision has not yet been taken.
3. Persons to whom points (d) to (f) of paragraph 1 or paragraph 2 apply shall be entitled to rights set out in or similar to those set out in Articles 3, 4, 16, 22, 31, 32 and 33 of the Geneva Convention in so far as they are present in the Member State.
4. 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 determining authority 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 for the reasons set out in paragraph 1 of this Article.
5. Decisions of the determining authority revoking, ending or refusing to renew refugee status pursuant to point (a) of paragraph 1 shall only take effect three months after the decision is adopted, in order to provide the third-country national or stateless person with the opportunity to apply for residence in the Member State on other grounds in accordance with relevant Union and national law.

*Article 15*  
***Review of refugee status***

In order to apply Article 14(1), the determining authority shall review the refugee status in particular:

- (a) where Union level country of origin information and common analysis of country of origin information as referred in Articles 8 and 10 of Regulation (EU) No XXX/XX [Regulation on the European Union Agency for Asylum] indicate a significant change in the country of origin which is relevant for the protection needs of the applicant;
- (b) when renewing, for the first time, the residence permit issued to a refugee.

## CHAPTER V

### QUALIFICATION FOR SUBSIDIARY PROTECTION

#### *Article 16* ***Serious harm***

Serious harm as referred to in Article 2 (5), 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) a 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 17* ***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. The determining authority:
  - (a) shall have regard 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;
  - (b) shall base itself on precise and up-to-date information obtained from all relevant sources, including Union level country of origin information and the common analysis on country of origin information as referred in Articles 8 and 10 of the Regulation (EU) No XXX/XX [Regulation on the European Union Agency for Asylum] or information and guidance issued by the United Nations High Commissioner for Refugee.
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 18* ***Exclusion***

1. A third-country national or a stateless person shall be 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;
- (e) he or she, prior to his or her admission to the Member State concerned, has committed one or more crimes outside the scope of points (a), (b) and (c) which would be punishable by imprisonment if 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.

2. Points (a) to (d) of paragraph 1 shall apply to persons who incite or otherwise participate in the commission of the crimes or acts mentioned therein.

## CHAPTER VI

### SUBSIDIARY PROTECTION STATUS

#### *Article 19*

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

The determining authority shall grant subsidiary protection status to a third-country national or a stateless person who is eligible for subsidiary protection in accordance with Chapters II and V.

#### *Article 20*

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

1. The determining authority shall revoke, end or refuse to renew the subsidiary protection status of a third-country national or a stateless person where :
  - (a) he or she has ceased to be eligible for subsidiary protection in accordance with Article 17;
  - (b) after having been granted subsidiary protection status, he or she should have been or is excluded from being eligible for subsidiary protection in accordance with Article 18;
  - (c) his or her misrepresentation or omission of facts, including the use of false documents, was decisive for the granting of subsidiary protection status;
  - (d) Article 23(2) is applied.
2. Without prejudice to the duty of the third-country national or stateless person pursuant to 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 paragraph 1 of this Article.
3. Decisions of the determining authority revoking, ending or refusing to renew subsidiary protection status pursuant to paragraph 1 (a) shall only take effect three months after the decision is taken, in order to provide the third-country national or stateless person with the opportunity to apply for residence in the Member State on other grounds in accordance with relevant Union and national law.

#### *Article 21*

#### ***Review of the subsidiary protection status***

In order to apply Article 20(1), the determining authority shall review the subsidiary protection status in particular

- (a) where Union level country of origin information and common analysis of country of origin information as referred in Articles 8 and 10 of Regulation (EU) No XXX/XX [Regulation on the European Union Agency for Asylum ] indicate a significant change in the country of origin which is relevant for the protection needs of the applicant,

- (b) when renewing, for the first and second time, the residence permit issued to a beneficiary of subsidiary protection.

