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NOTE

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	11316/16, 15261/16
Subject:	Proposal for a Regulation of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents

At its meetings on 28 October and 8 November 2016, the Asylum Working Party examined the proposal for a Qualification Regulation and at its meeting on 20 December 2016 it examined compromise proposals suggested by the Presidency in relation to Articles 1 and 3 to 12 and to certain recitals relevant for those Articles.

The text of the proposal in Annex contains modifications suggested by the Presidency in relation to all Articles except for:

- Article 2: placed in square brackets, to be discussed at a later stage;
- Articles 22(3)-(5), 28(2), 29, 30, 31, 32, 33, 34, 35 and 36 which will be discussed in the framework of the thematic approach. These Articles have been deleted and replaced with the symbol [TA];
- the recitals: placed in square brackets, to be discussed at a later stage.

Suggested modifications are indicated as follows: added text is in **bold** and deleted text is in ~~strike~~through.

Comments made by delegations on the Commission proposal text and on the Presidency compromise proposals of 20 December 2016, orally and in writing, appear in the footnotes of the Annex.

2016/0223 (COD)

Draft Proposal for a Regulation¹ 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 [...] concerning the status of third-country nationals who are long-term residents and deleting Council 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 granted²

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,

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

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

- [(1) ~~A number of substantive changes are to be made to Council Directive 2011/95/EU³ 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 (recast). To ensure harmonisation and more convergence in asylum decisions and as regards the content of international protection in order to reduce incentives to move within the European Union and ensure an equality of treatment of beneficiaries of international protection that Directive should be repealed and replaced by a Regulation.~~
- (2) A common policy on asylum, including a Common European Asylum System (CEAS) which is based on the full and inclusive application of the Geneva Convention Relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967 (**hereinafter referred as** Geneva Convention), is a constituent part of the European Union's objective of establishing progressively an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Union. Such a policy should be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States.

³ 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 (OJ L 337, 20.12.2011, p. 9).

- (3) The CEAS is based on common standards for asylum procedures, recognition and protection offered at Union level, reception conditions and a system for determining the Member State responsible for asylum seekers. Notwithstanding progress achieved so far in the progressive development of the CEAS, there are still significant disparities between the Member States in the types of procedures used, the recognition rates, the type of protection granted, the level of material reception conditions and benefits given to applicants for and beneficiaries of international protection. These divergences are important drivers of secondary movements and undermine the objective of ensuring that all applicants are equally treated wherever they apply in the Union.
- (4) In its Communication of 6 April 2016,⁴ 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 **to transform into an agency the European Asylum Support Office** ~~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 2016⁵ 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.

⁴ 7665/16.

⁵ EUCO 19.02.2016, ST 1/16.

- (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~~**for** subsidiary protection status. These statuses, if issued, are to be issued in a way not to entail a risk of confusion with international protection.⁶

⁶ **DE:** clarify "risk of confusion".

- (10) Successful resettlement candidates should be granted international protection. Accordingly, the provisions of this Regulation on the content of international protection should apply, including the rules to discourage secondary movement.
- (11) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union (the **Charter**). In particular this Regulation seeks to ensure full respect for human dignity and the right to asylum of applicants for asylum and their accompanying family members and to promote the application of the Charter's Articles relating to human dignity, respect for private and family life, freedom of expression and information, right to education, freedom to choose an occupation and right to engage in work, freedom to conduct a business, right to asylum, non-discrimination, rights of the child, social security and social assistance, health care, and should therefore be implemented accordingly.
- (12) With respect to the treatment of persons falling within the scope of this Regulation, Member States are bound by obligations under instruments of international law to which they are party, including in particular those that prohibit discrimination.
- (13) The resources of the Asylum, Migration and Refugee Fund should be used to provide adequate support to Member States' efforts in implementing the standards set by the Regulation, in particular to those Member States which are faced with specific and disproportionate pressure on their asylum systems, due in particular to their geographical or demographic situation.

- (14) The European Union Agency for Asylum (**'the Agency'**) **established by Regulation (EU) XXX/XX [Agency Regulation]** 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 **Agency** ~~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 (EU) XXX/XX [**Regulation on the European Union Agency for Asylum**]⁷
- (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.

⁷ 8742/16 + ADD 1.

- (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.⁸
- (17) This Regulation is without prejudice to the Protocol on asylum for nationals of Member States of the European Union as annexed to the Treaty on European Union (TEU) and the TFEU.
- (18) The recognition of refugee status is a declaratory act.
- (19) Consultations with the United Nations High Commissioner for Refugees may provide valuable guidance for Member States' authorities when determining refugee status according to Article 1 of the Geneva Convention.
- (20) Standards for the definition and content of refugee status should be laid down to guide the competent national bodies of Member States in the application of the Geneva Convention.
- (21) It is necessary to introduce common criteria for recognising applicants for asylum as refugees within the meaning of Article 1 of the Geneva Convention.
- (21a) In order to prevent secondary movements within the Union and abusive asylum applications in Member States, applicants should cooperate with the determining authority and remain present and available throughout the procedure, in accordance with the relevant provisions of the Dublin Regulation, the Asylum Procedures Regulation and the recast Reception Conditions Directive.⁹**

⁸ **EE:** see comment in Article 2 on the definition of 'family members'.

⁹ **DE:** scrutiny reservation: the content of this new recital depends more on Dublin.

- (22) In particular, it is necessary to introduce common concepts of protection needs arising sur place, sources of harm and protection, internal protection and persecution, including the reasons for persecution.
- (23) Protection can be provided, where they are ~~willing-able~~ **and willing** to offer protection, either by the State or by parties or organisations, including international organisations, meeting the conditions set out in this Directive, which control a region or a larger area within the territory of the State. Such protection should be effective and of a non-temporary nature.
- (24) Internal protection against persecution or serious harm should be effectively available to the applicant in a part of the country of origin where he or she can safely and legally travel to, gain admittance to and can reasonably be expected to settle. The assessment of whether such internal protection exists should be an inherent part of the assessment the application for international protection and should be carried out once it has been established by the determining authority that the qualification criteria would otherwise apply. The burden of demonstrating the availability of internal protection should fall on the determining authority.
- (25) Where the State or agents of the State are the actors of persecution or serious harm, there should be a presumption that effective protection is not available to the applicant. When the applicant is an unaccompanied minor, the availability of appropriate care and custodial arrangements, which are in the best interests of the unaccompanied minor, should form part of the assessment as to whether that protection is effectively available.
- (26) It is necessary, when assessing applications from minors for international protection, that the determining authorities should have regard to child-specific forms of persecution.
- (27) One of the conditions for qualification for refugee status within the meaning of Article 1(A) of the Geneva Convention is the existence of a causal link between the reasons for persecution, namely race, religion, nationality, political opinion or membership of a particular social group, and the acts of persecution or the absence of protection against such acts.

- (28) It is equally necessary to introduce a common concept of the persecution ground ‘membership of a particular social group’. For the purposes of defining a particular social group, issues arising from an applicant’s gender, including gender identity and sexual orientation, which may be related to certain legal traditions and customs, resulting in for example genital mutilation, forced sterilisation or forced abortion, should be given due consideration in so far as they are related to the applicant’s well-founded fear of persecution.
- (28a) As confirmed by the Court of Justice of the European Union, the circumstances in the country of origin, including for example the existence and application of criminal laws which specifically target LGBTI, can mean that those persons are to be regarded as forming a particular social group.**
- (29) ~~In accordance with relevant case law of~~ **As confirmed by** the Court of Justice of the European Union, when assessing applications for international protection, the competent authorities of the Member States should use methods for the assessment of the applicant's credibility in a manner that respects the individual's rights as guaranteed by the Charter, in particular the right to human dignity and the respect for private and family life. Specifically as regards homosexuality, the individual assessment of the applicant's credibility should not be based on stereotyped notions concerning homosexuals and the applicant should not be submitted to detailed questioning or tests as to his or her sexual practices.
- (30) Acts contrary to the purposes and principles of the United Nations are set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations and are, amongst others, embodied in the United Nations resolutions relating to measures combating terrorism, which declare that ‘acts, methods and practices of terrorism are contrary to the purposes and principles of the United Nations’ and that ‘knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations’.

- (31) Committing a political crime is not in principle a ground justifying exclusion from refugee status. However, ~~in accordance with relevant case law of~~ **as confirmed by** the Court of Justice of the European Union, particularly cruel actions, where the act in question is disproportionate to the alleged political objective, and terrorist acts which are characterised by their violence towards civilian populations, even if committed with a purportedly political objective, should be regarded as non-political crimes and therefore can give rise to exclusion from refugee status.
- (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 **persons** 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 **persons** eligible for subsidiary protection, the notion of indiscriminate violence, ~~in accordance with relevant case law of~~ **as confirmed by** the European Court of Justice, should include violence that may extend to people irrespective of their personal circumstances.
- (35) ~~In accordance with relevant case law of~~ **As confirmed by** the Court of Justice of the European Union[...], for the purpose of assessing serious harm, situations in which a third country's armed forces confront one or more armed groups, or in which two or more armed groups confront each other, should be considered an internal armed conflict. It is not necessary for that conflict to be categorised as an 'armed conflict not of an international character' under international humanitarian law; nor is it necessary to carry out, in addition to an appraisal of the level of violence present in the territory concerned, a separate assessment of the intensity of the armed confrontations, the level of organisation of the armed forces involved or the duration of the conflict.

