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From:	Presidency
To:	Delegations
Subject:	Proposal for a Regulation of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents

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During five meetings ( 28 October, 8 November and 20 December 2016, 31 January and 1 March 2017) the Asylum Working Party examined the proposal for a Qualification Regulation and compromise proposals suggested by the Presidency. Several Articles were also discussed in the framework of the thematic approach.

This document contains compromise proposals suggested by the Presidency in relation to all articles, except for the following items placed between square brackets and which will be discussed as a later stage :

- points (9) - (11), (16) and (19) of Article 2;

- Article 36 (to be discussed in the framework of the thematic approach);
- the recitals.

Suggested modifications are indicated as follows:

- new text compared to the Commission proposal is in **bold**;
- new text compared to the previous version of this document is in **bold underlined**;
- deleted text is in ~~striketrough~~.

Comments made by delegations on the Commission proposal text and on the Presidency compromise proposals, orally and in writing, as well as explanations given by the Presidency, appear in the footnotes of the Annex.

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2016/0223 (COD)

Draft Proposal for a Regulation<sup>1</sup> of

the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted, and amending Council Directive 2003/109/EC [...] 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 granted<sup>2</sup>

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular points (a) and (b) of Article 78(2) and (a) of Article 79 (2) thereof,

Having regard to the proposal from the European Commission,

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

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

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<sup>1</sup> **CZ, SK:** the change from Directive to Regulation is not justified. **ES:** doubts about the suitability of the legal basis for turning the act into a regulation. **NL:** differences between the rights attached to refugee status and subsidiary protection status will lead to considerable additional administrative burden for national systems.

<sup>2</sup> **BG, CZ, ES, FI, FR, IT, PT, SE, SI, SK:** 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/EU<sup>3</sup> 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.

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<sup>3</sup> 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,<sup>4</sup> the Commission set out its options for improving the CEAS, namely to establish a sustainable and fair system for determining the Member State responsible for asylum seekers, to reinforce the Eurodac system, to achieve greater convergence in the EU asylum system, to prevent secondary movements within the European Union and **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 2016<sup>5</sup> to make progress towards reforming the EU's existing framework so as to ensure a humane and efficient asylum policy. It also proposes a way forward in line with the holistic approach to migration set out by the European Parliament in its own initiative report of 12 April 2016.

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<sup>4</sup> 7665/16.

<sup>5</sup> 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.<sup>6</sup>

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<sup>6</sup> **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.
- (11a) Pursuant to Article 78(1) TFEU all national authorities are required to comply with the principle of non-refoulement set out in Article 33 of the Geneva Convention and developed in the case law of the Court of Justice and the European Court of Human Rights. When making a decision on the refoulement of a refugee, a person eligible for subsidiary protection, or a beneficiary of international protection, the competent authorities shall respect in all circumstances the Charter of Fundamental Rights in particular article 4 and 19(2) thereof.**
- (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**]<sup>7</sup>.
- (15) When applying this Regulation the 'best interests of the child' should be a primary consideration, in line with the 1989 United Nations Convention on the Rights of the Child. In assessing the best interests of the child, Member States' authorities should in particular take due account of the principle of family unity, the minor's well-being and social development, safety and security considerations and the views of the minor in accordance with his or her age and maturity.

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<sup>7</sup> 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.

**(16a) There is no obligation on national authorities to recognise polygamous marriages, which have been contracted lawfully in a third country, where such marriages are in conflict with the national legal order. This is without prejudice to the obligation of national authorities to take due account of the best interests of children of such marriages.**

(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.**<sup>8</sup>
- (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.

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<sup>8</sup> **DE:** scrutiny reservation: the content of this new recital depends more on Dublin.

- (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’.

- (30a) As confirmed by the case law of the Court of Justice of the European Union an applicant can be excluded from refugee status on the ground that he or she has committed an act contrary to the purposes and principles of the United Nations set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations, even where it is not established that the applicant has been convicted of one of the terrorist offences referred to in Article 1(1) of Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism.**
- (30b) Furthermore, as confirmed by the case law of the Court of Justice of the European Union an applicant can be excluded from international protection for having committed acts constituting participation in the activities of a terrorist group even though it is not established that the applicant committed, attempted to commit or threatened to commit a terrorist act as defined in the resolutions of the United Nations Security Council.**
- (30c) For the purposes of the individual assessment of the facts that may constitute grounds for a finding that there are serious reasons for considering that the applicant has been guilty of acts contrary to the purposes and principles of the United Nations, has instigated such acts or has otherwise participated in such acts, the fact that that the applicant was convicted, by the courts of a Member State, on a charge of participation in the activities of a terrorist group is of particular importance, as is a finding that the applicant was a member of the leadership of that group, and there is no need to establish that that person himself or herself instigated a terrorist act or otherwise participated in it.**

- (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, **in particular** 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 **serious** 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 **of the European Union**, 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.
- (37a) In view of preventing secondary movements the validity of the residence period issued upon granting international protection should be as much as possible harmonized. To this end the initial duration of residence permits should be set out in national law and should be between 1-3 years for beneficiaries of subsidiary protection status and between 3-5 years for beneficiaries of refugee status. Residence permits can thereafter be renewed in accordance with national law, and can include renewal for an unlimited period.**

- (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]**<sup>9</sup> .
- (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.

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<sup>9</sup> 8742/16 + ADD 1.

- (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~~ **to withdraw** the status should be deferred for a reasonable period of time after adoption, in order to give **without prejudice to the possibility for** the third-country national or stateless person concerned ~~the possibility~~ to apply for residence on the basis of other grounds than those having justified the granting of international protection, such as family reasons, or reasons related to employment or to education, in accordance with relevant Union and national law.
- (42) Beneficiaries of international protection should reside in the Member State which granted them protection. Those beneficiaries who are in possession of a valid travel document and a residence permit issued by a Member State applying the Schengen acquis in full, should be allowed to enter into and move freely within the territory of the Member States applying the Schengen acquis in full, for a period up to 90 days in any 180-day period in accordance with Schengen Borders Code<sup>10</sup> and with Article 21 of the Convention implementing the Schengen Agreement<sup>11</sup>. Beneficiaries of international protection can equally apply to reside in a Member State other than the Member State which granted protection, in accordance with relevant ~~EU~~ **Union** rules, notably on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment<sup>12</sup> and national rules; however, this does not imply any transfer of the international protection and related rights.
- (43) In order to prevent secondary movements within the ~~European~~ Union, beneficiaries of international protection, if found in a Member State other than the ~~Member State~~ **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**].<sup>13</sup>

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<sup>10</sup> Regulation 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders.

<sup>11</sup> Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders.

<sup>12</sup> 8715/1/16 REV 1

<sup>13</sup> [...]

- (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.
- (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.<sup>14</sup>
- (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.

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<sup>14</sup> **AT:** add a new recital as follows: "*In order to maintain public security in MS and as a common European response to recent security related issues connected to refugee movements in Europe, serious crimes that may pose a threat to the security, social peace, community or to individuals of a Member State shall be considered within the assessment for the withdrawal of or the exclusion from the status of a beneficiary of international protection.*"

- (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 powers<sup>15</sup>.
- (56) Since the objectives of this Regulation, namely to establish standards for the granting of international protection to third-country nationals and stateless persons by Member States, for a uniform status for refugees or for persons eligible for subsidiary protection[...] and for the content of the protection granted, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Regulation, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the TEU. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives

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<sup>15</sup> OJ L 55, 28.2.2011, p. 13.

(57) [In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, those Member States have notified their wish to take part in the adoption and application of this Regulation]

OR

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

OR

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

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

OR

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

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

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

HAVE ADOPTED THIS REGULATION:

## CHAPTER I

### GENERAL PROVISIONS

#### *Article 1*

#### *Subject matter*<sup>16</sup>

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<sup>17</sup>;
- (c) the content of the international protection granted.

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<sup>16</sup> **SE:** scrutiny reservation on the Article.

<sup>17</sup> **EL, ES, IT:** "*beneficiaries of subsidiaries protection*" instead of "*persons eligible for subsidiary protection*". **NL:** delete text in bold. **SE:** (b) seems covered by (a) and (c); redraft as follows: "*a uniform status for refugees and beneficiaries for subsidiary protection respectively*." **PRES:** since para (1) (b) refers to the granting of a status for refugees and persons eligible for subsidiary protection the comment by EL, ES and IT cannot be accomodated. The wording in bold "*and a uniform status*" has been added following a suggestion by CLS to strengthen the notion that we are talking about 2 different statuses. It should also be noted that 1(b) is part of the current acquis.

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

**Material scope**<sup>18</sup>

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**<sup>19</sup>.

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<sup>18</sup> **BG:** scrutiny reservation related to an inquiry made to the National Assembly of the Republic of Bulgaria. **CZ, DE:** scrutiny reservation. **FR:** move this after Art. 2. **PRES:** the scope of the Regulation should be set before the definitions (e.g. in the Asylum Procedures Regulation).

<sup>19</sup> **AT:** MS should be able to grant such statuses to family members according to national law. **DE:** reservation due to German family asylum. **COM:** such persons get protection as family members (derived status) entailing the same rights; they do not get refugee/subsidiary protection status. **FI, SK:** align with recital (9). **ES, SE:** replace "*Paragraph 1*" with "*This Regulation*" and delete "*pursuant to this Regulation*". **PRES:** the current text makes it abundantly clear that national humanitarian statuses (e.g. one based on family links to a beneficiary of international protection) can be issued to persons who do not qualify for international protection. This has been reiterated on various occasions by both CION and the Presidency. The text in recital 9 will consequently be amended to reflect the text in Article 1a (2) which is more clear. The suggestion by SE would lead to a repetition of "*This Regulation*" which would not be welcome by the lawyer linguists.