## CHAPTER VII

### CONTENT OF INTERNATIONAL PROTECTION RIGHTS AND OBLIGATIONS OF BENEFICIARIES OF INTERNATIONAL PROTECTION

#### SECTION I *COMMON PROVISIONS*

##### *Article 22* *General rules*

1. Refugees and persons who have been granted subsidiary protection status shall have the rights and obligations laid down in this Chapter. This Chapter shall be without prejudice to the rights and obligations laid down in the Geneva Convention.
2. This Chapter shall apply both to refugees and persons eligible for subsidiary protection unless otherwise indicated.
3. Within the limits set by international obligations, granting of benefits with regard to access to employment, social security shall require the prior issuing of a residence permit.
4. When applying the provisions of this Chapter, the specific situation of persons with special needs 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 shall be taken into account provided an individual evaluation of their situation establishes that they have special needs.
5. When applying the provisions of this Chapter that involve minors the best interests of the child shall be a primary consideration to the relevant authorities.

##### *Article 23* *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 referred to in paragraph 1, refugee or a beneficiary of subsidiary protection may be refouled, 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;
  - (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.

In those cases the refugee status or the subsidiary protection status shall also be withdrawn in accordance with Article 14 or Article 20 respectively.

*Article 24*  
**Information**

The competent authorities shall provide beneficiaries of international protection with information on the rights and obligations relating to refugee status or subsidiary protection status, as soon as possible after that has been granted. That information shall be provided in a language that the beneficiary can understand or is reasonably supposed to understand and shall make explicit references to the consequences of not complying with the obligations outlined in Article 28 on movement within the Union.

The form and content of that information shall be determined by the Commission by means of implementing acts adopted in accordance with the examination procedure referred to in Article 58 (1) of Regulation (EU)XXX/XXX [Procedures regulation.].

*Article 25*  
**Maintaining family unity**

1. Family members of a beneficiary of international protection who do not individually qualify for such protection shall be entitled to claim a residence permit in accordance with national procedures and insofar as this is compatible with the personal legal status of the family member.
2. A residence permit issued pursuant to paragraph 1 shall have the duration of the residence permit issued to the beneficiary of international protection and shall be renewable. The period of validity of the residence permit granted to the family member shall in principle not extend beyond the date of expiry of the residence permit held by the beneficiary of international protection.
3. No residence permit shall be issued for a family member where that family member is or would be excluded from international protection pursuant to Chapters III and V.
4. Where reasons of national security or public order so require, a residence permit shall not be issued for a family member and such residence permits which have already been issued shall be withdrawn or shall not be renewed.
5. Family members who are issued a residence permit pursuant to paragraph 1 shall be entitled to the rights referred to in Articles 27 to 39.
6. 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 or before the applicant arrived on the territory of the Member States, and who were wholly or mainly dependent on the beneficiary of international protection at the time.

**SECTION II**  
***RIGHTS AND OBLIGATIONS RELATED TO RESIDENCE AND STAY***

*Article 26*  
**Residence permits**

1. No later than 30 days after international protection has been granted, a residence permit shall be issued using the uniform format as laid down in Regulation (EC) No 1030/2002.

- (a) For beneficiaries of refugee status, the residence permit shall have a period of validity of three years and be renewable thereafter for periods of three years.
  - (b) For beneficiaries of subsidiary protection status, the residence permit shall have a period of validity of one year and be renewable thereafter for periods of two years.
2. A residence permit shall not be renewed or shall be revoked in the following cases:
  - (a) where competent authorities revoke, end or refuse to renew the refugee status of a third-country national in accordance with Article 14 and the subsidiary protection status in accordance with Article 20;
  - (b) where Article 23(2) is applied;
  - (c) where reasons of national security or public order so require.
3. When applying Article 14(5) and 20(3), the residence permit shall only be revoked after the expiry of the three month period referred to in those provisions.

#### *Article 27*

#### ***Travel document***

1. Competent authorities shall issue travel documents to beneficiaries of refugee status, in the form set out in the Schedule to the Geneva Convention and with the minimum security features and biometrics outlined in Council Regulation (EC) No 2252/2004<sup>45</sup>. Those travel documents shall be valid for at least one year.
2. Competent authorities shall issue travel documents with the minimum security features and biometrics outlined in Regulation (EC) No 2252/2004 to beneficiaries of subsidiary protection status who are unable to obtain a national passport. Those documents shall be valid for at least one year.
3. The documents referred to in paragraphs 1 and 2 shall not be issued where compelling reasons of national security or public order so require.