- (36) As regards the required proof in relation to the existence of a serious and individual threat to the life or person of an applicant, ~~in accordance with relevant case law of~~ **as confirmed by** the Court of Justice of the European Union [...], determining authorities should not require the applicant to adduce evidence that he is specifically targeted by reason of factors particular to his personal circumstances. However, the level of indiscriminate violence required to substantiate the application is lower if the applicant is able to show that he is specifically affected by reason of factors particular to his personal circumstance. Moreover, the existence of a serious and individual threat should exceptionally be established by the determining authorities solely on account of the presence of the applicant on the territory or relevant part of the territory of the country of origin provided the degree of indiscriminate violence characterising the armed conflict taking place reaches such a high level that there are substantial grounds for believing that a civilian, returned to the country or origin or to the relevant part of country of origin, would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to the serious threat.
- (37) The residence permit and the travel documents issued to beneficiaries of international protection for the first time or renewed following the entry into force of this Regulation should comply with the rules laid down by Regulation (EC) No 1030/2002 and Council Regulation (EC) No 2252/2004 respectively.
- (38) Family members, due to their close relationship to the ~~refugee~~ **beneficiary of international protection**, 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 **or apply** for international protection, for the purpose of maintaining family unity, they ~~shall~~ **should** 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 **or apply** for such protection should be granted residence permits and rights in accordance with that Directive. This Regulation ~~shall~~ **should** 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~~ **persons eligible for** 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 (EU) XXX/XX [**Regulation on the European Union Agency for Asylum**]¹⁰ .
- (40) When assessing a change of circumstances in the third country concerned, the competent authorities of the Member States ~~shall~~**should** verify, having regard to the refugee's individual situation, that the actor or actors of protection in that country have taken reasonable steps to prevent the persecution, that they therefore operate, inter alia, an effective legal system for the detection, prosecution and punishment of acts constituting persecution and that the national concerned will have access to such protection if the refugee status ceases to exist.
- (41) When the refugee status or the subsidiary protection status ceases to exist, the application of the decision by which the determining authority of a Member State revokes, ends or does not renew the status should be deferred for a reasonable period of time after adoption, in order to give the third-country national or stateless person concerned the possibility to apply for residence on the basis of other grounds than those having justified the granting of international protection, such as family reasons, or reasons related to employment or to education, in accordance with relevant Union and national law.

¹⁰ 8742/16 + ADD 1.

- (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 Code¹¹ and with Article 21 of the Convention implementing the Schengen Agreement¹². 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~~ **Union** rules, notably on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment¹³ 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~~ **one** 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 (EU) [~~xxx/xxxx~~ **New Dublin Regulation**].¹⁴
- (44) In order to discourage secondary movements within the European Union, ~~the Long Term Residence Council~~ 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** ~~Long Term Residence~~ 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 **or international** law.

¹¹ 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.

¹² 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.

¹³ 8715/1/16 REV 1

¹⁴ [...]

- (45) **Subject to individual assessment of the specific facts, the** notion of national security and public order also covers cases in which a third-country national belongs to an association which supports international terrorism or supports such an association.
- (46) When deciding on entitlements to the benefits included in this Regulation, the competent authorities should take due account of the best interests of the child, as well as of the particular circumstances of the dependency on the beneficiary of international protection of close relatives who are already present in the Member State and who are not family members of that beneficiary. In exceptional circumstances, where the close relative of the beneficiary of international protection is a married minor but not accompanied by his or her spouse, the best interests of the minor may be seen to lie with his or her original family.
- (47) Within the limits set out by international obligations, the granting of benefits with regard to access to employment and social security requires the prior issuing of a residence permit.
- (48) Competent authorities may restrict the access to employed or self-employed activities as regard posts which involve the exercise of public authority, and responsibility for safeguarding the general interest of the State or other public authorities. In the context of exercising their right equal treatment as regards membership of an organisation representing workers or engaging in a specific occupation, beneficiaries of international protection may likewise be excluded from taking part in the management of bodies governed by public law and from holding an office governed by public law
- (49) In order to enhance the effective exercise of the rights and benefits laid down in this Regulation by beneficiaries of international protection, it is necessary to take into account their specific needs and the particular integration challenges with which they are confronted, and facilitate their access to integration related rights in particular as regards employment-related educational opportunities and vocational training and access to recognition procedures for foreign diplomas, certificates and other evidence of formal qualifications in particular due to the lack of documentary evidence and their inability to meet the costs related to the recognition procedures.

- (50) Equal treatment should be provided for beneficiaries of international protection with nationals of the Member State granting protection as regards social security.
- (51) In addition, especially to avoid social hardship, it is appropriate to provide beneficiaries of international protection with social assistance without discrimination. However, as regards ~~beneficiaries of~~ **persons eligible for** 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~~ **persons eligible for** 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~~ **should** 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 powers¹⁵.
- (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.]

¹⁵ OJ L 55, 28.2.2011, p. 13.

OR

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

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

OR

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

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

(58) In accordance with Articles 1 and 2 of the Protocol (No 22) on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application,]

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS ¹⁶

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~~ **and a uniform status** for persons eligible for subsidiary protection;
- (c) the content of the international protection granted.

¹⁶ **SE:** The sequence and logic of the proposal is not ideal from a legal and practical perspective. Matters relating to eligibility are mixed with procedural aspects.

Article 1a [ex-Article 3 modified]

Material scope¹⁷

- 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. Paragraph 1 is without prejudice to the possibility of issuing national humanitarian statuses for persons who do not qualify for international protection pursuant to this Regulation.**

¹⁷ **BG:** scrutiny reservation related to an inquiry made to the National Assembly of the Republic of Bulgaria. **CZ:** scrutiny reservation even if Art. 1a seems more acceptable. **PL:** scrutiny reservation.

[Article 2
Definitions¹⁸

¹⁸ **LV:** need for alignment of definitions between all proposals. **NL:** a definition of 'public order' lacks. During the recent period in which high numbers of applicants arrived in the EU, several MS were confronted with applicants who have committed criminal offences. In response, some MS, including NL, have reviewed their policy on public order with regard to applicants and beneficiaries of international protection in order to be able to refuse or withdraw the residence permit, of course while fully respecting the principle of non-refoulement. In this context, NL is concerned about the judgment of the CJ of the EU of 24 June 2015 regarding the interpretation of the term public order. In this judgment, the Court states that it is of the opinion that the concept of public order contained in Directive 2004/38, in particular in Art. 27 and 28 thereof, has been interpreted in the case-law of the Court as follows. Recourse to public order presupposes, in any event, the existence - in addition to the perturbation of the social order which any infringement of the law involves - of a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society (see, to that effect, judgment in *Byankov*, C 249/11, EU:C:2012:608, para 40 and the case-law cited). The Court applies the same interpretation of public order to refugees and beneficiaries of subsidiary protection as to European citizens. NL however feels that a differentiation is justified. The Court notes that the term public order is not defined either by the provisions themselves or by any other provision of the current QD. By stating this the Court acknowledges that the provisions can hold a definition of 'public order' from which follows that it is up to the legislative body of the EU to lay down an definition.

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

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

- (1) ‘international protection’ means refugee status and ¹⁹subsidiary 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);²⁰
- (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;

¹⁹ **BE, NL:** "*or*" instead of "and". **COM:** "and" does not imply "at the same time"; "and" because it covers both types of protection. **NL:** modify as follows: " 'international protection' means *the [...]* status as defined in points (4) and (6);".

²⁰ **NL:** modify the definition as follows: "'beneficiary of international protection' means a person who has been granted *international 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 status²¹
- (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 States²², 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;

²¹ **SE**: what kind of protection remains at national level? need to define "humanitarian international protection".

²² Scrutiny reservations (**BG, DE, FI, HU, PT**) and reservations (**AT, CZ, EE, IE, SI**) were expressed on the extension of the scope of the definition of 'family members'. **BG**: the expansion of the definition would be a precondition for abuse with the right of international protection and would complicate the implementation of checks. Such a situation should be regulated by the procedure for family reunification. **CZ**: definition to be aligned with other instruments (the definition is not the same as in Dublin). **EE**: the widening of the scope entails an increase of the administrative burden, as the determination of family member statuses which arouse "en route" might pose additional challenges. **AT**: suggests to read the definition as follows: " 'family members' means, in so far as the family already existed *in the country of origin* [...], the following members ...". **PT**: these notions should be the same in all national legislations; sceptical on how this can work. **SI**: the extension of the scope will make more difficult the proof of family membership. **FI**: the definition of a 'family member' is already stabilised in Finland and it is the same for all migrant groups. Different definitions for different migrant groups would cause problems on how to apply them and would add costs. **SE**: welcomes the extension but suggests to specify on when the family members referred to shall be present in the MS, at the time of application for asylum or at the time of the decision?

- (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;²³
- (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 1030/2002²⁴, allowing a third-country national or stateless person to reside on its territory;²⁵
- (13) ‘country of origin’ means the country or countries of nationality or, for stateless persons, of former habitual residence;

²³ **LU**: agrees in principle; however, scrutiny reservation given the link with Art. 21 APR.

²⁴ OJ L157, 15.6.2002, p.1.

²⁵ **DE, HU, SE**: scrutiny reservation. **DE**: the definition in Council Regulation (EC) No 1030/2002 is different. Need to specify that it is not only the technical format. **COM**: the definition in 1030/2002 is to be used as regards the format.

- (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;²⁶
- (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;²⁷
- (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;²⁸

²⁶ **BE:** "refusal to renew" should refer to permits not to status. **IT:** definition not appropriate. **PL:** clarify definition of "revoke, end and refuse to renew the refugee or subsidiary protection status". Considers that in the current version of QR, conceptual chaos is observed concerning withdrawal of international protection. **SE:** scrutiny reservation: need to clarify further "to revoke, end or refuse to renew". The terms relating to withdrawal of status that is used in the proposal (revocation ending of and refusal to renew) refugee status and status for subsidiary protection should be explained and added to the definition chapter. If "revokes" seeks to be a collective term for revocation regardless of the grounds for revoking a status (cessation or exclusion) this has to be clarified and the term used consistently throughout the proposal and not used interchangeably with withdrawal, end or refuse to renew. The terms "end" and "refusal to renew" are misleading. How do they relate to cessation or cancellation? These terms should not be used at all, given that all the grounds for withdrawing status are limited to grounds related to exclusion or cessation as per Art. 11 and 12. Refugee status and subsidiary status is valid until it has either ceased or has been cancelled based on application of any of the criteria for cessation or exclusion are met.

²⁷ **DE:** suggests that procedural provisions (e. g. definitions in Art. 2 concerning the subsequent application) be regulated exclusively in the APR, and not be repeated in the QR. **SE:** not entirely in line with Art. 4(2)(i) APR. **COM:** indeed, not in line with APR but should be in line, yes.

²⁸ **BE, PT:** clarify "at first instance" **COM:** better to say "administrative stage". **SE:** not entirely in line with Art. 4(2)(e) in APR.

- (17) 'social security' means the branches of social security as defined in Regulation (EC) No 883/2004 of the European Parliament and of the Council²⁹ covering sickness benefits; maternity and equivalent paternity benefits; invalidity benefits; old-age benefits; survivors' benefits; benefits in respect of accidents at work and occupational diseases; death grants; unemployment benefits, pre-retirement benefits and family benefits;³⁰
- (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;³¹

²⁹ 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*).