*Article 2*  
***Definitions***<sup>20</sup>

- (1) 'international protection' means refugee status and<sup>21</sup> subsidiary protection status as defined in points (4) and (6);
- (2) 'beneficiary of international protection' means a person who has been granted refugee status or subsidiary protection status as defined in points (4) and (6);<sup>22</sup>

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<sup>20</sup> **LV:** need for alignment of definitions between all proposals. **NL:** a definition of 'public order' is missing. This delegation suggests two possible options:

- **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 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.**"

<sup>21</sup> **NL:** modify as follows: "'international protection' means the [...] status as defined in points (4) and (6);".

<sup>22</sup> **NL:** modify the definition as follows: "*beneficiary of international protection' means a person who has been granted international protection[...];*".

- (3) ‘refugee’ means a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 does not apply;
- (4) ‘refugee status’ means the recognition by a Member State of a third-country national or a stateless person as a refugee;
- (5) ‘person eligible for subsidiary protection’ means a third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 16, and to whom Article 18(1) and (2) does not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country;
- (6) ‘subsidiary protection status’ means the recognition by a Member State of a third-country national or a stateless person as a person eligible for subsidiary protection;
- (7) ‘application for international protection’ means a request made by a third-country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status;<sup>23</sup>
- (8) ‘applicant’ means a third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken;

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<sup>23</sup> **BE:** a clear distinction should be made between making and lodging of an application; application which was made but not lodged should not be considered as such.

[(9) ‘family members’ means, in so far as the family already existed before the applicant arrived on the territory of the Member States<sup>24</sup>, the following members of the family of the beneficiary of international protection who are present in the same Member State in relation to the application for international protection:

- (a) the spouse of the beneficiary of international protection or his or her unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to third-country nationals;
- (b) the minor children of the couples referred to in point (a) or of the beneficiary of international protection, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under national law;
- (c) the father, mother or another adult responsible for the beneficiary of international protection whether by law or by the practice of the Member State concerned, when that beneficiary is a minor and unmarried;

(10) ‘minor’ means a third-country national or stateless person below the age of 18 years;<sup>25</sup>

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<sup>24</sup> Reservations (**AT, BG, CZ, FI, HU, IE, SI**) on the extension of the scope of the definition of *"family members"*. **BG**: the extension of the definition could lead to abuses. 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). **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 ...*". **SI**: the extension of the scope will make more difficult the proof of family membership. **FI**: at national level, the definition of a 'family member' 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.

<sup>25</sup> **LU**: agrees in principle; however, scrutiny reservation given the link with Art. 21 APR.

- (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 **uniform** form ~~at provided by as laid down in~~ Council Regulation (EC) No 1030/2002<sup>26</sup>, allowing a third-country national or stateless person to reside **legally** on its territory;<sup>27</sup>
- (13) ‘country of origin’ means the country or countries of nationality or, for stateless persons, of former habitual residence;
- (14) ‘withdrawal of international protection’ means the decision by ~~a competent~~ **the determining** authority to revoke, end or refuse to renew the refugee **status** or **the** subsidiary protection status;<sup>28</sup>

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<sup>26</sup> OJ L157, 15.6.2002, p.1.

<sup>27</sup> **AT, DE, HU, IE, SE:** scrutiny reservation. **IE:** does not participate in Regulation 1030/2002 and is not bound by it.

<sup>28</sup> **BE:** “*refuse to renew*” should refer to permits not to status. **SE:** reservation; terminology unclear, redraft as follows: “(14) ‘*withdrawal of international protection*’ means the decision by a competent ~~the determining~~ authority to cancel or revoke ~~, end or refuse to renew the refugee status or the subsidiary protection status based on grounds of cessation or exclusion~~”. **FR:** reservation on the term “*determining authority*”, prefers “*competent*”; redraft as follows: “(14) ‘~~withdrawal~~ End of refugee status’ means the decision by ~~the determining~~ a competent authority to ~~revoke, end withdraw, repeal~~ or refuse to renew the refugee status [...]”; Add a new recital as follows: “(14a) ‘*End of subsidiary protection status*’ means the decision by a competent authority to withdraw, repeal or refuse to renew ~~or the subsidiary protection status~~”. **BE:** the definition should be more specific, making a clear distinction between the ex tunc and ex nunc effects of withdrawal of protection, cessation and revocation.

~~(15) 'subsequent application' means a further application for international protection made in any Member State after a final decision has been taken on a previous application, including where the applicant has explicitly withdrawn his or her application or where the determining authority has rejected an application as abandoned following its implicit withdrawal;~~<sup>29</sup>

[(16) 'determining authority' means any quasi-judicial or administrative body in a Member State responsible for examining applications for international protection and competent to take decisions at ~~first instance~~ **an administrative level in such cases;**<sup>30</sup>]

(17) 'social security' means the branches of social security as defined in **Article 3 (1) and (2) of Regulation (EC) No 883/2004 of the European Parliament and of the Council**<sup>31</sup> ~~covering sickness benefits; maternity and equivalent paternity benefits; invalidity benefits; old age benefits; survivors' benefits; benefits in respect of accidents at work and occupational diseases; death grants; unemployment benefits, pre-retirement benefits and family benefits;~~<sup>32</sup>

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<sup>29</sup> **FR:** scrutiny reservation on deletion.

<sup>30</sup> **SE:** not entirely in line with Art. 4(2)(e) in APR.

<sup>31</sup> Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (*OJ L 166, 30.4.2004, p. 1*).

<sup>32</sup> **DE, EL, FI, IE, IT, NL, SE:** scrutiny reservation. **AT:** reservation linked to the extension of rights; due to the reference to Art. 3 para (1) and (2) of Regulation (EC) No 883/2004 this term also entails family benefits. According to Art. 29 para. (2) QD the rights of beneficiaries of the subsidiary protection status are limited to core benefits regarding social assistance. **BG:** persons who are subject to equal treatment should be covered by Reg (EC) 883/2004 and Reg (EU) 1231/2010, regarding the issues related to the coordination of social security systems. **DE:** the term "*social security*" needs to be (more) clearly distinguished from the term "*social assistance*". 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. **FR:** reservation, similar misgivings as FI, DE, NL with regard to the special non-contributory cash benefits in relation to Regulation 883/2004.

(18) 'social assistance' means benefits granted in addition to or beyond social security benefits as defined in point (176), with the objective of ensuring that the basic needs of those who lack sufficient resources are met;<sup>33</sup>

[(19) 'guardian' means a person or an organisation appointed by the competent bodies in order to assist and represent an unaccompanied minor in procedures provided for in this Regulation with a view to ensuring the best interests of the child and exercising legal capacity for the minor where necessary.]<sup>34</sup>

### *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.~~

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<sup>33</sup> **AT, BG, FI, HU, IT, LV, NL, SE:** scrutiny reservation. **IE:** reservation, no agreed definition of 'social assistance' and this remains a MS competence. **DE, NL:** clarify that this assistance is granted by public bodies and is not conditional upon the beneficiary's own contributions. **FI, NL:** delete "*in addition to or*". **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. **FR:** reservation, similar misgivings as FI, DE, NL with regard to the special non-contributory cash benefits in relation to Regulation 883/2004. **NL:** reference to be made to Art. 3(5) of Regulation 883/2004

<sup>34</sup> **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*". **ES:** unclear if "*guardian*" applies to national realities. **FR:** "*tuteur*" (in French) to be translated by "*representative*" instead of "*guardian*" in English. **LU:** reservation on the term "*guardian*"; prefers "*representative*" like in QD. **HU:** to be aligned with APR definition. **NL:** "*guardian*" is different from "*legal representative*" who has a different role in NL. **FI:** still examining; probably the term "*representative*" should be used instead of "*guardian*". **SE:** clarification needed regarding the word "*procedures*". **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.

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

## CHAPTER II

# ASSESSMENT OF APPLICATIONS FOR INTERNATIONAL PROTECTION

### *Article 4*

#### *Submission of information and assessment of facts and circumstances*<sup>35</sup>

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 **fully** 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.**<sup>36</sup>

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<sup>35</sup> **SE:** scrutiny reservation on the whole Article.

<sup>36</sup> **LU:** the obligation for the applicant to remain "*present and available*" throughout the whole procedure might need some derogations/exceptions to cover cases like illness, minors in school trip, etc. **NL:** this text should be used in APR too. **AT:** continue to allow that temporary accommodation in another MS (bilateral negotiation) is still possible. **BE:** replace the wording "*he or she shall cooperate with the determining authority*" by "*he or she shall cooperate fully with the responsible authorities*". **PRES:** Recital 21a sufficiently explains that the rules of RCD apply. These rules allow for the possibility of leaving the territory in listed cases. As previously explained, there is nothing that prohibits a Member State to host on its territory a number of asylum seekers from another Member State.

2. The elements referred to in paragraph 1 shall consist of the applicant's statements ~~regarding the reasons for applying for international protection,~~ and all the documentation at the applicant's disposal regarding ~~the applicant's his or her~~ reasons for being in need of international protection, 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 ~~and~~, travel documents ~~and the reasons for applying for international protection.~~<sup>37</sup>
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.

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<sup>37</sup> **BG:** scrutiny reservation. **CZ, FR, LV, NL:** scrutiny reservation on the reference to the Resettlement Regulation proposal. **FR:** reservation, not favourable to the expedited procedure. **IT:** redraft as follows: "*the applicant's statements regarding the reasons for applying for international protection*" (and delete this in the last sentence); add "*and any other document necessary to substantiate the application*" after "*travel documents*". **IE:** support for the inclusion of the text on family members depends on the discussion on the definition of "*family members*" in Article 2, no support for extending the definition of "*family members*". **SE:** "*all documentation*" involves a very broad obligation for the applicant, unclear when this obligation will be considered fulfilled. **SI:** reservation; only statements and documentation should be mentioned. **BE:** redraft as follows: "*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 need for international protection including his or her age, background, ...*". **PRES:** new wording is proposed in order to remove any possible links to the making and lodging of an application (APR) and to ensure that the text is more accurate (i.e. statements and documents also in relation to the need for international protection). It should be noted that travel documents are not necessarily catered for under "travel routes" (e.g. an applicant travelled illegally to the territory of the MS but is in possession of a travel document) . Besides, the expedited procedure has been deleted from the EURF. Finally, the term 'background' is wide enough to include any further documents the applicant might have.

