



# **Evaluation of the application of the recast Qualification Directive (2011/95/EU)**

Executive Summary



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## Executive summary

The aim of the study was to evaluate the practical application of the Recast Qualification Directive 2011/95/EU<sup>1</sup> (Recast QD or Directive 2011/95/EU) laying down standards for the qualification of third-country nationals as beneficiaries of international protection as well as for the content of such protection. To this end, the study examined how and to what extent Member States had implemented common standards, whether the Recast QD had changed the situation in the Member States when compared to 2013, the deadline for transposing the Recast QD into national legislation, and whether it had led to greater convergence at EU level. Finally, the study identified benchmarks for measuring the implementation of each Article as well as shortcomings, which could possibly justify amendments to improve the effectiveness of the Directive.

The study covered all EU Member States<sup>2</sup> bound by the Directive through a large data collection exercise, including face-to-face and telephone interviews, desk research, case law analysis, stakeholder workshops and case studies engaging with a total of 219 stakeholders including case handlers, competent authorities, academic experts, lawyers, representatives of the judiciary as well as civil society.

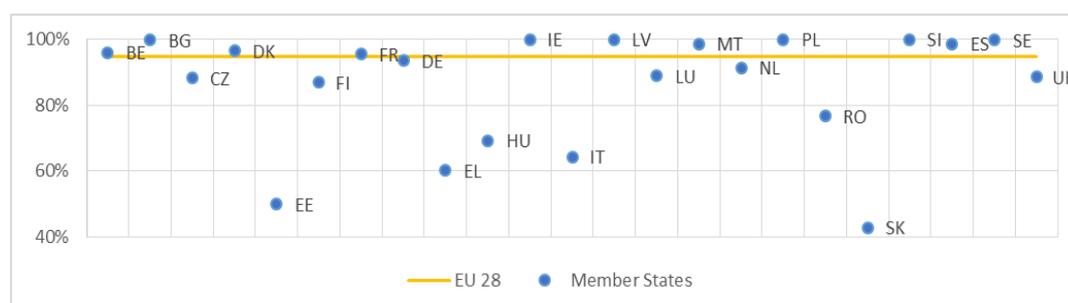
## Key cross-cutting findings

The evaluation led to the following general key messages relevant for several Articles of the Directive.

### Divergent recognition rates for same country of origin applications

While the Directive had in some areas contributed to a higher level of approximation of the national rules, it appeared that in other fields, the practical application of the Directive still varied significantly. This could lead to different outcomes from asylum applications across Member States in terms of recognition rates, even when applicants come from the same country of origin (bearing in mind however that the profile of applicants to some extent might vary across Member States). For example, while the majority of Member States granted protection to a very large share of applicants originating from Syria in 2014, only around 40% of Syrian applicants were granted protection in Slovakia.

**Figure 1.1 Recognition rate of persons with Syrian citizenship per Member State in 2014, %**



Source: Eurostat, *migr\_asycfsta*, extracted on 25 February 2016

<sup>1</sup> Directive 2011/95/EU of the European Parliament and of the Council 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).

<sup>2</sup> The study covers all Member States bound by Directive (i.e. all EU Member States except Denmark, Ireland and the United Kingdom). In Ireland and the United Kingdom, the study looked at relevant elements of the national legal framework as covered by Directive 2004/83/EC and identified, analysed and assessed the evolution and main achievements, using the same analytical and methodological approach as outlined for the other Member States. Information regarding all EU Member States bound by Directive 2011/95/EU or 2004/83/EC are reflected regarding with the exception of ES for some Articles, where no information could be collected for reasons explained in detail in Section 2 of this report.

These differences were, to some extent, related to the way in which the Directive was applied and interpreted. For example, significant differences in the application of the Directive's Articles were noted regarding the way facts and circumstances of applications were assessed (Article 4), the assessment of 'sur place' applications (Article 5), of protection alternatives (Articles 7 and 8) and the application of cessation clauses (Articles 11 and 16). Furthermore, the set-up and application of country of origin information (COI) and safe country of origin lists, as well as to the assessment of the credibility of the applicant during the examination of his or her well-founded fear of persecution or serious harm could lead to such differences.

### **Differences in transposition, interpretation and application of the Directive remain**

Overall, a higher level of harmonisation was achieved with regard to aligning the content of rights granted to subsidiary protection (SP) beneficiaries with refugees (e.g. concerning access to employment, access to education or access to healthcare).

However, variation among Member States' practices in granting rights to refugees and beneficiaries of subsidiary protection remained in some countries regarding the granting of residence permits (Article 24), travel documents (Article 25), social assistance (Article 29), the type and quality of integration programmes (Article 34) as well as repatriation assistance (Article 35). Such differences were, on the one hand, the result of different interpretations of the provisions and, on the other hand, related to the extent to which Member States had transposed certain 'may-clauses' – in the form of optional limitations or the possibility for more favourable rules – into national legislation.