³⁰ **AT, FI, IE, IT, LV, NL, SE:** scrutiny reservation. **BG:** persons who are subject to equal treatment should be covered by Reg (EC) 883/2004 and Reg (EU) 1231/2010, regarding issues of coordination of social security systems. **BG** has repeatedly stated position on these issues in the field of legal migration that has been for adherence to the existing framework. **DE:** the term "social security" needs to be (more) clearly distinguished from the term "social assistance". This applies in particular to special non-contributory cash benefits, which, by definition pursuant to Art. 70 (1) of Reg 883/2004, have characteristics both of the social security legislation and of social assistance. **DE** cannot accept a provision in which the term "social security" covers special non-contributory cash benefits. It should be clarified that social security benefits granted in accordance with Art. 2 (17) cover neither benefits having characteristics of both social security and social assistance, nor active benefits granted for the purpose of improving integration and financed from public funds. **LV:** list not useful since there are different situations in MSs. Will refugees/beneficiaries of subsidiary protection have access to benefits which are not based on contributions (see Reg 883/2004)?

³¹ **AT, BG, FI, HU, IE, IT, LV, SE:** scrutiny reservation. **DE:** clarify that this assistance is granted by public bodies and is not conditional upon the beneficiary's own contributions.. **NL:** delete "in addition to or". **PT:** clarify what does 'social assistance' cover and how it fits in this text. **FI:** the wording seems to be in contradiction to the usual practice; usually the social assistance benefits are of last resort, whereas here it means benefits granted in addition to or beyond social security benefits.

- (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.]³²

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.~~

³² **AT, BG, FI:** scrutiny reservation. **BG:** see position on Article 36. **DE:** clarify what is meant by "organisation". In addition, keep the term "legal representative"; MS should remain free to decide how representation is practised, especially in order to take sufficient account of practical requirements. The concept of "representation" without the immediate requirement of appointing a guardian ensures that the unaccompanied minor is legally represented already at an early stage at which for a lack of time alone a guardian could not have been appointed yet. DE proposes to address this issue in the broader context of reforming the CEAS and independently from the individual proposals for legislation. Also, the question of the appropriate regulatory place should be discussed. **ES:** does "guardian" apply to national realities? **FR:** "tuteur" (in French) to be translated by "representative" instead of "guardian" in English. **LU:** substantial reservation on the term "guardian"; prefers "representative" like in the current Directive. **HU:** to be aligned with APR definition. **NL:** 'guardian' is different from 'legal representative' who has a separate role in NL. **FI:** still examining; probably the term "representative" should be used in exchange for "guardian". **SE:** the description of the guardian's role has changed compared to the current Directive; does this mean greater requirements? **COM:** in the framework of this proposal, "guardian" is a representative for a person who has already received international protection; in the APR, "representative" is for a person who does not have protection yet; thus, different moments, different obligations.

CHAPTER II

ASSESSMENT OF APPLICATIONS FOR INTERNATIONAL PROTECTION

Article 4

*Submission of information and assessment of facts and circumstances*³³

1. The applicant shall submit all the elements available to him or her which substantiate the application for international protection. **For that purpose, he** ~~He~~ or she shall cooperate with the determining authority and shall remain present and available, throughout the procedure, **in the territory of the Member State responsible for examining his or her application.**³⁴
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 **family members and other** relevant relatives, identity, nationality(ies), country(ies) and place(s) of previous residence, previous applications [for international protection and results of any expedited resettlement procedure as defined by Regulation (EU) no XXX/XX [Resettlement regulation]], travel routes, travel documents and the reasons for applying for international protection.³⁵

³³ **BE:** para. 1 and 2 need a clearer link with Art 7 APR to clarify the obligation. Proposal to follow. **SE:** suggests to put the whole Article 4 in APR. **COM:** this Article is still in QR; there is indeed a grey zone between procedure and substance. It is a question of decision. Para 3 is of a more procedural nature. The idea is to try not to modify the current acquis too much.

³⁴ **LU:** the obligation for the applicant to remain "present and available" throughout the whole procedure might need some derogations/exceptions to cover cases like illness, minors in school trip, etc.

³⁵ **CZ, LV:** scrutiny reservation on the reference to the Resettlement Regulation proposal.

3. The determining authority shall assess the relevant elements of the application **for international protection** 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.³⁶
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:³⁷
 - (a) the applicant has made a genuine effort to substantiate his or her application **for international protection**;
 - (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.

³⁶ **NL:** this paragraph should be moved to Art. 33 APR.

³⁷ **FI:** scrutiny reservation on para 5.

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.
- 2a. **When examining an application for international protection, the determining authority shall take into account whether the activities that the applicant has engaged in since leaving the country of origin were carried out by the applicant for the sole or main purpose of creating the necessary conditions for applying for international protection, so as to assess whether those activities would expose the applicant to persecution or serious harm if returned to that country.**
3. ~~Without prejudice to the Geneva Convention and the European Convention on Human Rights an applicant who files,~~ **When assessing** a subsequent application in accordance with Article 42 of Regulation (EU) XXX/XXX [Procedure Regulation] **the determining authority shall not normally be granted refugee status or subsidiary protection status grant international protection to the applicant if it is established that 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 or origin for the sole or main purpose of being granted international protection.**

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)~~, **Article 7(1) 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 State,

provided they are ~~willing-able~~ and ~~able-willing~~ to ~~offer~~ **provide** 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 **parties or organisations, including** international organisations, ~~controls~~ **control** a State or a substantial part of its territory, and ~~provides~~ **provide** protection as referred to in paragraph 2, ~~the~~ determining ~~authorities~~ **authority** shall ~~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~~ **take into account precise and up-to-date information on countries of origin obtained from relevant and available national, Union and international sources, and the common analysis on the situation in specific countries of origin and the guidance notes** referred to in Articles 8 and 10 of Regulation (EU) No XXX/XX [Regulation on the European Union Agency for Asylum], **as well as information and guidance issued by the United Nations High Commissioner for Refugees.**³⁸

³⁸ **BE:** reference to sources of information to be put in APR instead. **BG:** instead of "all relevant available [...] sources", proposes the wording "*the available relevant [...] sources*". In order to ensure the harmonization between the current regulation and the Regulation on the EUAA, BG proposes that the following text be added in the end of par. 3: "[...] *without prejudice to their competence for deciding on individual applications*" in compliance with art. 10, par. 2a of the EUAAR. **CY:** reservation regarding the obligation for the determining authorities to base their decisions only on EASO common analysis and guidance note. **HU:** it is important to keep the national list of countries of origin; therefore cannot support the proposal. **PL:** maintains its reservation on the need to take account of EASO information. **SE:** revert to the QD wording by saying "all relevant sources". **COM:** "base" was replaced by "take into account" to reflect the current wording of EASO.

Article 8

Internal protection alternative

1. As part of the assessment of the application for international protection, the determining authority shall³⁹ 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.

³⁹ **FR:** scrutiny reservation. The examination for internal protection has to remain optional in order to ensure that requests are assessed according to their own characteristics.

2. The assessment of the availability of internal protection shall be carried out once it has been established by the determining authority that the qualification criteria would otherwise apply. ~~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.~~⁴⁰

⁴⁰ **BE, DE, IT:** the basic burden of proof on alternative protection should lie with the applicant. **BG:** maintains its reservation on par. 2 and proposes that it is entirely omitted from art. 8 as it would cause additional administrative burden. Upon making a thorough examination of art. 8, it becomes clear that par. 1 already contains an obligation for the determining authority to establish if the applicant can receive an alternative internal protection. The obligatory construction “shall determine” clearly allocates the burden of proof on the determining authority. Thus, the sentence in par. 2 “the burden of demonstrating the availability of internal protection shall rest on the determining authority” is a mere rephrasing of the same obligation. The only new element in par. 2 then, is the establishment of an obligatory order of action, as indicated by BE and DE. Such a provision entails two separate actions on behalf of the determining authority during the assessment of each and every application: 1) to demonstrate that the criteria for international protection are met, and 2) to demonstrate that there is a possibility for an alternative internal protection. This would unnecessarily double the work of the determining authority, especially in cases where it is a known fact that a possibility for an alternative internal protection exists. **DE,** supported by **BE, BG:** reservation, as this provision stipulates an obligatory order of action. Pursuant to the present wording, refusal of international protection on grounds of the availability of internal protection always requires previous assessment and positive confirmation that the criteria for international protection are actually fulfilled. This seems to be inefficient, in particular in those cases in which it is obvious that generally there is an alternative possibility of internal protection in the country of origin. **EL:** would prefer the deletion of this additional sentence ("without prejudice ... to this end."). It appears to be in conflict with the principle of the burden of proof resting exclusively on the determining authority. **PL:** reservation: delete the second sentence on the burden of proof for MS. **PT:** reservation. **SE:** burden of proof should be on the determining authority.

3. In examining whether an applicant has a well-founded fear of being persecuted or is at real risk of suffering serious harm, or has access to protection against persecution or serious harm in a part of the country of origin in accordance with paragraph 1, ~~the determining authorities~~ authority shall at the time of taking the decision on the application **for international protection** 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, the determining ~~authorities~~ **authority** shall **take into account** precise and up-to-date information is obtained from ~~all-relevant~~ **and available national, Union and international** sources, ~~and including available Union level country of origin information and the common analysis of country of origin information~~ **the common analysis on the situation in specific countries of origin and the guidance notes** referred to in Articles 8 and 10 of Regulation (EU) No XXX/XX [Regulation on the European Union Agency for Asylum], as well as information and guidance issued by the United Nations High Commissioner for Refugees.⁴¹

⁴¹ **BG**: in relation to its position on art. 7(3), proposes the wording "*the available relevant [...] sources*", instead of "all relevant available [...] sources", as well as the addition of the following text in the end of par. 3: "*[...] without prejudice to their competence for deciding on individual applications*" in compliance with art. 10, par. 2a of the EUAAR. **CY**: reservation regarding the obligation for the determining authorities to base their decisions only on EASO common analysis and guidance note. **HU**: it is important to keep the national list of countries of origin; therefore Hungary does not support the proposal. **NL**: scrutiny reservation on "make sure to obtain". **AT**: delete "all" because redundant; why is UNHCR mentioned? **PL**: reservation on the need to include guidelines from EASO and UNHCR. **SE**, supported by **IT**: why precise and up to date information from all relevant available sources if you have to take into account the information from EUAA? Same position as in Art. 7(3). **COM**: "obtain" is part of the acquis. There is a general reference and, in addition, a specific reference to the EUAA products. Reference to UNHCR is acquis, no new addition.