5. Where **particular** aspects of the applicant's statements are not supported by documentary or other evidence, no additional evidence shall be required in respect of those **particular** aspects where the following conditions are met:<sup>38</sup>
- (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;<sup>39</sup>
  - (e) the general credibility of the applicant has been established.

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<sup>38</sup> **FI, SE:** scrutiny reservation on para (5). **SE:** difficult to apply in practice. **PRES:** the word "*particular*" was added to make it clear that this may apply to any individual aspect separately.

<sup>39</sup> **SE:** not clear what sort of additional information should be submitted in case the applicant has not applied at the earliest possible time and cannot demonstrate good reasons for not having done so, delete (d) as (a), (b) and (c) correspond to the UNHCR handbook. **PRES:** a number of Member States do use point (d) when evaluating the general credibility of an applicant and his or her need for international protection (e.g. an applicant claiming persecution in the country of origin stays living in the Member State for over a year before applying for international protection).

Article 5

*International protection needs arising sur place*<sup>40</sup>

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, ~~or~~<sup>2</sup>. ~~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.~~<sup>41</sup>

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<sup>40</sup> **SI:** scrutiny reservation on the article. **AT:** add a para (2a) as follows: "*The determining authority shall not grant an international protection status when the activities of the applicant since leaving the country of origin were carried out intentionally for the main reason, or increasing the likeliness to be granted an international protection status.*" **PRES:** since this Article is very problematic for a number of MS (most notable because of practical difficulties related to its implementation), the best course of action would be to remove paras (2a) and (3) from the QR and discuss them within the context of the APR. QR should only contain a reference to international protection needs arising sur place.

<sup>41</sup> **DE:** scrutiny reservation on deletion.

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.**~~<sup>42</sup>

#### *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.~~<sup>43</sup>

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<sup>42</sup> **DE, IE, NL:** scrutiny reservation on the deletion of para (3). **PL:** against deletion; the provision can be efficient in fighting abuse.

<sup>43</sup> **EL:** reservation; the deleted part should remain and furthermore a reference should be added to Art. 7 para (2). **PRES:** since Article 6(c) refers to protection, it would be best to refer to the actors of protection mentioned in Article 7(1). It should also be noted that this change in text does not change the substance.

*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.<sup>44</sup>

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.

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<sup>44</sup> **CZ:** scrutiny reservation on para (1), should not say "*provide*". **PRES:** protection is provided and not offered by actors of 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 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<sup>45</sup> where available 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 recommendations issued by the United Nations High Commissioner for Refugees.**<sup>46</sup>

**This is without prejudice to the competence of the determining authority to decide on individual applications for international protection.**<sup>47</sup>

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<sup>45</sup> **FR:** replace "*and*" by "*including*".

<sup>46</sup> **BE:** sources of information should be put in APR and this provision should only refer to that. **AT, BE, ES, NL, SK:** delete reference to "*guidance*" by UNHCR, keep only "*information*". **PRES:** since several MS consider that the word "*guidance*" in relation to UNHCR is problematic, it is suggested to change it to "*recommendations*". It should also be noted that para (3) clearly states that the determining authority only needs to take these sources into account (something which is already done on a practical level). Therefore there is no binding nature to it. To further emphasize this point, a second sub-para was also added to para (3).

<sup>47</sup> **DE:** scrutiny reservation. **SE:** non-binding provision, delete it. **NL:** the provision could be placed in a recital.

Article 8

***Internal protection alternative***<sup>48</sup>

1. As part of the assessment of the application for international protection, **once it has been established that the qualification criteria would otherwise apply**, the determining authority shall<sup>49</sup> ~~determine that~~ **examine if** an applicant is not in need of international protection ~~if~~ **because** 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.<sup>50</sup>
  
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.~~<sup>51</sup>

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<sup>48</sup> **CZ, SE:** scrutiny reservation on the Article.

<sup>49</sup> **FR, IE, IT:** scrutiny reservation. The examination for internal protection has to remain optional in order to ensure that requests are assessed according to their own characteristics. **FR, SK:** "may" instead of "shall". **PRES:** just like a determining authority examines an application for international protection, the possibility of internal protection alternative should also be examined rather than determined. Furthermore, in order to achieve further harmonization this should not be a "may" provision since it might lead to more secondary movements from one MS to the other (e.g. MS A applies internal protection alternative to Iraqis while MS B does not).

<sup>50</sup> **DE:** reservation on (b), in favour of deletion.

<sup>51</sup> **EL:** reservation; not in favour of deleting the two last sentences; it should be explicitly mentioned who has the burden of proof. **PRES:** this has been deleted as it was considered problematic by many MS. The first sentence of para (2) has now been incorporated in para (1).

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 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 shall ~~ensure that~~ **take into account** precise and up-to-date information is obtained from ~~all~~ relevant **and available national, Union and international** sources, ~~and~~<sup>52</sup> **where available** ~~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~~ **recommendations** issued by the United Nations High Commissioner for Refugees.<sup>53</sup>

**This is without prejudice to the competence of the determining authority to decide on individual applications for international protection.**<sup>54</sup>

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<sup>52</sup> **FR:** replace "*and*" by "*including*".

<sup>53</sup> **PRES:** see explanations related to Art. 7 (3).

<sup>54</sup> **DE:** scrutiny reservation. **SE:** non-binding provision, delete it.

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.**<sup>55</sup>

~~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 in relation to food, hygiene and shelter.~~

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<sup>55</sup> **SE:** reservation, the list in Art 8 (4) second sub-para is not consistent to the one in Art 33 (2) (d) APR.

## 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 particular<sup>56</sup>, **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, ~~that~~ ~~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;<sup>57</sup>

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

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<sup>56</sup> **BE:** reservation on (d), concern over the "and" between the two indents. **PRES:** "and" in this part of the text is acquis and comes from Case C199/2012 of the CJEU which states that this should be cumulative. With reference to witch children, it should be noted that children in themselves are already a particular social group. Moreover, membership of a particular social group should suffice as a ground for granting refugee status if it is perceived so by the actor of persecution.

<sup>57</sup> **CZ, DE:** scrutiny reservation (also on recital (28a)). **EL:** the wording of QD is more accurate. **DE:** prefers to be able to keep its more favourable rules which enable to give more support to certain social groups. **NL, SE:** reservation on (d); delete the second sentence in the last sub-para as it is very problematic. **NL:** clarify in recitals that "political convictions" fall under "identity".

2. When assessing if an applicant has a well-founded fear of being persecuted it is immaterial whether the applicant actually possesses the racial, religious, national, social or political characteristic which attracts the persecution, provided that such a characteristic is attributed to the applicant by the actor of persecution.<sup>58</sup>
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.<sup>59</sup>

*Article 11*  
**Cessation**<sup>60</sup>

1. A third-country national or a stateless person shall cease to be a refugee where one or more of the following apply:
  - (a) the person has voluntarily re-availed<sup>61</sup> himself or herself of the protection of the country of nationality;
  - (b) having lost his or her nationality, the person has voluntarily re-acquired it;

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<sup>58</sup> **SI:** scrutiny reservation.

<sup>59</sup> **CZ, ES:** not clear what "*exercise reserve*" means. **IT:** reservation, "*exercise reserve*" is unclear. **PRES:** the wording "*exercise reserve*" reflects the wording used in the judgement C-199/2012.

<sup>60</sup> **BG:** reservation on the whole article, linked to Art. 14 (1) and 15. **AT:** scrutiny reservation, a person returning voluntarily should cease to be a refugee. **IT:** this Art. is linked with Art. 8 and 14. Review creates administrative burden; establish a time-limit after which review cannot take place.

<sup>61</sup> **CZ:** scrutiny reservation. **CZ, NL:** specify the term "*re-availed*" so it could lead to a better application of the criteria for cessation. **AT:** add "*travelled to or*" before "*re-availed*" (also for letter (d)) because a person shall cease to be a refugee when travelling back to the country of origin. **PRES:** the wording in this text mirrors that of the Geneva Convention. No changes should be made to wording that is already present and agreed upon in international law.

- (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;<sup>62</sup>
- (e) the person can no longer, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of nationality;
- (f) being a stateless person, the person is able, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, to return to the country of former habitual residence.

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

2. When points (e) and (f) of paragraph 1 apply, the determining authority **shall**:

- (~~ba~~) ~~shall~~ have regard to whether the change of circumstances is of such a significant and non-temporary nature that the refugee's fear of persecution can no longer be regarded as well-founded;

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<sup>62</sup> **AT:** a person returning voluntarily should cease to be a refugee.

(~~a~~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 where available** ~~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 **recommendations** ~~guidance~~ issued by the United Nations High Commissioner for Refugees.<sup>63</sup>

**This is without prejudice to the competence of the determining authority to decide on individual applications for international protection.**<sup>64</sup>

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<sup>63</sup> **DE:** scrutiny reservation on point (b). **PRES:** see explanations for Art. 7(3) and 8(3). The reasoning behind the change in the word order is that chronologically the Determining authority should first take into account the available information and then 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.

<sup>64</sup> **SE:** delete this sentence, the non-binding nature of "*take into account*" is sufficiently clear.

*Article 12*  
***Exclusion***<sup>65</sup>

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

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<sup>65</sup> **AT:** reservation on the whole Article, further grounds for exclusion are necessary due to new challenges for security; repeated crimes or serious crimes that may constitute a danger to the security, community, social peace or individuals of a MS must be considered. Thus, add following text: "*(d) there are reasonable grounds for regarding him or her as a danger to the security, to the community, the social peace or individuals of the Member State in which he or she is present; (e) he or she, having been convicted by a final judgment of a serious crime or repeated crimes that may constitute a danger to to the security, to the community, the social peace or individuals of the Member State in which he or she is present.*" **BG:** include two other grounds for exclusion, which are provided in Art. 14(1)(d) and (e), as follows:  
•add a letter (c) to para (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;  
•add a letter (d) to para (2):  
(d) he or she is a danger to the security of the Member State in which he or she is present.  
**PRES:** the exclusion grounds listed here are the same as the ones in the Geneva Convention, albeit with a number of minor changes. As far as possible, text that has already been agreed upon in international law should be maintained.