#### *Article 28*

#### ***Freedom of movement within the Member State***

1. Beneficiaries of international protection shall enjoy freedom of movement within the territory of the Member State that granted international protection, including the right to choose their place of residence in that territory, under the same conditions and restrictions as those provided for other third-country nationals legally resident in their territories who are in a comparable situation.
2. Within the limits set by international obligations, residence conditions may be imposed on a beneficiary of international protection who receives certain specific social security or social assistance benefits only where those residence conditions are necessary to facilitate the integration of the beneficiary in the Member State that has granted that protection.

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<sup>45</sup> Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for in passports and travel documents issued by Member States (OJ L 385, 29.12.2004, p. 1)

*Article 29*  
***Movement within the Union***

1. Beneficiaries of international protection shall not have the right to reside in Member States other than the one which granted protection. This is without prejudice to their right to apply and be admitted to reside in other Member States pursuant to relevant provisions of Union and national law and their right to move freely in accordance with the conditions of Article 21 of the Convention Implementing the Schengen Agreement.
2. Where a beneficiary is found in a Member State other than the one that granted him or her protection without a right of stay or the right to reside there in accordance with relevant Union or national law, he will be subject to a take back procedure as defined under Article 20(1)(e) of the Dublin Regulation (EU) no. xxx/xxx.

**SECTION III**  
**RIGHTS RELATED TO INTEGRATION**

*Article 30*  
***Access to employment***

1. Beneficiaries of international protection shall have the right to engage in employed or self-employed activities subject to the rules generally applicable to the profession and to the public service, immediately after protection has been granted.
2. Beneficiaries of international protection shall enjoy equal treatment with nationals of the Member State that has granted protection as regards:
  - (a) working conditions, including pay and dismissal, working hours, leave and holidays as well as health and safety requirements at the workplace;
  - (b) freedom of association and affiliation, and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the benefits conferred by such organisations;
  - (c) employment-related education opportunities for adults, vocational training, including training courses for upgrading skills, practical workplace experience;
  - (d) advice services afforded by employment offices.
3. Competent authorities, where necessary shall facilitate the full access to the activities referred to in paragraph (2)(c) and (d).

*Article 31*  
***Access to education***

1. Minors granted international protection shall have full access to the education system, under the same conditions as nationals of the Member State that has granted protection.
2. Adults granted international protection shall have access to the general education system, further training or retraining, under the same conditions as third-country nationals legally resident in that Member State who are in a comparable situation.

### *Article 32*

#### ***Access to procedures for recognition of qualifications and validation of skills***

1. Beneficiaries of international protection shall enjoy equal treatment with nationals of the Member State that has granted protection in the context of the existing recognition procedures for foreign diplomas, certificates and other evidence of formal qualifications.
2. Competent authorities shall facilitate full access to the procedures mentioned in paragraph 1 to those beneficiaries of international protection who cannot provide documentary evidence of their qualifications without prejudice to Articles 2(2) and 3(3) of Directive 2005/36/EC of the European Parliament and of the Council<sup>46</sup>.
3. Beneficiaries of international protection shall enjoy equal treatment with nationals of the Member State that has granted protection as regards access to appropriate schemes for the assessment, validation and accreditation of their prior learning and experience.

### *Article 33*

#### ***Social security***

Beneficiaries of international protection shall enjoy equal treatment with nationals of the Member State that has granted protection with regard to social security.

### *Article 34*

#### ***Social assistance***

1. Beneficiaries of international protection shall enjoy equal treatment with nationals of the Member State that has granted protection as regards social assistance.  
Access to certain social assistance specified in national law may be made conditional on the effective participation of the beneficiary of international protection in integration measures.
2. For beneficiaries of subsidiary protection status Member States may limit social assistance to core benefits.

### *Article 35*

#### ***Healthcare***

1. Beneficiaries of international protection shall have access to healthcare under the same eligibility conditions as nationals of the Member State that has granted such protection.
2. 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 shall be provided adequate healthcare, including treatment of mental disorders when needed, under the same eligibility conditions as nationals of the Member State that has granted protection.