4. When considering the general circumstances prevailing in that part of the country which is the source of protection as referred to in Article 7, the accessibility, effectiveness and durability of that protection shall be taken into account.

When considering **the** personal circumstances of the applicant, **the determining authority shall take into account factors such as** health, age, gender, ~~sexual orientation including~~ gender identity and ~~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.~~ **sexual orientation, and the social status of the applicant.** ⁴²

When considering whether an applicant can be reasonably expected to settle in another part of the country of origin, the determining authority shall also take into account whether he or she would be able to cater for his or her own basic needs.

⁴² **BG, IT, LU:** delete "undue hardship". **CZ:** "undue hardship": on the last AWP, we discussed bilaterally with EC, that this formulation comes from the ECHR's case and we were promised to get the link. We would appreciate if the case is clarified. **EL:** for the purpose of clarity, this provision should also incorporate new recital (31a). **HU:** reservation. **AT,** supported by **DE:** delete the last part of the paragraph ("together with ... or her") together with the new recital (31a) as possibly too dynamic and not necessary in view of case law, notably of ECHR on inhumane or degrading treatment. **NL:** scrutiny reservation on "undue hardship". **PL:** reservation on "undue hardship". **SE:** revert to the Commission text. **COM:** recital (31a) clarifies what is meant by "undue hardship".

CHAPTER III

QUALIFICATION FOR BEING A REFUGEE

Article 9

Acts of persecution

1. An act shall be regarded as an act of persecution within the meaning of Article 1(A) of the **Geneva** Convention ~~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 **membership of** a particular social group shall include, in particular⁴³, **membership of** a group where:
- **whose** members share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and
 - ~~that group~~ **which** has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society.;

Depending on the circumstances in the country of origin, ~~the that~~ concept ~~might may~~ include **membership of** 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 the national law of the Member State)~~ **State responsible for examining the application for international protection shall not be considered to fall under sexual orientation.**; Gender-related aspects, including gender identity, shall be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group;⁴⁴

⁴³ **BE:** considering the words "in particular", do MS have an option like they have under the current Directive? Alternative application of the two indents or not? **COM:** both indents have to be taken into account (both criteria need to be fulfilled). **BE:** substantial reservation on (d).

⁴⁴ **DE:** scrutiny reservation (also on recital (28a)). **EE:** understands and welcomes the change to further clarify the principle of the particular social group and the idea of not to include specific criminally liable persons as members of the particular social group on the ground of sexual orientation. However, the wording is somewhat confusing and can cause challenges in practice. Therefore, clarify the wording as follows: "Acts considered to be criminal in accordance with national law of the Member States shall not be included when determining particular social group under based on sexual orientation". **EL:** considers the original phrasing as being more accurate. **IT:** wording in 1(d) not clear enough.

- (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.⁴⁵
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~~ **exercise reserve** 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.⁴⁶

⁴⁵ **SI:** scrutiny reservation.

⁴⁶ **ES:** scrutiny reservation on the impact of certain expressions, like "to behave discreetly", might have. **NL:** does this paragraph sufficiently cover the Case Law C-199/2012, especially for political activists? It could go against para (1)(e). **SE:** insert "(...) inherent to his or her identity *and constitute a manifestation of his or her human right*, to avoid (...)".

Article 11
*Cessation*⁴⁷

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-availed⁴⁸ 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.

⁴⁷ **BG**: reservation on the whole article, in conjunction with Art. 14 and 26. Additional resources might be necessary for the review which could be difficult. Maintains its reservation on this article in relation to the inquiry made to the National Assembly of the Republic of Bulgaria on art. 1a. **AT, FR**: scrutiny reservation. **IT**: this Art. is linked with Art. 8 and 14. Review creates administrative burden; establish a time-limit after which review cannot take place.

⁴⁸ **CZ**: scrutiny reservation; specify the term "re-availed" so it could lead to a better application of the criteria for cessation.

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 **shall:**
- (a) [...] have regard to whether the change of circumstances is of such a significant and non-temporary nature that the refugee's fear of persecution can no longer be regarded as well-founded;
 - (b) ~~shall base itself on~~ **take into account** precise and up-to-date information obtained from ~~all~~ relevant **and available national, Union and international** sources, ~~and including Union level country of origin information and common analysis of country of origin information~~ **the common analysis on the situation in specific countries of origin and the guidance notes** referred to in Articles 8 and 10 of Regulation (EU) No XXX/XX [Regulation on the European Union Agency for Asylum] ~~or~~, **as well as** information and guidance issued by the United Nations High Commissioner for Refugees.^{49 50}

⁴⁹ **BG:** proposes the wording "*the available relevant [...] sources*", instead of "all relevant available [...] sources". **CZ:** delete "all relevant". **CY:** reservation regarding the obligation for the determining authorities to base their decisions only on EASO common analysis and guidance note. **IT:** same reservation as for Art. 7(3) and 8(3). Worried re "make sure" which is stronger than "base". **SE:** same reservation as for Art. 7(3) and 8(3).

⁵⁰ **BG:** in line with its position on art.7(3), proposes that par. 2(ba) be amended as follows: "[...] guidance notes referred to in Articles 8 and 10 of Regulation (EU) No XXX/XX [Regulation of the European Union Agency for Asylum] *without prejudice to their competence for deciding on individual applications*". **HU:** does not support the proposal. Taking into account information at Union level might influence excessively the discretion of the authority. **SE:** same reservation as for Art. 7(3) and 8(3).

Article 12
Exclusion⁵¹

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

⁵¹ **AT, RO:** scrutiny reservation on the whole Article. **BG:** include two other grounds for exclusion, which are provided in Art. 14(1)(d) and (e) as grounds for revocation of, ending of or refusal to renew refugee status. If the determining authority can revoke refugee status on these grounds, then it should be able to employ them to reject an application and refuse refugee status in the first place. The addition is necessary in order to preserve the inner logic of the Regulation. Therefore, the proposition is as follows:
•To add a letter (c) to par. 1:
(c) 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;
•To add a letter (d) to par. 2:
(d) he or she is a danger to the security of the Member State in which he or she is present.
AT: Add further grounds for exclusion.

- 1a. **When considering whether the protection or assistance from organs and agencies as referred to in point (a) of paragraph 1 has ceased to exist, the determining authority shall ascertain whether the person concerned was forced to leave their area of operation for reasons beyond his or her will, due to a situation where his or her personal safety was at serious risk and such organs or agencies were unable to ensure his or her minimum living conditions in accordance with their mandate.**
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 prior⁵² 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;⁵³
 - (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.

⁵² **EL:** in accordance with the Geneva Convention the serious non-political crimes leading to exclusion from the refugee status are those committed outside the country of refuge. Serious non-political crimes committed within the country of refuge are to be dealt with in accordance with the penal system of the host country and should not lead to exclusion from international protection. This issue has been dealt with (by Greece) when transposing the recast Directive 2011/95 and a different phrasing was adopted, closer to the meaning of Art. 1 F of the Geneva Convention. It suggests that this provision is rephrased as follows: "[...] outside the country of refuge prior to his or her admission as a refugee."

⁵³ **FI:** scrutiny reservation.

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)⁵⁴ of paragraph 2, ~~the following acts shall be classified as~~ serious non-political crimes **shall include in particular:**⁵⁵
 - (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.⁵⁶

⁵⁴ **EL:** scrutiny reservation. Clarification needed: what is the point of connecting the acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations with the serious crimes that have particularly cruel actions?

⁵⁵ **ES:** scrutiny reservation. To include the relevant case-law as this issue is particularly sensitive. **FI:** scrutiny reservation on para 5.

⁵⁶ **NL:** clarify whether these are objective criteria, not linked to the effects of the persecution. **FI:** scrutiny reservation. In Finland an asylum seeker, who is excluded from international protection, is issued with a temporary residence permit, if he/she cannot be returned because of the principle of non-refoulement. It seems that such residence permit could be issued under national law even after entry into force of this regulation. **COM:** this paragraph is based on Case-law C-57/2009 (point 3(111)) (not an *a posteriori* assessment).

CHAPTER IV

REFUGEE STATUS

Article 13

Granting of refugee status⁵⁷

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~~ Withdrawal of refugee status⁵⁸

1. The determining authority shall⁵⁹ ~~revoke, end or refuse to renew~~ **withdraw** the refugee status of a third-country national or stateless person where:⁶⁰
 - (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;

⁵⁷ **SE:** the placement of this article in Chapter IV while the definition is placed in Chapter 1 is illogical and impractical. Also, the definition of who is a refugee is found in chapter I, not chapter II and III as stipulated in Art. 13. Therefore reference should be made to Chapter I.

⁵⁸ **FR, RO, SE:** scrutiny reservation on the whole article. **SI:** reservation on the whole article. **BE:** "refusal to renew" is not clear; to consider whether Art 11 on cessation should be moved under this Chapter. **SE:** the terms referred to in the heading are not clear. **FR:** reservation on the periodic review as it is too burdensome. **LT:** in order to avoid excessive administrative burden, a time-limit for the revocation of, ending of or refusal to renew the refugee status should be applied as of the date of granting. **RO:** periodic review should not be mandatory because of the costs.

⁵⁹ **RO:** "may" instead of "shall". **DE:** scrutiny reservation on this new obligation.

⁶⁰ **SE:** the link between the terms "revocation", "ending" and "refusal to renew" and the grounds for cessation and exclusion of refugee status contained in Art. 11-12 is not clear.

- (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;⁶¹
 - (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;⁶²
 - (f) Article 23(2) is applied.⁶³
2. In situations referred to in points (d) to (f) of paragraph 1, the determining authority may decide not to grant **refugee** status ~~to a refugee, where such a decision has not yet been taken.~~

⁶¹ **FI:** scrutiny reservation. **DE:** point (d) is not clear. **EE:** in order to ensure the security of the Schengen Area, the risk to the other MS's security and public order should be also usable for a ground when revoking, ending or refusing to renew refugee status. **FR:** revocation for public order - pooling of information between MS.