- 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~~ his/her 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.<sup>66</sup>
2. A third-country national or a stateless person shall be excluded from being a refugee where there are serious reasons for considering that:
- (a) he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
- (b) he or she has committed a serious non-political crime outside the country of refuge prior<sup>67</sup> to his or her admission as a refugee, which means the time of ~~issuing a residence permit based on the~~ granting of refugee status; particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes;<sup>68</sup>

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<sup>66</sup> **FR, SE:** scrutiny reservation, "*minimum living conditions*" - not the exact terminology from the case-law. **PRES:** "*minimum*" has been deleted so as to ensure that the wording reflects the CJEU's judgment in C364/2011. The wording "*for reasons beyond his or her will*" has been deleted as it is considered to be superfluous.

<sup>67</sup> **EL:** in accordance with the Geneva Convention the serious non-political crimes leading to exclusion from the refugee status are those committed outside the country of refuge. Serious non-political crimes committed within the country of refuge are to be dealt with in accordance with the penal system of the host country and should not lead to exclusion from international protection. This issue has been dealt with (by Greece) when transposing the recast Directive 2011/95 and a different phrasing was adopted, closer to the meaning of Art. 1 F of the Geneva Convention. This provision should be rephrased as follows: "[...] *outside the country of refuge prior to his or her admission as a refugee.*"

<sup>68</sup> **FI, SE:** scrutiny reservation. **PRES:** in view of the discrepancy in timing between the granting of refugee status and the actual issuance of a residence permit we suggest the deletion of this part of the text.

- (c) he or she has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations.
3. Paragraph 2 shall apply to persons who incite or otherwise participate in the commission of the crimes or acts mentioned therein.
4. ~~When considering whether the protection pursuant to point (a) of paragraph 1 has ceased to exist, the determining authority shall ascertain whether the person concerned was forced to leave the area of operations of the relevant organ or agency. This shall be the case where that person's personal safety was at serious risk and it was impossible for that organ or agency to guarantee that his or her living conditions in that area would be commensurate with the mission entrusted to that organ or agency.~~
5. ~~For the purposes of points (b) and (c) of paragraph 2, the following acts shall be classified as serious non-political crimes **shall include in particular:**~~
- (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.<sup>69</sup>~~
6. The exclusion of a person from refugee status shall depend exclusively on whether the conditions set out in paragraphs (1) to (35) are met and shall not be subject to any additional proportionality assessment in relation to the particular case.<sup>70</sup>

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<sup>69</sup> **DE:** scrutiny reservation on the deletion of para (5). **SE:** corresponding recital should be amended accordingly. **PRES:** as explained previously this point has been deleted and will be moved to a recital, where the wording will be amended to reflect the recent Lounani judgement (C-573/14). It should also be noted that terrorist acts would fall under exclusion grounds mentioned in para 2 (b) or (c).

<sup>70</sup> **FI:** scrutiny reservation. **SE:** could be put in a recital. **COM:** this paragraph is based on Case-law C-57/2009 (point 3(111)) (not an *a posteriori* assessment). **PRES:** the fact that a person has been excluded does not preclude the possibility of issuing a temporary residence permit on the basis of national law.

## CHAPTER IV

### REFUGEE STATUS

#### Article 13

#### *Granting of refugee status*<sup>71</sup>

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 status*<sup>72</sup>

1. The determining authority shall<sup>73</sup> ~~revoke, end or refuse to renew~~ **withdraw**<sup>74</sup> the refugee status of a third-country national or stateless person where:

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<sup>71</sup> **SE:** reservation on the Article, reference should be made to Chapter I. **DE:** add the following text: "*Member States may decide in accordance with their national law to grant the refugee status to the family members of the beneficiary who are present in the Member State.*"

<sup>72</sup> **DE:** scrutiny reservation on the whole Article. **SI:** reservation on the whole Article. **BE:** to consider whether Art. 11 on cessation should be moved under this Chapter. **FR:** reservation on the periodic review as it is too burdensome; redraft the title and para (1) as follows: "*End of the refugee status*"; "*(1) The determining authority shall end the refugee status of a third-country or stateless person were:*". **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. **PRES:** the new wording in the title is based on the definition of withdrawal of international protection found in Article 2 of this Regulation and includes the revocation, ending, or refusal to renew the status. The term 'withdrawal' should always be seen in the context of the definition in this Regulation and would cover both ex-nunc and ex-tunc cases .

<sup>73</sup> **DE:** scrutiny reservation on this new obligation. **ES:** reservation on "*shall*". **PRES:** as reiterated by the CLS on various occasions, a Regulation should contain a minimum number of "*may*" provisions. The withdrawal of refugee status cannot be a "*may*" provision since it would not lead to harmonisation.

<sup>74</sup> **FR:** in line with its comment on Art. 2(14), concern over the use of term "*withdrawal*"; prefers "*end*".

- (a) he or she has ceased to be a refugee in accordance with Article 11;
- (b) he or she should have been or is excluded from being a refugee in accordance with Article 12;
- (c) his or her misrepresentation or omission of facts, including the use of false documents, was decisive for the granting of refugee status;
- (d) there are reasonable grounds for regarding him or her as a danger to ~~the security of the Member State in which he or she is present,~~<sup>75</sup>

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<sup>75</sup> **DE:** scrutiny reservation. **FR:** the revocation for public order should involve the pooling of information between MS. **AT:** add "*to the community, the social peace or individuals*" after "*to the security*". **PRES:** requests were expressed to reword this point to include "*a danger to the security of any Member State*". However, besides the practical difficulties that this would entail (a MS would need to check with all the other MS whether someone is a danger to their security), the text does not preclude a MS which receives a security notification from another MS, from applying this provision on the basis that the beneficiary would also represent a danger to the security of the MS where he or she is present (e.g. terrorist threat). The new text as proposed by the Presidency removes any reference to the Member State where he or she is present, thus making it easier to apply this provision in case a beneficiary is a threat to the security of another Member State, without placing an added administrative burden on national authorities. There is no need to extend the operational provision to other MS as the case law of the ECJ confirms that MS retain a certain discretion with regard to the notions of public order and public security and that they are allowed to define these, subject to the control of the Court, in accordance with national needs. In addition, the case law of the Court confirms that "*national security*" encompasses not only the notion of "*internal security*" but also "*external security*" and that the latter concept allows a MS to take into account its relations with third countries (Case C-367/89 Richardt, para. 22; Case C- 83/94 Leifer, para. 26; Case C- 285/98 Kreil, para. 17). This means that a MS is already under the current *acquis* allowed to take into account information received from another MS to determine in individual cases, whether a third state national or stateless person poses a risk to its national security, but is not obliged to do so. The reference in point (d) has been changed to align it with the rest of the Articles related to exclusion/withdrawal which refer to "*serious reasons*".

(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;~~<sup>76</sup>

(f) Article 23(2) is applied.<sup>77</sup>

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.~~<sup>78</sup>
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 that examined their application or granted them international protection.**<sup>79</sup>

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<sup>76</sup> **DE, FI:** scrutiny reservation. **AT:** see comment regarding Art. 12; should 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 the security, to the community, the social peace or individuals ~~the community~~ of the Member State in which he or she is present;".

**PRES:** see the explanation in the previous footnote.

<sup>77</sup> **DE:** scrutiny reservation. **FI:** scrutiny reservation, the principle of non-refoulement is unconditional in the Constitution of Finland. **SE:** scrutiny reservation on (b), (d), (e) and (f) as long as scrutiny reservation remains for Article 12 and Article 23 (2). **PRES:** to avoid duplication, the last sub-paragraph in Article 23(2) has been deleted.

<sup>78</sup> **FI, SE:** scrutiny reservation. **EL:** if this is a form of exclusion, it should be dealt with in the respective Article.

<sup>79</sup> **FI, SE:** scrutiny reservation. **CZ:** prefers "*and granted them refugee status*". **PRES:** the term "*responsible*" has been replaced with more appropriate wording. It should also be noted that in the new wording "*or*" cannot be replaced with "*and*" since you might have cases where protection was not granted.

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.<sup>80</sup>
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 that granted him or her international protection~~ on other grounds in accordance with relevant Union and national law.

~~To this effect, the Member State responsible shall allow the~~A person whose status has been withdrawn by the determining authority for reasons specified in points (e) or (f) of Article 11 (1), ~~and has applied for residence on other grounds, shall be allowed to remain on it's the territory of the Member State that granted him or her international protection for a period not exceeding three months following the notification of the withdrawal.~~

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<sup>80</sup> **SE:** scrutiny reservation; 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 he or she commits a crime leading to exclusion 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. **PRES:** in the context of withdrawal of international protection, the burden of proof falls on the determining authority, which needs to demonstrate that the person concerned has ceased to be or should have never been granted refugee status.

*Article 15*  
*Review of refugee status*<sup>81</sup>

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<sup>81</sup> **FI, IE, SE:** scrutiny reservation on the whole Article. **BG** reservation: 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. **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. **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. The provision does not include other reasons than change in the situation in the country of origin, such as criminal conviction of the beneficiary. In addition, concern over the binding nature of EASO guidelines. **LU:** increased administrative burden. **AT:** MS must always be allowed to review the status periodically. The review should be connected to the period of validity of residence permits.