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<sup>46</sup> Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications ([OJ L 255, 30.9.2005, p. 22](#)).



*Article 36*  
***Unaccompanied minors***

1. As soon as possible after international protection is granted and within five working days at the latest, as outlined in Article 22(1) of Regulation EU no xxx/xxx[Procedures regulation], competent authorities 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.

Where an organisation is appointed as guardian, it shall as soon as possible designate a person responsible for carrying out the duties of guardian in respect of the unaccompanied minor, in accordance with this Regulation.

2. The appointed guardian shall have the duty of ensuring that the minor can access all rights stemming from this Regulation. The appropriate authorities shall regularly assess the performance of the appointed guardian.
3. Unaccompanied minors shall be placed in one of the following ways:
  - (a) with adult relative;
  - (b) with a foster family;
  - (c) in centres specialised in accommodation for minors;
  - (d) in other accommodation suitable for minors.

The views of the minor 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, competent authorities shall start tracing them as soon as possible after the granting of international protection, whilst protecting the minor's best interests. If tracing has already started, it shall be continued 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. The persons and organisations working with unaccompanied minors shall receive continuous appropriate training concerning the rights and needs of minors and child safeguarding standards will be respected as referred to in Art 22 of Regulation EU No xxx/xxx[Procedures regulation].

*Article 37*  
***Access to accommodation***

1. Beneficiaries of international protection shall have access to accommodation under conditions equivalent to those applicable to other third-country nationals legally resident in the territories of the Member States who are in a comparable situation.

2. National dispersal practices of beneficiaries of international protection shall be carried out to the extent possible without discrimination of beneficiaries of international protection and shall ensure equal opportunities regarding access to accommodation.

*Article 38*

***Access to integration measures***

1. In order to facilitate the integration of beneficiaries of international protection into society, beneficiaries of international protection shall have access to integration measures provided by the Member States, in particular language courses, civic orientation and integration programs and vocational training which take into account their specific needs.
2. Member States may make participation in integration measures compulsory.

*Article 39*

***Repatriation***

Assistance shall be provided to beneficiaries of international protection who wish to be repatriated.

## CHAPTER VIII

### ADMINISTRATIVE COOPERATION

#### *Article 40* *Cooperation*

Each Member State shall 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 41* *Staff*

Authorities and other organisations applying the provisions of this Regulation shall have received or shall receive the necessary training and shall be bound by the confidentiality principle, as defined in national law, in relation to any information they obtain in the course of their work.

# CHAPTER IX

## FINAL PROVISIONS

### *Article 42*

#### ***Committee Procedure***

1. The Commission shall be assisted by a committee [established by Article 58 of xxx of Regulation (EU)XXX/XXX [Procedures regulation]]. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
3. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.

### *Article 43*

#### ***Monitoring and evaluation***

By no later than two years from entry into force of this Regulation and every five years thereafter, the Commission shall report to the European Parliament and the Council on the application of this Regulation and shall, where appropriate, propose the necessary amendments.

Member States shall forward to the Commission all information appropriate for the preparation of that report, at the latest nine months before that time limit expires.

### *Article 44*

#### ***Amendment to Directive 2003/109/EU***

1. In Article 4 of Directive 2003/109/EU, the following paragraph 3 a is inserted:

"3a. Where a beneficiary of international protection 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, the period of legal stay preceding such a situation shall not be taken into account in the calculation of the period referred to in paragraph 1."

2. The following Article 26a is inserted:

"Article 26a

Transposition of Article 4(3a)

The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 4(3a) of this Directive by [six months after the entry into force of this Regulation] at the latest. They shall forthwith inform the Commission thereof."

*Article 45*

***Repeal***

Directive 2011/95/EC is repealed with effect from the date of entry into force of this Regulation. References to the repealed Directive should be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex II.

*Article 46*

***Entry into force and applicability***

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall start to apply from [six months from its entry into force].

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

*For the Council*  
*The President*  
[...]