⁶² **DE:** point (e) is not clear. **EE:** same comment as for (1)(d). **AT:** read as follows "(e) he or she, having been convicted by a final judgment of a particularly serious crime, *or repeated crimes that may* constitutes a danger to *individuals or* the community of the Member State in which he or she is present;"

⁶³ **DE:** point (e) is not clear. **FI:** scrutiny reservation. Applying Art. 23(2) has not been possible so far in Finland. The principle of non-refoulement is unconditional in the Constitution of Finland. **SE:** repeats the content of Art. 23 (2), which states that status shall be withdrawn for persons falling within 14(1)(d) and (e). Raise the question if not Art 23 (2) may be removed all together?

3. Persons to whom points (d) to (f) of paragraph 1 or paragraph 2 apply shall be entitled to **the** 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 **responsible**.⁶⁴
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 **a refugee** or **should have** ~~has~~ never been **granted** refugee **status** for the reasons set out in paragraph 1 of this Article.⁶⁵

⁶⁴ **SE:** According to this para. persons who have their refugee status withdrawn owing to security concerns spelled out in Art. 14 (d-e) shall be afforded the rights contained in the following articles of the 1951 Refugee Convention: Art. 3 (Non-discrimination), Art.4 (Religion), Art.16 (Access to courts), Art.22 (Public education), Art. 31 (Rights relating to refugees unlawfully in the country of refuge), Art. 32 (Safeguards against Expulsion) and Art. 33 (Prohibition of refoulement) of the 1951 Convention. It is our understanding that in Art. 14 (3) reference is made to the withdrawal of status declaration as per the regulation but not to status per se according to the Geneva Convention. As such, the person falling within the scope of Art. 14 (d-e) should have all the rights according to the 1951 Convention up until refoulement takes place, and not only the ones renumerated in Art. 14 (3).

⁶⁵ **ES:** scrutiny reservation. **NL:** suggests a minor change in order to make it clear that para 4 refers to all situations as described in para 1 (a to f): replace “has ceased to be or has never been a refugee” by “*have ceased to be eligible or have never been eligible to refugee status*”. **SE:** this paragraph refers to the determining authority’s demonstration that a person “has ceased to be or has never been a refugee” for the reasons set out in para 1. A third scenario needs to be included in Art 14(4), i.e. when an applicant has been initially recognised as a refugee but where he or she commits an excludable crime in the country of asylum following recognition. As a result she/he becomes unworthy of international protection and revocation applies. Furthermore, it is noted that the paragraph spells out the placement of the burden of proof in cases of cessation or cancellation of refugee status. The reference to the placement of the burden of proof is however not consistently referred to throughout the proposal and this may lead to diverse interpretation by MS.

5. ~~Decisions~~**The decision** of the determining authority ~~revoking, ending or refusing to renew to~~
withdraw the refugee status **for reasons specified in points (e) or (f) of Article 11(1)**
~~pursuant to point (a) of paragraph 1~~ shall ~~only take effect three months after the decision is~~
~~adopted, in order to provide the~~ **be without prejudice to the possibility for a** third-country
national or stateless person ~~with the opportunity~~ to apply for residence in the Member State
responsible on other grounds in accordance with relevant Union and national law.⁶⁶

⁶⁶ **AT, CY, ES, FI, IE, LV, PT:** scrutiny reservation. **BG:** reservation on the grace period of three months for the entry into force of such decision. The reasons for taking such a decision by the determining authority are significant enough in nature and they can not justify the existence of such grace period. It should be noted that decisions of the determining authority are subject to appeal, which extends the period of decisions' entry into force and provides time and possibilities for the persons to seek opportunities to apply for residence. **CZ:** reservation on the content of this provision due to principle of subsidiarity and the temporary nature of the international protection status; proposes to delete it. MS know how to make further stay for certain categories legal, so this regulation is not necessary. **DE:** is this paragraph in line with APR? Furthermore, we should differentiate among those who are not able to get refugee status and those who made a false application. We should give "a right to remain" for a certain period instead of extending the status. **EL:** clarify MS obligations; what if the MS replies after 3 months? What is the status of the person if the decision of the MS comes after this three-month period? **ES:** doubts on this three-month period. **IT:** supports the present drafting of Articles 14 and 20, allowing the possibility to apply for residence on other grounds, where a third country national or stateless person is not willing to return to his/her country of origin following revocation of, ending of or refusal to renew, respectively, refugee status and subsidiary protection status. In fact, the TC national or SP concerned may be well integrated in the MS of residence (e.g., having found a job or formed a family) and a possible removal may turn out in a violation of fundamental rights as laid down in the European Charter. Moreover, the investment made by MS in putting in place integration measures would be nullified in case of removal. The latter might even be detrimental to the MS and its citizens in case the TC national or SP concerned is an employer. **CY:** clarify the articulation of this provision with Art. 23(2) (derogations from the principle of *non-refoulement*). **LV:** concern about the three-months period. Why 3 months? **NL:** reservation on the proposal that decisions ending refugee (or subsidiary protection) status shall take effect only after a period of three months. This would provide persons whose status has been withdrawn with an opportunity to apply for another legal status, such as for work related purposes. Such a period of grace could create unjustified expectations on the part of the migrant about his or her possibilities of staying in a MS and is in fact an open invitation to start new procedures, whereas migrants should be solely focused on return at this stage. Moreover, migrants will also appeal against a decision to withdraw the status, and this appeal has suspensive effect according the APR. In other words, during this period the migrant already has sufficient opportunity to reflect whether he or she could qualify for another residence title. Therefore, delete paragraph 5. **AT:** delete this paragraph. **PL:** reservation. The possibility to apply for a residency permit after withdrawing the international protection should be covered by the national law. Therefore, delete this

provision. **PT**: Some of the situations would not justify the granting of a three-month period. What about those having committed a crime? We have to consider different cases. **SI**: what rights would a person have during these three months? **FI**: in practice, the three months rule does not seem to fit into our national system very well. Issuing the residence permit and expulsion procedure are nevertheless separate from revoking, ending or refusing to renew the refugee status. **SE**: suggests that the three-month period only kicks in three months after the decision has gained legal effect. **COM**: the three-month period only applies for the cessation grounds (Art. 14(1)(a)); no grace period is proposed when withdrawal is made; criminals are not concerned by this provision.

To this effect, the Member State responsible shall allow the person whose status has been withdrawn to remain on its territory for a period not exceeding three months.

Article 15

*Review of refugee status*⁶⁷

⁶⁷ **FI, IE, SE:** scrutiny reservation on the whole article. **BE:** the *acquis* should be revised in order to take into account the readmission agreements. **COM:** it is another question whether a person is returnable or not. **BE, DE, SE:** clarify whether the review is individual or as a group. **COM:** review should take place on an individual basis; however, if there is information on a significant change in a specific country of origin, review would apply for all persons coming from this country of origin. **BG:** the introduction of regular review of the status is justified, but it is related to the provision of additional resources by the MS and additional administrative burden. The mandatory nature of these provisions at this stage would significantly impede the national asylum systems. Due to these reasons, reservation on these provisions, as suggest to be reached a compromise with the help of optional provisions. **CZ:** this provision is too vague. **APR** seems not to consider these aspects. Clarify who should review (a judicial body?). **DE:** clarify the implications for the administration. **EE, PT:** "may" instead of "shall". **ES:** scrutiny reservation on the obligatory nature of the review (administrative burden). **FR:** delete this Article. The obligatory periodic review of the status, in particular when reviewing the residence permit, would entail a disproportionate administrative burden for the determining authorities. **LU:** the obligation to review is not a priority given the administrative burden involved. **AT:** broadly positive on the Art. but scrutiny reservation because of possible administrative burden implications. **RO:** this provision must show flexibility in order to avoid administrative burdens. The reanalysis of the situation of the beneficiary of international protection is performed whenever there are signs that could have an impact on the need of protection (e.g. changes in the origin countries). It is important to take into account the possibility of periodic reconsideration of the status of the MS, without making this analysis compulsory at given intervals. Imposing periodic reconsideration of the status would trigger a series of activities and expenses (interviews, translations, written notices in different languages, lawyers, court, etc.) with minimal benefit for MS authorities. In this regard, the hints that determine the initiation of reconsideration procedures can occur at any time and not necessarily at the first or second renewal of the residence permit. Therefore, replace "shall" by "*may*". **FI:** it is very important to develop ways to pay more attention to the cessation of the need for international protection; supports the goals for reviewing the need for protection, i.e. preventing misuse and pull factors in asylum procedure.

In order to apply Article 14(1), the determining authority shall review the refugee status, in particular⁶⁸ ~~when (a) — where Union level country of origin information and the common analysis of country of origin information~~ **on the situation in specific countries of origin and the guidance notes** referred in Articles 8 and 10 of Regulation (EU) No XXX/XX [Regulation on the European Union Agency for Asylum]⁶⁹, indicate a significant change⁷⁰ in the country of origin which is relevant for the protection needs of the ~~applicant~~ **refugee**.

~~(b) — when renewing, for the first time, the residence permit issued to a refugee.~~⁷¹

⁶⁸ **PL**: clarify "in particular": are there other reasons to review the status?

⁶⁹ **CY, EE**: same comment as in Art. 7(3). **DE, NL**: would like to retain the possibility to work on the basis of national information/analyse. **EL**: is the national analysis also included?

⁷⁰ **DE**: clarify "significant change".

⁷¹ **DE**: examining the provision requiring the determining authority to review the protection status when renewing, for the first and second time, the residence permit, irrespective of whether there is reason to believe that the merits of the case or the legal conditions have changed. This requirement is expected to involve a considerable amount of additional administrative work – particularly in the case of reviewing the subsidiary protection status after one year. Moreover, the effect of this provision on the affected individual's willingness to integrate should be considered. **EE**: clarify "for the first time". **IE**: reservation on the regular review given the additional administrative burden that this may create and given the impact on integration prospects. **EL**: substantive reservation. If we were to review all refugee statuses in view of the renewal of the residence permit, it would cause an extremely disproportionate administrative burden. Therefore, the possible review of the status when renewing for the first time the residence permit, should only take place if we possess relevant information at the Union level on significant change in the country of origin, as stated in point (a). **NL**: doubts about the explanation of the Commission that the mandatory reviews of statuses 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 needs in any event to be taken, or in cases of a reported significant change in the situation in a specific country of origin. **FI**: still need to consider more thoroughly the different treatment of beneficiaries belonging to the two categories of international protection. In Finland the first residence permit for all beneficiaries of international protection is currently issued for four years (as a fixed-term permit).