**For the purpose of** ~~In order to apply~~ Article 14(1), the determining authority shall<sup>82</sup> review the refugee status, ~~in particular~~ **when** (a) ~~where~~ ~~Union level~~ ~~country of origin~~ ~~information and the~~ **where available** common analysis of ~~country of origin information on the~~ **situation in specific countries of origin and the guidance notes as referred to** in Articles 8 and 10 of Regulation (EU) No XXX/XX [Regulation on the European Union Agency for Asylum]<sup>83</sup>, indicate a significant change<sup>84</sup> in the country of origin which is relevant for the protection needs of the ~~applicant~~ **refugee. This is without prejudice to the possibility to** **review the refugee status on the basis of national and international sources, including information and recommendations ~~guidance~~ issued by the United Nations High Commissioner for Refugees, or on other grounds as deemed appropriate by the determining authority.**<sup>85</sup>

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<sup>82</sup> **ES, IE:** reservation on "shall", "may" provision instead. **IE:** redraft as follows: "*In order to apply Article 14(1), the determining authority may review the refugee status when a significant change in the country of origin is indicated, which is relevant for the protection needs of the refugee. Member States should take into account relevant national and international sources, including information and guidance issued by the United Nations High Commissioner for Refugees and, where available, the common analysis and guidance notes as referred to in Articles 8 and 10 of Regulation [EU Agency for Asylum].*" **SE:** keep "in particular".

<sup>83</sup> **DE, NL:** would like to retain the possibility to work on the basis of national information/analyse.

<sup>84</sup> **DE:** clarify "significant change".

<sup>85</sup> **FR:** redraft as follows: "*When there are objective indications that Article 14(1) could apply, the determining authority shall review the refugee status. In order to determine whether to apply article 14(1)(a), the determining authority shall take into account, where available, common analysis of country of origin information on the situation in specific countries of origin and the guidance notes as referred to in Articles 8 and 10 of Regulation (EU) No XXX/XX [Regulation on the European Union Agency for Asylum], as well as national and international sources, including information and guidance issued by the United Nations High Commissioner for Refugees, indicateing a significant change in the country of origin which is relevant for the protection needs of the refugee.*" Delete the last sentence. **SE:** the level of obligation is unclear.

(b) ~~when renewing, for the first time, the residence permit issued to a refugee.~~<sup>86</sup>

## CHAPTER V

### QUALIFICATION FOR SUBSIDIARY PROTECTION<sup>87</sup>

#### *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.

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<sup>86</sup> **CZ:** reservation on the deletion of point (b). **PRES:** the changes were made in order to make the text clearer. The word "*guidance*" in relation to UNHCR has been changed to "*recommendations*" in line with proposed changes throughout the text. The review of cases should not be a "*may*" provision as this would not lead to harmonization. However, to avoid administrative burden the obligation to review the status only applies when the common analysis and guidance notes published by EUAA highlight a significant change in the country of origin. The proposed wording leaves ample flexibility for MS to also make a review on the basis of national and international sources, as well as on other appropriate grounds (e.g. beneficiary sentenced by a Court for breaking the law).

<sup>87</sup> **BG:** reservation on the whole Chapter V.

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.
2. The determining authority **shall**:
  - (~~ba~~) ~~shall~~ have regard **to** 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;
  - (~~ab~~) ~~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 where available** ~~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 **recommendations** ~~guidance~~ issued by the United Nations High Commissioner for Refugees.<sup>88</sup>

**This is without prejudice to the competence of the determining authority to decide on individual applications for international protection.**<sup>89</sup>

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<sup>88</sup> **PL:** same comment as for Art. 7(3), 8(3) and 11(2)(b). **PRES:** see explanation for Art. 11 (2).

<sup>89</sup> **SE:** delete this sentence, the non-binding nature of "*take into account*" is sufficiently clear. **DE:** scrutiny reservation.

3. Paragraph 1 shall not apply to a beneficiary of subsidiary protection status who is able to invoke compelling reasons arising out of previous serious harm for refusing to avail himself or herself of the protection of the country of nationality or, being a stateless person, of the country of former habitual residence.

*Article 18*

***Exclusion***

1. A third-country national or a stateless person shall be excluded from being eligible for subsidiary protection where there are serious reasons for considering that:
- (a) he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
  - (b) he or she has committed a serious crime;
  - (c) he or she has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations;
  - (d) he or she constitutes a danger to the community or to ~~the security of the Member State in which he or she is present;~~<sup>90</sup>

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<sup>90</sup> **PL:** in order to ensure the security of the Schengen Area, the risk to the other MS' security and public order should be also usable for a ground when excluding a person from being eligible for subsidiary protection. **AT:** same comments as for Art. 12, add "*to the community, the social peace or individuals*" after "*danger*". **COM:** pending further confirmation, it is the actual MS which is concerned, not other MS. **SE:** scrutiny reservation on (1). **PRES:** same explanation as in relation to Art. 14.

(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.~~

2a. ~~Member States may exclude a third-country national or a stateless person may be excluded 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.~~

## CHAPTER VI

### SUBSIDIARY PROTECTION STATUS <sup>91</sup>

#### Article 19

#### *Granting of subsidiary protection status*<sup>92</sup>

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 status<sup>93</sup>

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;

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<sup>91</sup> **BG:** reservation on the whole chapter VI.

<sup>92</sup> **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. **DE:** add the following text: "*MS may decide in accordance with their national law to grant the subsidiary protection status to the family members of the beneficiary who are present in the MS.*"

<sup>93</sup> **BG, FI, SE:** scrutiny reservation. **FR:** reservation; redraft the title and para (1) as follows: "End of subsidiary protection"; "(1) The determining authority shall end the subsidiary protection status of a third-country national or a stateless person where:". **AT, BE, ES, FR, SE:** same comments as for Art. 14. **SK:** unclear if it is possible to keep national legislation concerning refusal to renew the subsidiary protection status. For practical reasons, the drafting in QD I preferable as it reflects more the temporary character of subsidiary protection. **PRES:** the new wording in the title is based on the definition of withdrawal of international protection found in Article 2 of this Regulation and includes the revocation, ending, or refusal to renew of the status. The term "*withdrawal*" should always be seen in the context of the definition in this Regulation and would cover both ex-nunc and ex-tunc cases.

- (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;<sup>94</sup>
- (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.<sup>95</sup>
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 subsidiary protection or should have never been granted** subsidiary protection **status** in accordance with ~~for the reasons set out in~~ paragraph 1 of this Article.<sup>96</sup>
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 that granted him or her international protection on other grounds in accordance with relevant Union and national law.~~

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<sup>94</sup> **SE:** scrutiny reservation regarding (b) and (d) as long as scrutiny reservation remains for Art. 18 and on Art. 23 (2).

<sup>95</sup> **DE:** scrutiny reservation on the para (1). **FI:** scrutiny reservation on (1) (d), the principle of non-refoulement is unconditional in the Constitution of Finland. **PRES:** to avoid duplication, the last sub-para in Article 23(2) has been deleted.

<sup>96</sup> **SE:** scrutiny reservation.

~~To this effect, the Member State responsible shall allow the A person whose status has been withdrawn by the determining authority for reasons specified in Article 17 and has applied for residence on other grounds, shall be allowed to remain on its the territory of the Member State that granted him or her international protection for a period not exceeding three months following the notification of the withdrawal.~~

*Article 21*

*Review of the subsidiary protection status<sup>97</sup>*

1. ~~In order to apply~~ **For the purpose** of Article 20(1), the determining authority shall review the subsidiary protection status, ~~in particular (a) where Union level country of origin information and the where available common analysis of country of origin information as on the~~ **situation in specific countries of origin and the guidance notes as referred to 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. This is without prejudice to the possibility to review the refugee subsidiary protection status on the basis of national and international sources, including information and guidance recommendations issued by the United Nations High Commissioner for Refugees, or on other grounds as deemed appropriate by the determining authority.**<sup>98</sup>

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<sup>97</sup> **AT, BE, BG, CZ, DE, EL, ES, FI, FR, IE, LT, LU, NL, 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. **HU:** it is important to keep the national list of countries of origin therefore Hungary does not support the proposal. Taking into account information at Union level might influence excessively the discretion of the authority. **PRES:** changes in order to make the text clearer. The word "*guidance*" in relation to UNHCR has been changed to "*recommendations*" in line with proposed changes throughout the text. The review of cases should not be a 'may' provision as this would not lead to harmonization. However, to avoid administrative burden the obligation to review the status only applies when the common analysis and guidance notes published by EUAA highlight a significant change in the country of origin. The proposed wording leaves ample flexibility for MS to also make a review on the basis of national and international sources, as well as on other appropriate grounds (e.g. beneficiary sentenced by a Court for breaking the law).

<sup>98</sup> **FR, IE:** same suggestions as for Art. 15. **PRES:** see explanation in footnote 86 (Art. 15).

~~(b) — when renewing, for the first and second time, the residence permit issued to a beneficiary of subsidiary protection.~~<sup>99</sup>

## CHAPTER VII

# CONTENT OF INTERNATIONAL PROTECTION RIGHTS AND OBLIGATIONS OF BENEFICIARIES OF INTERNATIONAL PROTECTION<sup>100</sup>

### SECTION I

#### *COMMON PROVISIONS*

##### *Article 22*

##### *General rules*<sup>101</sup>

1. 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.~~
2. ~~This Chapter shall apply both to refugees and persons eligible for subsidiary protection unless otherwise indicated.~~

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<sup>99</sup> **DE:** scrutiny reservation on the deletion.

<sup>100</sup> **SE:** reservation on Chapter VII.

<sup>101</sup> **BG, SE:** scrutiny reserve on the whole Article, especially for social security issues.

3. ~~Within the limits set by international obligations, granting of benefits with regard to access to employment, social security shall require the prior issuing of a residence permit~~ **Beneficiaries of international protection shall have access to rights under this Chapter related to information, free movement within the Member State that granted them protection, movement within the Union, employment, education, recognition of qualification and validation of skills,<sup>102</sup> social security, health care, access to accommodation and access to integration measures as soon as once international protection is granted.<sup>103</sup>**

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<sup>102</sup> **BE, IE:** insert a fullstop and amend the rest of the text as follows: "Access to social security, health care, access to accommodation and access to integration measures once international protection is granted shall require prior issuance of residence permits."

<sup>103</sup> **IE, EL, FI, FR, SE:** scrutiny reservation. **DE:** reservation, delete para (3), it is unnecessary and confusing. Para (1) is sufficient. We oppose explicitly listing various rights, because it is unclear whether this will lead to unintended legal consequences. **COM:** see Case-Law C-373/13: possibility to revoke the residence permit without affecting the rights. The Directive allowed for legal uncertainty; Regulation tries to remedy that. **FI :** the meaning is unclear. **FR:** prefer "as soon as" to "once". **PRES:** It should be noted that the rights listed in para (3) all emanate from the fact that the applicant has been granted international protection. Therefore, access to these rights should be possible from the moment international protection is granted (especially in view of the longer time limit that is being proposed for the issuance of a residence permit). However, it is important to bear in mind that as indicated in the respective Articles, beneficiaries have equal treatment with either nationals or third country nationals legally residing in the MS. This means that if a national/third country national requires a residence permit to have access to any of these rights, the same would apply for a beneficiary.

4. ~~When applying the provisions of this Chapter, the specific situation of p~~ **Where an individual evaluation establishes that a Ppersons with who hasve** special needs, ~~determined on the basis of an individual evaluation of their situation,~~ such as **a** minors, ~~an unaccompanied minors, disabled people~~ **a person with a disability,** ~~elderly people~~ **an elderly person,** ~~a pregnant womaen, a single parents with a minor children,~~ **a victims of human trafficking in human beings, a person with a serious illness,** ~~a persons with a mental disorders and a persons who hasve been subjected to torture, rape or other serious forms of psychological, physical or sexual violence,~~ **such a person shall be are entitled to have his or hertheir specific situationsshall be taken into account in the application of the provisions of this Chapter** ~~provided an individual evaluation of their situation establishes that they have special needs.~~<sup>104</sup>
5. When applying the provisions of this Chapter that involve minors the best interests of the child shall be a primary consideration to the competent authorities.<sup>105</sup>

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<sup>104</sup> **CZ:** redundant. **NL:** the provision is too detailed for a Regulation; in favour of deletion. **FR:** reservation. Delete the initial words "*Where an individual evaluation establishes that*". **SE:** reservation, include a definition of specific needs in a recital and redraft éé (4) as follows: "*Persons with specific needs shall be entitles to have his or her specific situation taken into account in the application of the provisions of this Chapter.*". **PRES:** the wording in this text has been aligned with that of the RCD by adding "*a person with serious illness*". The proposed wording does not imply that a new evaluation needs to be carried out. As explained by the Presidency at the last AWP if an evaluation has already been made at a previous stage there is no need to do a new one (in most cases this would have already been done during the asylum procedure). Since in the QR we do not have any definition of "*vulnerable persons*", there is the need to have such a non-exhaustive list. The fact that the text states "*have his or her specific situation taken into account*" does not mean that a vulnerable person would get extra benefits other than the ones already present in this Chapter.

<sup>105</sup> **SE:** scrutiny reservation.

Article 23

*Protection from refoulement*<sup>106</sup>

1. ~~Member States shall respect the principle of non-refoulement in accordance with their international obligations.~~ **Refugees, persons eligible to subsidiary protection and beneficiaries of international protection must be protected from non-refoulement in accordance with Union and international law.**<sup>107</sup>
2. Where not prohibited by the ~~international~~ obligations referred to in **the previous** paragraph~~4~~, a refugee ~~in accordance with the Geneva Convention~~, a person eligible for ~~or a beneficiary of subsidiary protection~~, or a beneficiary of international protection<sup>108</sup> ~~status, whether formally recognised or not~~, may be refouled<sup>109</sup> ~~whether formally recognised or not~~ when provided that:
  - (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.**<sup>110</sup>

~~In those cases the refugee status or the subsidiary protection status shall also be withdrawn in accordance with Article 14 or Article 20 respectively.~~<sup>111</sup>

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<sup>106</sup> SE: scrutiny reservation on the Article.

<sup>107</sup> EL: reservation on the deletion.

<sup>108</sup> DE, NL: repetition of concepts "*refugee*", "*person eligible for subsidiary protection*", and "*beneficiary of international protection*".

<sup>109</sup> HU: replace "refouled" by "*returned*" or "*expelled*". FI: scrutiny reservation; the principle of non-refoulement is unconditional in the Constitution of Finland.

<sup>110</sup> DE: scrutiny reservation.

<sup>111</sup> PRES: the wording in Article 23 has been amended to ensure that the text is clearer and to avoid regulating paragraph 2 twice (the same provision is already found in the respective Articles dealing with withdrawal of international protection).

*Article 24*  
***Information***<sup>112</sup>

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, **as specified in Annex II**<sup>113</sup>, 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 ~~2928~~ on movement within the Union.<sup>114</sup>

~~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].~~

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<sup>112</sup> **SE:** scrutiny reservation on the Article.

<sup>113</sup> **IE:** scrutiny reservation. **ES:** reservation on the content of Annex II.

<sup>114</sup> **NL:** rules on provision of information should be more flexible, leaving MS more room for manoeuvre

Article 25

*Maintaining family unity*<sup>115</sup>

1. Family members of a beneficiary of international protection who do not individually **apply or** qualify for such protection shall be entitled to ~~claim~~ a residence permit **in the Member State that granted international protection to the beneficiary** in accordance with **this Article and with** national procedures and insofar as this is compatible with the personal legal status of the family member.<sup>116</sup>

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<sup>115</sup> **DE, IE:** reservation on the whole Article related to national legislation. **FI, FR, SE:** scrutiny reservation on the whole Article. **AT, BG, CZ, DE, IE, SK:** 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? **CZ:** clarification needed: does this provision relate to the asylum or subsidiary protection status for a purpose to family reunification? If yes, it is acceptable, but the wording of this Article seems to refer to other form of status and residence permit. To prevent confusion, the following reformulation is suggested: delete "*apply or*" (first line), "*this Article and*" (third line) and add "*remaining on the same territory*" in the end.

<sup>116</sup> **IE, SK:** reservation on "*apply*" - expands the scope of the Article, delete it. It should be said that the family members shall be entitled to apply for a residence permit in the Member State that granted international protection to the beneficiary. There are other considerations which must be taken into account in accordance with national law and procedures before a decision can be made to grant a residence permit linked to the beneficiary (e.g. in the case of a polygamous union). **NL:** redraft as follows: "*If family members of a beneficiary of international protection who do not individually apply or qualify for such protection are entitled to a residence permit in accordance with national procedures and insofar as this is compatible with the personal legal status of the family member, this article shall apply.*" **PRES:** the word "*apply*" was added to cater for those limited cases where the family members of an applicant decide not to individually apply for international protection. Regarding the issue of polygamy, a recital has been added to cover for such a scenario (16a).

2. A residence permit issued pursuant to paragraph 1 shall have the **same duration of validity as** the residence permit issued to the beneficiary of international protection and shall be renewable **for as long as the residence permit issued to the beneficiary of international protection is renewed**. 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.<sup>117</sup>
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.<sup>118</sup>
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.

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<sup>117</sup> **DE:** scrutiny reservation.

<sup>118</sup> **EL:** scrutiny reservation. **FR**, supported by **EL**: doubts: there is a confusion between what comes under international protection and what comes under Family Law. **PRES:** the residence permit issued to family members of a beneficiary who do not apply or who do not qualify should have the exact same validity period as that of the beneficiary since the only reason why the residence permit is being issued is to ensure family unity with the beneficiary. The current text does not preclude the possibility of issuing a residence permit to family members on the basis of other regulations or national law. Adding new grounds for not issuing a residence permit would be problematic since in this case family members were either rejected or did not apply for protection.

5. Family members who are issued a residence permit pursuant to paragraph 1 shall be entitled to the rights referred to in Articles ~~28~~**7** to **35 and 37 to 39**.<sup>119</sup>
6. ~~Member States may decide that this article also applies to other close relatives who lived together as part of the family at the time of leaving the country of origin or before the applicant arrived on the territory of the Member States, and who were wholly or mainly dependent on the beneficiary of international protection at the time.~~<sup>120</sup>

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<sup>119</sup> **PL** (supported by **CZ**): not all of the rights the beneficiaries of international protection are entitled for should be available for their family members. Article 29 par. 2 – implementing the Dublin Regulation in regard to family members, who are not beneficiaries of international protection and had not seek for it might be problematic, because according to art. 1 of amended version of Dublin Regulation it establishes criteria and mechanisms of determining a Member State responsible for examining an application for international protection lodged in one of the Member State by third country citizen or stateless person; clarification needed to know if MS are allowed to verify whether the conditions provided in Art. 7 (1) of Directive 2003/86/EC are met if the application for the residency for the family member is submitted after 3 months since granting the international protection for the applicant

<sup>120</sup> **EL**: reservation, deletion not acceptable. **DE**: scrutiny reservation on the deletion.

## SECTION II

### *RIGHTS AND OBLIGATIONS RELATED TO RESIDENCE AND STAY*

#### *Article 26*

#### *Residence permits*<sup>121</sup>

1. **As soon as possible after international protection has been granted, and within 4560 days from the notification of the decision 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 and shall have the following validity periods:**<sup>122</sup>
  - a) For beneficiaries of refugee status, ~~that~~**The** residence permit shall have a period of validity ~~of~~ **between three and five years, as determined by national law, and shall** be renewable ~~thereafter for periods of three years.~~<sup>123</sup>

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<sup>121</sup> **FR:** reservation. **BG, FI, IE, SE, SK:** scrutiny reservation. **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. **HU:** the validity periods proposed in this Article might cause secondary movements because beneficiaries of international protection might choose that MS which issues the residence permit with the longest validity period.

<sup>122</sup> **BG:** against the link between the residence permit and the status; there should not be any obligation to issue a residence permit. **DE:** scrutiny reservation linked to Art. 22(3). **IE:** regarding the format, IE does not participate in Reg 1030/2002 and thus is not bound by it. **BE, FR:** should be 90 days like in other migration instruments; add the following sentence at the end of the first sub-para: "*A temporary document shall be issued immediately to the beneficiary of protection awaiting the issuance of the residence permit.*"

<sup>123</sup> **IT:** 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*". **FR:** for refugees the validity of the residence permit should be between five and ten years, renewable afterwards. **PT:** the validity period could be increased. **AT, DE:** scrutiny reservation on the extension of the validity period for subsidiary protection.