CHAPTER V

QUALIFICATION FOR SUBSIDIARY PROTECTION⁷²

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~~ **A beneficiary of subsidiary protection status** shall cease to be eligible for subsidiary protection when the circumstances which led to the granting of ~~subsidiary protection~~ **this** status have ceased to exist or have changed to such a degree that protection is no longer required.

⁷² **BG:** reservation on the whole chapter V.

2. The determining authority **shall**:
- (a) ~~shall~~ have regard whether the change in circumstances is of such a significant and non-temporary nature that the ~~person eligible for~~ **beneficiary of subsidiary protection status** no longer faces a real risk of serious harm;
 - (b) ~~shall base itself on~~ **take into account** precise and up-to-date information obtained from ~~all~~ relevant **and available national, Union and international** sources, ~~and including Union level country of origin information and the common analysis on country of origin information as the common analysis on the situation in specific countries of origin and the guidance notes~~ referred to in Articles 8 and 10 of Regulation (EU) No XXX/XX [Regulation on the European Union Agency for Asylum] ~~or, as well as~~ information and guidance issued by the United Nations High Commissioner for Refugees.⁷³
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.

⁷³ **CZ**: reservation. Delete "all". **ES, LT, LV**: scrutiny reservation. **DE**: make sure the references are correct. Why this distinction? We should base on more prudent criteria. **COM**: worth to reflect on. **EE**: reservation about the obligatory nature of the EU Agency for Asylum common country of origin analysis and guidance. The obligation for a MS to notify to the Agency for Asylum when analyses and guidance were not followed would raise the administrative burden. **IE, FR**: "take account of" instead of "base on". **ES**: "shall base itself" restricts MS's room for manoeuvre. **FR**: See suggested wording in Article 8(3). **CY**: reservation regarding the obligation for the determining authorities to base their decisions only on EASO common analysis and guidance note. **PL**: same comment as in Article 11(2)(b). **RO**: considers that the phrase "from all relevant sources" might seem excessive with regard to the second sentence of subparagraph b) which contains a comprehensive listing of information sources developed at the institutional level. Therefore, "all" could be deleted. **FI**: the wording "shall base itself on" is quite obligating. **SE**: scrutiny reservation as in Article 11; the wording "base themselves on" to be replaced with "take into account" in order to align the para with para 10.2 of the EUAA regulation.

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;⁷⁴
 - (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;⁷⁵

⁷⁴ **RO:** needs further clarification on the elimination of the term “common law”.

⁷⁵ **DE:** we should use the same criteria. **EE:** in order to ensure the security of the Schengen Area, the risk to the other MS's security and public order should be also usable for a ground when excluding a person from being eligible for subsidiary protection. **COM:** pending further confirmation, it is the actual MS which is concerned, not other MS. **SE:** para (1)(a-d) replicates the wording of the Directive but is nevertheless in need of clarification. According to para 1(a) third-country nationals or a stateless person shall be excluded from being eligible for subsidiary protection where there are serious reasons for considering that he or she constitutes a danger to the community. In Art. 14(1)(d) however, it is stated that refugee status shall be revoked/ended/refused if there is reasonable ground for regarding him or her as a danger. Clarification needed on the differences in legal thresholds applied in exclusion from subsidiary protection (serious considerations) vis-a-vis that for revocation ending/refusal of refugee status (reasonable grounds). **COM:** it corresponds to the *acquis*.

(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.~~⁷⁶

3. **Member States may exclude a third-country national or a stateless person from being eligible for subsidiary protection if he or she, prior to his or her admission to the Member State concerned, has committed one or more crimes outside the scope of points (a), (b) and (c) of paragraph 1 which would be punishable by imprisonment if they had 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.**

⁷⁶ **RO:** considers it a rule similar to the previous one, with the necessary adaptation to the observation of the previous paragraph to the optional nature of applying the provisions of subparagraph d).

CHAPTER VI

SUBSIDIARY PROTECTION STATUS⁷⁷

Article 19

*Granting of subsidiary protection status*⁷⁸

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~~ Withdrawal of subsidiary protection status⁷⁹

1. The determining authority shall ~~revoke, end or refuse to renew~~ **withdraw** 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;⁸⁰
 - (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;⁸¹

⁷⁷ **BG:** reservation on the whole chapter VI.

⁷⁸ **SE:** this article is placed in Chapter VI while the definition of who qualifies for subsidiary protection is placed in Chapter I. This is illogical and impractical. Also, the definition of who qualifies for subsidiary protection is found in Chapter I, not II and V. Reference should therefore be to Chapter I.

⁷⁹ **BG, FI, FR, SE:** scrutiny reservation. **BE, ES, FR, SE:** same comments as in Art. 14.

⁸⁰ **LT:** scrutiny reservation.

⁸¹ **SE:** same comments as for Art. 18(1)(e).

(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.⁸²

2. Without prejudice to the duty of the third-country national or stateless person ~~pursuant to~~ **in accordance with** Article 4(1) to disclose all relevant facts and provide all relevant documentation at his or her disposal, ~~the Member State~~ **the determining authority** which has granted subsidiary protection status shall, on an individual basis, demonstrate that the person concerned has ceased to be ~~or is not eligible for~~ **or should have never been granted** subsidiary protection ~~status in accordance with~~ **for the reasons set out in** paragraph 1 of this Article.⁸³

⁸² **DE:** scrutiny reservation on the whole paragraph 1. **RO:** considers that the possibility to revoke the status of subsidiary protection in this case should be left to the MS and should not constitute a mandatory provision. **FI:** scrutiny reservation on (1)(d). Applying Article 23(2) has not been possible so far in Finland. The principle of non-refoulement is unconditional in the Constitution of Finland. **SE:** same comments as for Art 14(1)(f).

⁸³ **DE:** scrutiny reservation. **SE:** the wording is inconsistent with that of Art 14(4) and shall be aligned. Reference is made to "Member State" instead of "determining authority". Also the wording here is "demonstrate that the person concerned has ceased to be or is not eligible for subsidiary protection in accordance with paragraph 1". It is suggested that the wording is brought in line with that of Art 14(4) and only refers to situations of cessation or cancellation due to exclusion. In addition, it is noted that the paragraph 2:

- specifies the placement of the burden of proof in cases of revocation/ending or refusal to renew. The placement of the burden of proof is however not consistently referred to throughout the proposal. If expressed here, it shall as a minimum by reason be stipulated in Art. 17 on cessation and Art. 18 on exclusion.
- spells out the placement of the burden of proof in cases of revocation/ending/refusal of subsidiary protection (should be cessation or cancellation as per previous comments). The reference to the placement of the burden of proof is however not consistently referred to throughout the proposal. If expressed in Art 20, it should as a minimum, also be mentioned in Art. 17 on cessation and Art. 18 on exclusion.

3. ~~Decisions~~ **The decision** of the determining authority ~~revoking, ending or refusing to renew~~ **to withdraw the** subsidiary protection status pursuant to **point (a) of** paragraph 1 ~~(a)~~ shall ~~only~~ take effect ~~three months after the decision is taken, in order to provide the~~ **be without prejudice to the possibility for a** third-country national or stateless person ~~with the opportunity~~ to apply for residence in the Member State **responsible** on other grounds in accordance with relevant Union and national law. ⁸⁴

To this effect, the Member State responsible shall allow the person whose status has been withdrawn by the determining authority for reasons specified in Article 17, to remain on its territory for a period not exceeding three months.

Article 21

*Review of the subsidiary protection status*⁸⁵

1. 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 the common analysis of country of origin information as~~ **on the situation in specific countries of origin and the guidance notes** 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~~ **beneficiary of subsidiary protection status.** ⁸⁶

⁸⁴ **AT, BG, CY, CZ, DE, ES, FI, IE, IT, LV, NL, PL, SE:** see comments on Art. 14(5). **RO:** linguistic reserve for the Romanian version of the proposal in terms of translating the term "residence". Furthermore, clarify: why was a period of three months chosen? What if the alien contests the conclusion of decision-making authority? Does the 3 month term continue to flow or is its flow suspended until a final decision?

⁸⁵ **AT, BE, BG, CZ, DE, EE, EL, ES, FI, FR, IE, IT, LT, LU, NL, PL, RO, SE:** see comments on Art. 15. **COM:** took note of the MS' concerns on increased administrative burden; nevertheless, stressed that MS should ensure that when reviewing the residency permit the protection need still persists.

⁸⁶ **CY, EE:** same comment as in Art. 7(3).

(b) — when renewing, for the first and second time, the residence permit issued to a beneficiary of subsidiary protection.⁸⁷

CHAPTER VII

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

SECTION I

COMMON PROVISIONS

Article 22

*General rules*⁸⁸

⁸⁷ **DE, EL:** see comment on Art. 15(b). **NL:** mandatory review of the subsidiary protection status, when renewing the residence permits, seems to have less added value and will cause a lot of extra work for MS. For example, if a MS has granted a lot of subsidiary protection statuses due to a high influx, it carries the effect that that high influx will spill-over also to the next year. Because the next year, all those statuses granted the previous year, need to be reviewed. And if there are no significant changes in the situation of the country of origin, the outcome of those reviews will most likely be that the applicant is still in need for international protection. Also, the likelihood that a significant change would have occurred within the limited space of a year is limited; so no advantage while the administrative burden of a review is there. **RO:** applying (b) will create a greater administrative and financial burden with no major benefits for the Member State.

⁸⁸ **BG, SE:** scrutiny reserve on the whole article, especially for social security issues.

1. ~~Unless otherwise indicated, Refugees and persons who have been granted beneficiaries of 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.~~⁸⁹
2. ~~This Chapter shall apply both to refugees and persons eligible for subsidiary protection unless otherwise indicated.~~⁹⁰
3. [TA]
4. [TA]
5. [TA]

Article 23

Protection from refoulement⁹¹

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

⁸⁹ **CZ:** this last sentence is redundant and should be deleted. Geneva Convention is applicable directly. This sentence only draws attention to potentially problematic provision.

⁹⁰ **SE:** same comment as for paragraph 1.

⁹¹ **CZ:** This provision is unnecessary due to the fact that person with the status can never be expelled (with regard to Art. 3 of the European Convention). First, the status has to be withdrawn and then it is the possibility of expulsion.

2. Where not prohibited by the international obligations referred to in paragraph 1, a refugee or a beneficiary of subsidiary protection **status, whether formally recognised or not**, may be refouled ⁹² ~~whether formally recognised or not~~ ⁹³ when:
- (a) there are reasonable grounds for considering him or her as a danger to the security of the Member State in which he or she is present; **or**
 - (b) he or she, having been convicted by a final judgment of a particularly serious crime constitutes a danger to the community of ~~that~~ **the Member State in which he or she is present.** ⁹⁴

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 **29** ~~28~~-on movement within the Union.

⁹² **HU:** replace "refouled" by "**returned**" or "**expelled**". **FI:** scrutiny reservation. Applying Art. 23(2) has not been possible so far in Finland. The principle of non-refoulement is unconditional in the Constitution of Finland.

⁹³ **SE:** clarify the meaning of "whether formally recognized or not". How would a MS be able to know that Art 23 (2) is applicable if it has not concluded the risk of persecution or serious harm upon return in the first place through a status determination procedure?

⁹⁴ **DE, FR, IT, RO:** insert "**or**" between (a) and (b), since, as in the current Directive, it should be an alternative. **COM:** agrees. **EE:** in order to ensure the security of the Schengen Area, the risk to the other MS's security and public order should be also usable for a ground when a refugee or a beneficiary of subsidiary protection may be refouled. **FR:** as the EU is a free movement area, the threat to security of a MS needs to take account of its effects on the security of other MS; therefore, we need a flexible legal framework allowing exchanges of information on convictions, dangers, etc., between MS.

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].⁹⁵

Article 25

Maintaining family unity⁹⁶

1. Family members of a beneficiary of international protection who do not individually **apply or** qualify for such protection shall be entitled to ~~claim~~⁹⁷ a residence permit in accordance with **this Article and with** national procedures ~~and~~ insofar as ~~this is~~ compatible with the personal legal status of the family member.⁹⁸
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.⁹⁹

⁹⁵ **FR, NL:** reservation on implementing acts for fixing the information by the Commission. **NL:** implementing acts are far too cumbersome. **COM:** APR also provides implementing acts for access to information. It is an option.

⁹⁶ **CZ:** reservation on the whole article. **AT, BG, FI, FR, IE:** scrutiny reservation on the whole article. **AT, BG, DE, IE:** against the extended scope of the definition of "family members". **EL:** clarify what would happen in case of changes in the family (e.g. death, divorce, adulthood). Is this regulated by the national legislation? **FI:** needs to analyse further the consequences since this art. is attached to the residence permits and rights issued to family members of a beneficiary of international protection, who are not eligible for international protection themselves.

⁹⁷ **DE:** for linguistic reasons, delete "claim".

⁹⁸ **RO:** clarification on the case when the family member does not request international protection, but requests the residence permit referred to in para. 1.

⁹⁹ **SE:** scrutiny reservation; this provision might involve practical difficulties in terms of implementation linked to the temporary residence permit (it makes possible for family members to get residence permit for just a few months while it is normally issued for a 12 month period. **COM:** Article 26 (residence permit) is not applicable to them; the residence permit might be indeed shorter than that of the beneficiary of international protection. Their rights derive from those of the beneficiary. **SE:** this could be problematic in practice.

3. No residence permit shall be issued **under this Article** ~~for to~~ a family member ~~where that family member~~ **who** is or would be excluded from international protection pursuant to Chapters III and V.¹⁰⁰
4. Where reasons of national security or public order so require, a residence permit shall not be issued ~~for to~~ 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 39.¹⁰¹
6. Member States may¹⁰² decide that this article also applies to other ~~close~~ relatives¹⁰³ 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~~ dependent¹⁰⁴ on the beneficiary of international protection at the time.

SECTION II

RIGHTS AND OBLIGATIONS RELATED TO RESIDENCE AND STAY

Article 26

*Residence permits*¹⁰⁵

¹⁰⁰ **FR:** doubts: there is a confusion between what comes under international protection and what comes under family's law.

¹⁰¹ **FR:** doubts on the relevance of this provision here. **PL:** this provision is too liberal; what if the family member is a citizen of a safe third country of origin?

¹⁰² **NL:** is "may" possible in a Regulation? (question for the CLS).

¹⁰³ **DE:** clarify the expansion of the definition of the family unit to include "other close relatives".

¹⁰⁴ **RO:** clarify the meaning of "mainly dependent".

¹⁰⁵ **FR:** reservation. **BG, FI, IE, PT, SE:** scrutiny reservation. **HU :** agrees with the harmonisation of the validity of residence permits. **FI:** see comment on Art. 15(b). **SE:** a temporary residence permit has real negative consequences on integration prospects; there could be a gap between one permit and the following one with possible negative effects for the person. Therefore, a permanent residence permit should be granted.

1. **As soon as possible after international protection has been granted, and within 45 days at the latest,** ~~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 1030/2002.¹⁰⁶ ~~(a) — For beneficiaries of refugee status, the~~ **The** residence permit shall have a period of validity of three years and be renewable thereafter for periods of three years.¹⁰⁷ ~~(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~~¹⁰⁸
- 1a. **When renewing the residence permit of a beneficiary of international protection, the competent authorities shall take into account whether there have been any substantial changes in the country of origin which would trigger a review of the status granted.**

¹⁰⁶ **CY, CZ, EL, FR, IE, IT, LU, RO:** reservation on "no later than 30 days" as this is a very short time-limit to issue a residence permit. **BG:** against the link between the residence permit and the status; there should not be any obligation to issue a residence permit. **DE:** the 30 days deadline is not workable; since this provision is linked with Art. 22(3), scrutiny reservation. **IE:** regarding the format, IE does not participate in Reg 1030/2002 and thus is not bound. **FR:** replace "no later than 30 days" by "*as soon as possible*" because of administrative difficulties. **HU:** scrutiny reservation because "no later than 30 days" is too short and has costs implications. **RO:** suggests a period of 45 days. **COM:** the deadline of 30 days was introduced in order to harmonise too divergent legislations which create secondary movements.

¹⁰⁷ **FR:** now, in France the residence permit is issued for a ten-year period; therefore, three years would be a minimum, with the possibility for MS to grant for a longer duration if they want. Read "(...) *at least* three years and be renewable thereafter for periods of *at least* three years". **BG, PT:** support FR. **LV:** currently longer validity period at national level.

¹⁰⁸ **EL, IE, NL:** reservation on the distinction between the two types of statuses as far as the period of validity of the residence permit is concerned. **EL, FI, IE, IT:** at national level, both statuses are harmonised as regards the validity period. **EL:** this provision would create excessive administrative burden; would like to maintain the possibility to have the current period of time (3 years) according to the Greek law for both statuses. **IT:** review can be done even if the residence permit has longer validity. **LV:** supports the idea of harmonising the validity periods. **NL:** in link with its comment on Articles 15 and 21, favours the same duration of the validity of the residence permits, regardless of the status granted; is still reflecting on the desired duration of that residence permit, but one year in combination with a mandatory review is too short. **RO:** the period of one year is too short. At the same time, the revision of the status should take effect from the date of a final decision in this regard, to date the person concerned has the right to renew her residence permit, for a period of two years, according to the draft regulation.

2. A residence permit shall not be renewed or shall be revoked ~~in the following cases where:~~
- (a) ~~where~~ competent authorities ~~revoke, end or refuse to renew~~ **withdraw** the refugee status ~~of a third-country national~~ in accordance with Article 14 ~~and or~~ the subsidiary protection status in accordance with Article 20;¹⁰⁹
 - (b) ~~where~~ Article 23(2) is applied;¹¹⁰
 - (c) ~~where reasons of national security or public order so require.~~¹¹¹
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.~~¹¹²

Article 27

Travel document¹¹³

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 2252/2004¹¹⁴. Those travel documents shall be valid for at least one year.

¹⁰⁹ **SE:** clarify the relation between the requirement to withdraw a residence permit in cases of cessation or exclusion and Member States' international obligations, not least Art 3 of the ECHR and the related right to remain.

¹¹⁰ **SE:** See comments in Art. 23.

¹¹¹ **DE:** scrutiny reservation on this paragraph given the interaction with national law to be examined further.

¹¹² **IE, LV:** scrutiny reservation as for Article 14(5) and 20(3). **NL:** reservation.

¹¹³ **BG, FI, HU, SE:** scrutiny reservation. **HU:** regarding the reference to Council Regulation (EC) No 2252/2004: needs to examine the cost impacts of renewing the travel documents of refugees and beneficiaries of subsidiary protection. **FI:** only the maximum duration of travel documents is currently regulated in Finland. In addition, an alien's passport may be issued for a foreigner who is abroad only for one month.

¹¹⁴ 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).

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 **or renew** a national passport. Those **travel** documents shall be valid for at least one year. ¹¹⁵
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 State¹¹⁶

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. [TA]

¹¹⁵ **LT**, supported by **DE**: clarify "unable to obtain a national passport" by adding "due to objective reasons", otherwise the burden of proof would be on MS. **COM**: this is current *acquis*; will reflect.

¹¹⁶ **ES, FR, SE**: scrutiny reservation. **FR**: to check the compatibility of this provision with Art. 26 of the Geneva Convention which foresees a right for refugees to choose their place of residence.

Article 29
Movement within the Union¹¹⁷

[TA]

SECTION III
RIGHTS RELATED TO INTEGRATION¹¹⁸

¹¹⁷ **ES, FR:** reservation. **SE:** scrutiny reservation. **DE:** scrutiny reservation on Article 29 and recital (42), providing for an expansion of the freedom of movement in accordance with EU law, and the resulting applicability of the Blue Card Directive (draft). Regarding recital (42): expanding the scope of application of the Blue Card Directive (draft) to persons entitled to protection should not be anticipated in recital 42 before agreement is achieved on this issue. **HU:** the scope of Dublin regulation would be extended to beneficiaries of international protection. Hungary – in connection with the proposal of Dublin regulation, opposes the art. and enters a scrutiny reserve on the second sentence of this article. **RO:** the two paragraphs of this art. are inconsistent. On the one hand, the beneficiaries of international protection have the right to move freely in accordance with the requirements of Art. 21 of the Convention implementing the Schengen Agreement (being allowed to remain in another MS fully applying the Schengen acquis for a period of 90 days within any period of 180 days), and on the other hand, if they have no right stay or a right to reside in the State in which he/she moves in accordance with the Union law or relevant national law, will be subject to a take back procedure. In conclusion, the right to move freely in accordance with the requirements of Art. 21 of the Convention implementing the Schengen Agreement lacks content – Further clarification is needed in this regard. Moreover, the rules create a discrimination situation, meaning that third country nationals or stateless persons on the territory of a MS with a right of temporary residence other than that the one which had granted them international protection will not apply for the right to long term residence under the same conditions as those applicable to third country nationals / stateless persons who are beneficiaries of international protection staying in the same Member State and with the same right of temporary residence (the right of residence in their case will be considered for granting a right of residence in the long term and, if necessary, to obtain citizenship of the Member State which granted them this right) – Further clarifications are needed in this regard.