- b) For beneficiaries of subsidiary protection status, ~~that~~ residence permit shall have a period of validity ~~of between one and three years, as determined by national law,~~ and shall be renewable thereafter for periods of two years<sup>124</sup>

~~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.~~

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;

- b) ~~where~~Article 23(2) is applied;<sup>125</sup>

- c) ~~where~~reasons of national security or public order so require.<sup>126</sup>

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.~~<sup>127</sup>

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<sup>124</sup> **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. **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. **FR:** for beneficiaries of subsidiary protection, the validity of the residence permit should be between one and five years, renewable afterwards. **PRES:** the wording proposed by the Presidency only stipulates the validity period of the first residence permit to be issued to a beneficiary. This does not preclude the possibility of issuing a permanent residence permit when renewing for the first time (recital (37a) has been added to this effect).

<sup>125</sup> **SE:** scrutiny reservation, linked to Art. 23 (2) second sub-para. **PRES:** to avoid duplication, the last sub-para of Article 23(2) has been deleted.

<sup>126</sup> **DE:** scrutiny reservation on the entire para (2) given the interaction with national law.

<sup>127</sup> **EL:** reservation on the deletion.

*Article 27*  
***Travel document***<sup>128</sup>

1. Competent authorities shall issue travel documents to beneficiaries of refugee status, in the form set out in the Schedule to the Geneva Convention and with the minimum security features and biometrics outlined in Council Regulation (EC) No 2252/2004<sup>129 130</sup>. Those travel documents shall be valid for at least one year.
2. Competent authorities shall issue travel documents with the minimum security features and biometrics outlined in Regulation (EC) No 2252/2004 to beneficiaries of subsidiary protection status who are unable to obtain **or renew** a national passport. Those **travel** documents shall be valid for at least one year.
3. The documents referred to in paragraphs 1 and 2 shall not be issued where compelling reasons of national security or public order so require.

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<sup>128</sup> **BG, FI, SE:** scrutiny reservation. **FI:** only the maximum duration of travel documents is currently regulated in Finland. **PRES:** the Regulation only stipulates the minimum validity period for a travel document.

<sup>129</sup> Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for in passports and travel documents issued by Member States (OJ L 385, 29.12.2004, p. 1).

<sup>130</sup> **IE:** does not participate in Regulation 2252/2004 and is not bound by it.

Article 28

***Freedom of movement within the Member State***<sup>131</sup>

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.<sup>132</sup>
  
2. Within the limits set by international obligations, residence conditions may be imposed on a beneficiary of international protection who receives certain specific social security or social assistance benefits only where those residence conditions are necessary to facilitate the integration of the beneficiary in the Member State that has granted ~~that~~ **him or her international** protection.<sup>133</sup>

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<sup>131</sup> **FR, SE:** scrutiny reservation. **FR:** the compatibility of this provision with Art. 26 of the Geneva Convention, which foresees a right for refugees to choose their place of residence, should be checked.

<sup>132</sup> **NL:** scrutiny reservation.

<sup>133</sup> **DE:** reservation on the second paragraph. The beneficiary's lasting integration into society should be the only purpose for assigning a certain place of residence.

**PRES:** para (2) is a "may" provision. Thus, there is no obligation for a MS to place any residence conditions on a beneficiary. Moreover, para (2) clearly states that this can only be done within the limits set by international obligations (i.e. in full respect of the Geneva Convention).

Article 29

***Movement within the Union***<sup>134</sup>

1. Beneficiaries of international protection shall not have the right to reside in Member States other than the one which granted them international protection. This is without prejudice to their right to apply and be admitted to reside in **another Member States-pursuant to that Member State's national law or** pursuant to relevant provisions of Union law ~~and national or of international law-agreements, and-or~~ their right to move freely in accordance with the conditions of Article 21 of the Convention Implementing the Schengen Agreement.<sup>135</sup>

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<sup>134</sup> **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 before agreement is achieved on this issue. **HU:** the scope of Dublin Regulation would be extended to beneficiaries of international protection. In connection with the Dublin proposal, this delegation opposes the art. and enters a reservation 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). On the other hand, if they have no right to 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 discriminatory 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.

<sup>135</sup> **HU:** reservation on the second sentence.

- [2. Where a beneficiary is found in a Member State other **than** the one ~~that~~**which granted** him or her ~~granted international~~ protection without a right **to** stay or the right to reside there in accordance with **that Member State's national law, or pursuant to relevant provisions of Union law, and of international agreements** ~~relevant Union or national law~~, he **or she** will be subject to a take back procedure as defined under Article 20(1)(e) of the Dublin Regulation (EU) no. xxx/xxx.]<sup>136</sup>

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<sup>136</sup> **DE, FR, RO:** scrutiny reservation. **LT:** this paragraph is in conflict with the Blue Card Regulation. **IT:** it might be better to use other instruments, like readmission agreements; resorting to Dublin is too burdensome for MS of arrival who are responsible for the take back procedure. **BG, EL:** reservation; see IT comment. **CY, ES:** reservation: since the purpose of the Dublin Regulation is the examination of the claim for international protection in the MS where the application was first lodged, Cyprus has reservations regarding para 1(e) of article 20 of the Dublin proposal (take back beneficiaries of international protection who made an application in another member state than the one which granted the protection status). These cases are already being dealt with under Article 6(2) of the Return Directive, and they are returned back to the MS which issued the residence permit. This will also add to the administrative and financial burden of the MSs which are already under pressure. **COM:** Article 29 is relevant even if mirroring Schengen Agreement or Dublin Reg. provisions. **PRES:** the two paragraphs are not in contradiction. Para (1) states the right to a beneficiary to move freely within the Union in accordance with the conditions of Article 21 of the Convention Implementing the Schengen Agreement and to the possibility of applying and being admitted to reside in another MS. On the other hand, para (2) states the repercussions if a beneficiary is found in another MS without a right to stay there (e.g. overstayed the 90 day timeframe in a 180 day period as indicated in Schengen Borders code).

**SECTION III**  
**RIGHTS RELATED TO INTEGRATION<sup>137</sup>**

*Article 30*

***Access to employment<sup>138</sup>***

1. Beneficiaries of international protection shall have the right to engage in employed or self-employed activities subject to the rules generally applicable to the profession and to the public service<sup>139</sup>, immediately after protection has been granted.<sup>140</sup>
2. Beneficiaries of international protection shall enjoy equal treatment with nationals of the Member State that has granted **them international** protection as regards: <sup>141</sup>
  - a) **terms of employment including the minimum working age and** working conditions, including pay and dismissal, working hours, leave and holidays as well as health and safety requirements at the workplace;
  - b) freedom of association and affiliation, and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the benefits conferred by such organisations;

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<sup>137</sup> **BE, BG, ES, FI:** general scrutiny reservation on the whole Section III

<sup>138</sup> **EL, RO:** scrutiny reservation.

<sup>139</sup> **RO:** scrutiny reservation; a definition of "public service" is needed.

<sup>140</sup> **DE, EL, SE:** scrutiny reservation; clarify the link with Art 22(3) which refers to the requirement of the prior issuing of a residence permit, while in Art. 30(1) it says "*immediately after protection has been granted*", wording needs to be aligned. **COM:** the residence permit is not constitutive of the right to work but it is a proof of the status.

<sup>141</sup> **DE:** scrutiny reservation on para 2.

- c) employment-related education opportunities for adults, vocational training, including training courses for upgrading skills, practical workplace experience;
  - d) advice services afforded by employment offices.
3. Competent authorities, where necessary shall facilitate the full access to the activities referred to in **points (c) and (d) of paragraph (2)**~~(c) and (d)~~.<sup>142</sup>

*Article 31*

***Access to education***<sup>143</sup>

1. Minors granted international protection shall have full access to the education system, under the same conditions as nationals of the Member State that has granted **them international** protection.
2. Adults granted international protection shall have access to the general education system, further training or retraining, under the same conditions as third-country nationals legally resident in ~~that~~ **the Member State that has granted them international protection** who are in a comparable situation.<sup>144</sup>

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<sup>142</sup> **SE:** scrutiny reservation. **IE:** reservation related to "*full access*", delete "*full*"; MS should retain the right to target such measures to those who are considered to be most in need and for whom they are likely to be of greatest benefit. **PRES:** the current wording only implies a requirement to facilitate full access to the activities referred to in points (c) and (d).

<sup>143</sup> **IE:** scrutiny reservation.

<sup>144</sup> **AT:** add para (3) as follows: "*Paragraph 1 shall not apply to financial benefits from the Member States which are granted to promote education.*" **IE:** delete "*in a comparable situation*". **PRES:** it should be noted that in para (2) the comparison is with third-country nationals legally resident in the Member State and not with nationals. Therefore, access to financial benefits which are granted to promote education can be restricted if this is also restricted for the said category. The wording "*in a comparable situation*" should be understood as referring to the validity period of the residence permit.

Article 32

*Access to procedures for recognition of qualifications and validation of skills*<sup>145</sup>

1. Beneficiaries of international protection shall enjoy equal treatment with nationals of the Member State that has granted **them international** protection in the context of the existing recognition procedures for foreign diplomas, certificates and other evidence of formal qualifications.
2. Competent authorities shall facilitate full access to the **existing** procedures mentioned in paragraph 1 to those beneficiaries of international protection who cannot provide documentary evidence of their qualifications, without prejudice to Articles 2(2) and 3(3) of Directive 2005/36/EC of the European Parliament and of the Council.<sup>146147</sup>
3. Beneficiaries of international protection shall enjoy equal treatment with nationals of the Member State that has granted **them international** protection as regards access to appropriate **and existing** schemes for the assessment, validation and ~~accreditation~~ **recognition** of their prior learning **outcomes** and experience.