¹¹⁸ **BE, BG, ES, PL, FI:** general scrutiny reservation on the whole Section III

Article 30
*Access to employment*¹¹⁹

[TA]

Article 31
*Access to education*¹²⁰

[TA]

Article 32
*Access to procedures for recognition of qualifications and validation of skills*¹²¹

[TA]

¹¹⁹ **EL, FI, RO**: scrutiny reservation.

¹²⁰ **FI, NL, RO**: scrutiny reservation.

¹²¹ **EL, FI, NL, RO**: scrutiny reservation. **FR**: reservation.

Article 33
*Social security*¹²²

[TA]

¹²² **AT, FI, IE, LT, RO, SE:** scrutiny reservation. **DE:** reservation if special non-contribution benefits are covered by social security (see comment on Art. 2(17)). Art. 33 restricts Art. 24 of the Geneva Convention. Is this the actual intention of the Commission? It is important that benefits intended to aid a beneficiary's integration into the labour market can be made conditional upon additional prerequisites (in accordance with Art. 24(1)(b)(ii) of the Geneva Convention); therefore insert: "*Within the limits set by international obligations*, beneficiaries of international protection shall enjoy equal treatment (...)." **COM:** the intention is to cover special non-contribution benefits applicable to all beneficiaries of international protection and their family members (i.e. those who are under family unity article). The Coordination Regulation No 883/2004 only applies when refugee has moved in another MS, while the QR is regulating situation where refugees are confined in one MS. Thus, two different situations. **LV:** reservation on the title and the definition of "social security" in Art. 2. **PL:** the applicable provisions laid down in the Act on the social insurance system provides that Polish social insurance system treats equally all insured persons, regardless of their ethnicity, nationality and place of residence. The principle of equal treatment concerns particularly: 1) conditions of coverage by the social insurance system, 2) obligation of paying and calculating of the amount of social security contributions, 3) calculating of the amount of benefits, 4) benefit period and retention of entitlement to benefits. Additionally, the Polish legislator in Art. 2a(3) of the abovementioned Act introduced the judicial control on compliance by the insurance body with the principle of equal treatment. Every insured person who believes that he or she was not treated in accordance with the principle has the right to bring claims on social insurance before a court of law. The conditions of coverage by the social insurance system are of objective and non-discriminatory nature, thus there is no need for undertaking actions to provide equal treatment of persons who are covered by the proposed EU acts. What is more, attention should be given for inconsistency of the provisions laid down in Art. 30(2)(a) QR and Art. 15(3)(a) of the proposal for the abovementioned Directive COM (2016) 455. In accordance with Art. 30(2) QR, beneficiaries of international protection are treated equally with nationals of the MS 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. Whereas in the proposal for the Directive (Art 15(3)(a)) it was laid down that MS provide equal treatment to applicants for international protection with reference to: a) working conditions, including **pay** and dismissal, **leave and holidays**, as well as health and safety requirements at the workplace. It is unclear what is the justification of such difference in both abovementioned provisions. **FI:** in Finland the parliament is currently discussing a government bill, which would mean, that "Labour Market Subsidy" would be issued as "integration assistance" for immigrants (including beneficiaries of international protection). The new subsidy would be lower than the usual Labour Market Subsidy.

Article 34
Social assistance¹²³

[TA]

Article 35
Healthcare¹²⁴

[TA]

Article 36
Unaccompanied minors¹²⁵

[TA]

Article 37
Access to accommodation¹²⁶

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 **territory** ~~territorie~~ of the Member ~~States~~ **State responsible** 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.

¹²³ **DE, FI, IE, LT, RO, SE**: scrutiny reservation. **DE**: see comment on Art. 2(17). **LV**: reservation on the title and the definition of "social assistance" in Art. 2.

¹²⁴ **DE, ES, FI, RO**: scrutiny reservation.

¹²⁵ **AT, FI, IE, RO**: scrutiny reservation.

¹²⁶ **FI, NL, RO, SE**: scrutiny reservation.

Article 38

*Access to integration measures*¹²⁷

1. In order to facilitate ~~the~~ **their** integration **into society**, ~~of~~ beneficiaries of international protection ~~into society~~, beneficiaries of international protection shall **be ensured** ~~have access~~ to integration measures **considered appropriate**, provided **or facilitated** by the Member States **State responsible**, in particular language courses, civic orientation, ~~and~~ integration programs and vocational training ~~which take into account their specific needs~~.¹²⁸
2. Member States may make participation in integration measures compulsory **and ensure that such measures are accessible and affordable**.

¹²⁷ **FI:** scrutiny reservation. **HU:** this proposal is acceptable, though it shall be clarified whether giving the access to integration measures is obligatory for Member States.

¹²⁸ **ES:** equal treatment for men and women should be included. **NL** (supported by **IT**): reservation on how access is provided; MS should facilitate access but not necessarily provide it themselves; the current Directive text should be maintained. Therefore, "provided by the Member States" should be replaced by "**which are facilitated by the Member States**". **COM:** integration measures are not necessarily provided by MS but should be available.

Article 39

Repatriation

Assistance shall, **where necessary**, be provided to beneficiaries of international protection who wish to be repatriated.¹²⁹

¹²⁹ **BG**: reservation. The provision of assistance by the MS to the persons granted protection, who wishes to be repatriated, should not be binding. Alternatively, the provision of funds should come from voluntary return programs for beneficiaries of protection. Otherwise, MS will be charged with additional financial and administrative burden. **CZ, DE, FI, IT, LV, SE**: scrutiny reservation. **AT, CZ, DE, ES, IE, LV**: clarify "assistance". **AT, CZ, DE, FI, FR, IE, IT, LV, PL**: assistance should remain optional. **CZ**: use "may" to give more flexibility because of administrative burden. **DE**: better in a recital and use "should" instead of "shall". The granting of repatriation assistance should remain a discretionary decision of MS. **FR**: it is justified that persons who ask for benefiting from voluntary return are required to request the ending of the international protection first. The Art. should read as follows: "Assistance [...] *may* be provided to beneficiaries of international protection who, *after explicitly requesting to the determining agency the ending of the international protection*, wish to be repatriated.". **IT**: "when necessary" or "where the person has no financial means, he/she could be given access to a voluntary assisted return programme" could be inserted. **HU**: clarify whether the EU's financial instruments especially the AMIF's financial resources could be used. **PL**: concerned by the obligation to provide support with repatriation for beneficiaries of international protection, who, at least formally, express founded fear of persecution or serious harm upon return to his or her country of origin. Supposes that international protection status should be withdrawn first, then required support granted. **FI**: the obligation to provide assistance to repatriation is now formulated strictly in the proposal. There should not be a need for assistance, if the person willing to repatriate has sufficient means to return. **COM**: "may" clauses should be avoided in a Regulation; open to specify "assistance" further.

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 PROVISIONS¹³⁰

Article 42

*Committee Procedure*¹³¹

1. The Commission shall be assisted by a committee [established by Article 58 of xxx of Regulation (EU)XXX/XXX [Procedures **R**egulation]]. 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 **the** 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.

¹³⁰ **PL**: scrutiny reservation on the whole chapter.

¹³¹ **EL, ES, PL**: scrutiny reservation.

Article 44

Amendment to Directive 2003/109/EU¹³²

Directive 2003/109/EU is amended as follows:

1) ~~In~~ **in** Article 4 of Directive 2003/109/EU, the following paragraph 3 is **added** inserted:

"~~4~~ **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 **or international** law, the period of legal stay **in the Member State responsible** preceding such a situation shall not **normally** be taken into account in the calculation of the period referred to in paragraph 1.

By way of derogation from the first subparagraph, in exceptional cases and in accordance with their national law, Member States may accept that the calculation of the period referred to in paragraph 1 shall not be interrupted."¹³³

¹³² **EL, ES, FI, PT, SE:** scrutiny reservation.

¹³³ **DE:** still examining the proportionality of the penalty (whether it is reasonable to consider that the period of legal stay is automatically interrupted in all cases and that this period should start from zero, or whether this should only apply when a beneficiary of international protection is found in a MS, other than the one that granted international protection, culpably without a right to stay or to reside there). **EL:** understands the reasoning behind this provision. Nevertheless, questions whether a so radical punishment, without any exceptions, justifications or conditions is compatible with the principle of proportionality. **IT:** the new paragraph 3a should not automatically cancel the matured residence period. The beneficiary of international protection should be given the possibility to justify his/her being in a MS other than the one which granted international protection. **AT** (supported by **BE**): welcomes penalties. **COM:** this art. has nothing to do with the status review procedure; it only affects the eligibility to a legal migration status; it affects the access to an additional right; no problem of proportionality in this punitive measure.

2) ~~The following~~ Article 26(1)a is ~~inserted~~ **replaced by the following**:

~~"Article 26a~~

~~— Transposition of Article 4(3a)~~

"1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 23 January 2006 at the latest. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 4(43a) ~~of this Directive~~ by ...[six months after the entry into force of this Regulation] ~~at the latest~~. They shall forthwith ~~inform~~ **communicate the text of those measures to the Commission thereof.**"¹³⁴

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 **the Annex H.**

¹³⁴ **CZ:** scrutiny reservation on para 2. **PL:** the proposed 6-month term to implement this regulation is definitely too short, considering a complexity of proposed changes.

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~~ **twelve** months from its entry into force].¹³⁵

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

[...]

¹³⁵ **AT, CZ, DE, EL, ES, HU, LT, SE:** scrutiny reservation. **AT, BG, CZ, DE, ES, HU, LT, NL, PL, SE:** six-month term to implement this regulation is too short. **BG:** 18 months. **CZ:** two years. **DE, LT:** one year.