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<sup>145</sup> **EL, IE, RO, SE:** scrutiny reservation. **FR:** reservation.

<sup>146</sup> Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications ([OJ L 255, 30.9.2005, p. 22](#)).

<sup>147</sup> **AT, FR, IE:** reservation. **DE, PT:** scrutiny reservation. **FR,** supported by **AT:** concern that this might lead to more favourable treatment for refugees than for other third-country nationals; in addition, this might be also problematic for certain regulated professions related to public health and safety issues. **COM:** this corresponds to Art. 28(2) of the current Directive, only "endeavour" was replaced by "facilitate" which means letting them into the procedure but not recognising their diplomas, certificates etc. Standards (minimum harmonisation rules in sectoral professions) have to be kept, hence cross-reference to Articles 2(2) and 3(3) of Directive 2005/36/EC; for recognition, they still need to present evidence. **PRES:** this refers only to letting beneficiaries into the procedure and not recognising their diplomas, certificates etc. In this sense, "*existing*" has been added to make it clear that Member States do not have any obligation to create new procedures or schemes, but simply to give access if these schemes already exist.

Article 33

~~*Social security*~~

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

Article 34

*Social security*<sup>148</sup> ~~and~~ *Social assistance*<sup>149</sup>

1. Beneficiaries of international protection shall enjoy equal treatment with nationals of the Member State that has granted **them international** protection as regards social **security and social** assistance.<sup>150</sup>

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<sup>148</sup> **DE:** former Art. 33 restricts Art. 24 of the Geneva Convention. 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 (...).*" **SE:** not clear how the principle of equal treatment should be applied. Shall the beneficiaries of international protection be treated equally with regard to a national citizen returning home from a longer period of residence in a third country, or shall the beneficiaries be treated equally with regard to persons that have lived in the Member State their entire life (or at least for a very long time)?

<sup>149</sup> **BE, DE, EL, FR, IE, LT, RO, SE:** scrutiny reservation. **IE:** no agreed definition of "*social assistance*". **DE:** see comment on Art. 2(17); the phrase "*necessary social assistance*" in the current Article 29 (1) of the QD should be retained in order to avoid giving the impression that an amendment or widening of scope is intended here. **LV:** reservation on the title and the definition of "*social assistance*" in Art. 2. **SE:** not clear what are the differences in the content of the rights to be granted with regard to minimum income support (social assistance) versus unemployment benefits covered (social security); not clear what are the differences in the content of the rights to be granted with regard to assistance in the case of illness (social assistance) versus sickness benefits (social security); not clear what are the differences in the content of the rights to be granted with regard to pregnancy and parental assistance versus maternity and equivalent paternity benefits covered (social security).

<sup>150</sup> **EL:** scrutiny reservation. **DE:** maintain the current wording of QD "*necessary social assistance*" in order to avoid giving the impression that this draft Regulation is proposing an amendment or widening of scope. **COM:** it is considered as implied; social assistance is given upon request.

Access to certain social assistance specified in national law may be made conditional on the effective participation of the beneficiary of international protection in integration measures, **where such measures are made compulsory in accordance with Article 38 (2).**

2. **Notwithstanding paragraph 1, for beneficiaries of subsidiary protection status, Member States may limit the provision of equal treatment as regards social assistance may be limited to core benefits.** <sup>151</sup>

*Article 35*

***Healthcare***<sup>152</sup>

1. Beneficiaries of international protection shall have access to healthcare under the same eligibility conditions as nationals of the Member State that has granted ~~such~~ **them international** protection.

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<sup>151</sup> **SE:** scrutiny reservation. **DE:** clarify why the current wording "*which will then be provided at the same level and under the same eligibility conditions as nationals*" from the QD was not included in the COM proposal. **ES, NL:** reservation on the differentiation made between both statuses. **AT:** wishes to maintain differences between the treatment of refugees and beneficiaries of subsidiary protection status. It should be possible that the treatment of beneficiaries of subsidiary protection status regarding social security and social assistance can be limited to core benefits. **COM:** we cannot extend the "*may*" clause to both statuses due to international law (Geneva Convention); therefore, the *status quo* is kept. **PRES:** special non-contributory cash benefits no longer fall under social security but would now be part of social assistance, which in the case of beneficiaries of subsidiary protection status can be limited to core benefits as defined in the recitals. During the last AWP, it was explained that MS would need to check on a case by case basis whether special non-contributory cash benefits fall under core benefits or not.

<sup>152</sup> **DE, ES, RO, SE:** scrutiny reservation.

2. Beneficiaries of international protection who have special needs, such as pregnant women, disabled people, persons who have undergone torture, rape or other serious forms of psychological, physical or sexual violence or minors who have been victims of any form of abuse, neglect, exploitation, torture, cruel, inhuman and degrading treatment or who have suffered from armed conflict shall be provided adequate healthcare, including treatment of mental disorders when needed, under the same eligibility conditions as nationals of the Member State that has granted **them international** protection.<sup>153</sup>

*Article 36*

*Unaccompanied minors*

[TA]

*Article 37*

*Access to accommodation*<sup>154</sup>

1. Beneficiaries of international protection shall have access to accommodation under conditions equivalent to those applicable to other third-country nationals legally resident in the territories of the Member States ~~State responsible that granted him or her international protection~~ who are in a comparable situation.<sup>155</sup>
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.

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<sup>153</sup> **CZ:** delete para due to the basic principle that beneficiaries of international protection have access to healthcare under the same conditions as nationals of the MS.

<sup>154</sup> **SE:** scrutiny reservation.

<sup>155</sup> **DE:** scrutiny reservation on para (1)

Article 38

*Access to integration measures*<sup>156</sup>

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**<sup>157</sup>, provided **or facilitated** by the Member States ~~State responsible that granted him or her international protection~~, in particular language courses, civic orientation, ~~and~~ integration programs and vocational training ~~which take into account their specific needs.~~<sup>158</sup>
2. ~~Member States may make participation~~ **Beneficiaries of international protection shall participate** in integration measures **where participation is made compulsory in the Member State that granted them international protection.**, ~~and ensure that~~ **Such integration measures a** ~~shall be accessible and affordable.~~

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<sup>156</sup> **SE:** scrutiny reservation. **HU:** it should be clarified whether giving the access to integration measures is obligatory for MS.

<sup>157</sup> **DE, IT:** unclear what "*considered appropriate*" means. **IE:** after "*considered appropriate*," include "*where provided for or facilitated by the Member State responsible...*". **PRES:** the wording "*considered appropriate*" leaves ample flexibility for Member States to decide on what type of integration measures are appropriate for beneficiaries.

<sup>158</sup> **ES:** equal treatment for men and women should be included. **FR:** it should be a "*may*" clause instead. **FI, SE:** unclear why the last part was deleted. **PRES:** the current wording does not create an obligation on MS to provide integration measures, but only to give access if such measures are provided or facilitated. The last part was deleted in order to avoid undue burden on the MS. However, there is nothing precluding MS from providing or facilitating tailor made integration measures.

Article 39

**Repatriation**

**When a beneficiary of international protection expresses the wish to be repatriated, and hence agrees to the withdrawal of the protection granted once repatriated, assistance for repatriation shall, where necessary, be provided.**~~Assistance shall, where necessary, be provided to beneficiaries of international protection who wish to be repatriated.~~<sup>159</sup>

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<sup>159</sup> **BG:** reservation. Assistance provided by the MS to the person to whom protection was granted and 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. **AT, DE, IT, LV, NL, SE:** scrutiny reservation. **AT, DE, ES, IE, LV:** clarify "*assistance*". **AT, DE, ES, FI, FR, IE, IT, LV:** assistance should remain optional. **DE:** better in a recital and use "*should*" instead of "*shall*". The granting of repatriation assistance should remain a discretionary decision of MS. **HU:** clarify whether the EU's financial instruments especially the AMIF's financial resources could be used. **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. **AT:** unclear why this provision foresees a consent of the beneficiary, even if such a consent is not necessary for the cessation of the status. **CZ:** delete "*once repatriated*". **PRES:** the proposed wording does not create an obligation on Member States to provide assistance in each and every case. The word "*where necessary*" entails that an assessment will have to be done on a case by case basis to determine if, and what type of assistance is needed. It would also be problematic to give an exhaustive list of what is meant by assistance since this would depend on the particular case. MS should also keep in mind that "*may*" provisions should be kept at a minimum in a Regulation.

## CHAPTER VIII

### ADMINISTRATIVE COOPERATION

#### *Article 40*

#### *Cooperation*

Each Member State shall appoint a national contact point and communicate its address to the Commission. The Commission shall communicate that information to the other Member States. Member States shall, in liaison with the Commission, take all appropriate measures to establish direct cooperation and an exchange of information between the competent authorities.

#### *Article 41*

#### *Staff*

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

# CHAPTER IX

## FINAL PROVISIONS

### *Article 42*

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

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

### *Article 43*

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

By ... [no later than two years from **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.

*Article 44*  
*Amendment to Directive 2003/109/EU<sup>160</sup>*

**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 that granted him or her international protection** preceding such a situation shall not ~~normally~~ be taken into account in the calculation of the period referred to in paragraph 1.<sup>161</sup>

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

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<sup>160</sup> **EL, ES, FI, PT, SE:** scrutiny reservation.

<sup>161</sup> **DE:** scrutiny reservation, still examining the proportionality of the sanction. **EL:** unclear whether such a radical punishment, without any exceptions, justifications or conditions is compatible with the principle of proportionality. **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. **PRES:** the last sub-para was reinstated to provide for more flexibility to MS and maintain a measure of proportionality.

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 eighteen months~~ **two years** 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."<sup>162</sup>

*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 **III**.

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<sup>162</sup> CZ: scrutiny reservation on para (2).

*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 eighteen months~~ **two years** from its entry into force].<sup>163</sup>

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*

[...]

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<sup>163</sup> AT, CZ, DE, EL, ES, SE: scrutiny reservation.