### **Divergent practices in establishing country of origin information**

While all Member States applied COI for the assessment of asylum claims, the sources and mechanisms to set up COI differed considerably across Member States. For instance, the extent to which COI units were (politically) independent, how much financial and human resources were invested in setting up COI, and to what extent the Member States coordinated the content of COI with other Member States, United Nations High Commissioner for Refugees (UNHCR) and the European Asylum Support Office (EASO) information led to different levels of detail and quality of COI. Overall, awareness of the existence of the EASO COI Portal<sup>3</sup> seemed low among case handlers.

### **Use of country of origin information versus credibility assessment**

Member States' divergent practical interpretations of COI also seemed to contribute to different outcomes of asylum decisions. In particular, the extent to which an applicant was given the chance to rebut general COI with personal and individual circumstances, the level and burden of proof applied for applicants coming from countries of origin which were considered safe, and the type of documents admissible to support or rebut COI had an impact on the way applications were assessed and decided upon.

### **Safe country of origin mechanism**

Similar differences in the assessment of asylum applications occurred across Member States depending on whether they applied safe country of origin lists or not. Member States using such lists, generally applied a higher standard of proof on the applicant from a safe country of origin and the chances for such applicants to be granted international protection were therefore considered low.

### **Practical obstacles in accessing rights**

The same practical obstacles in accessing certain rights, such as access to employment (Article 26), access to education (Article 27), access to procedures for recognition of qualification (Article 28) and access to accommodation (Article 32) were reported across Member States. These included mainly language barriers, the excessive length and complexity of procedure to be followed in order to access a right, a lack of awareness and information on the functioning of the national system on the part of beneficiaries, a lack of awareness on the side of the competent authorities about the specific situation and particular needs of beneficiaries, financial obstacles such as the inability to pay the requisite fees for the services provided, as well as many bureaucratic requirements which sometimes cannot be met

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<sup>3</sup> <https://coi.easo.europa.eu/>.

by beneficiaries of international protection (e.g. showing original certificates in order to access education or training).

### Lack of coherent use and availability of guidance and training

An overall lack of coordinated and coherent use of guidance and training was noted across Member States, in spite of the availability of elaborate materials in some key areas, such as EASO's Practical Guides on Tools and Tips for Online COI Research,<sup>4</sup> on Evidence Assessment<sup>5</sup> and on the Personal Interview<sup>6</sup> as well as UNHCR's Handbook,<sup>7</sup> EASO training modules on Interview Techniques, Evidence Assessment, Interviewing Vulnerable Persons, Interviewing Children, and Country of Origin Information. The availability of guidance and training on topics not addressed by EU or UN guidance varied greatly between the Member States.

## Main findings per Article

### The examination of an application – Article 2(d) and (f)

In the framework of a **single procedure**, applications for international protection should first be examined to establish whether the applicant qualifies for refugee status and only subsequently whether the applicant qualifies for international protection. This principle was respected by all Member States except Ireland (which is not bound by the Recast QD). Furthermore, the Directive requires Member States to assess applications for international protection in a **forward-looking manner**, which means whether the claimant has good grounds for fearing persecution in the future. In practice however, NGOs or lawyers interviewed in several Member States (BE, EL, FR, HR, IT, MT, PL, PT, SI, UK) did not consider that case handlers always conducted a forward-looking assessment.

### Assessment of facts and circumstances – Article 4

Articles 4(1) and (5) include an optional clause to require the applicant to cooperate with the authority when submitting an asylum claim. In the majority of Member States (AT, BE, BG, CY, CZ, EE, EL, FI, FR, IE, HR, LU, LV, MT, NL, PL, PT, RO, SE, SI), the **burden of proof** was shared between the applicant and the determining authority, but could shift between them depending on the phase of the procedure.

The notion of '**benefit of the doubt**' was applied in most Member States (AT, BE, BG, CY, EE, EL, FI, FR, HR, HU, IE, IT, MT, NL, PL, PT, RO, SE, SI, SK) but it seemed that their understanding of the term was variable. In some Member States it was defined in the law or guidelines, while in others it was assessed on a case-by-case basis. Some Member States indicated that their assessment of the benefit of the doubt was adapted depending on the applicant's profile and the knowledge s/he could reasonably be expected to have of his/her country of origin.

Issues were pointed out in several Member States regarding the **credibility assessment**, often resulting from a strict interpretation of applicants' contradictions or inaccuracies in their statements, which could result in the automatic rejection of the application, without an assessment of other elements in the application. Several Member States considered that the overall credibility of the applicant prevailed over the availability of evidence to substantiate the applicant's claim (AT, BE, BG, CY, CZ, EE, EL, FI, LU, NL, PL).

The submission of **additional documents and evidence** by the applicant remained possible after the interview with the determining authority in some Member States until the decision on the application was made or within a reasonable timeframe. Four Member States set time limits within which evidence had to be submitted (LU, MT, NL, SI), but in practice the applicant could still submit additional evidence until the adoption of the decision. In several Member States, new evidence could also be submitted before the Court in case the decision was appealed. However, late submission of evidence could affect the credibility of the claim in the absence of a plausible explanation.

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<sup>4</sup> <https://coi.easo.europa.eu/administration/easo/PLib/EASO-Tools-and-tips-for-online-COI-research2.pdf>

<sup>5</sup> [https://easo.europa.eu/wp-content/uploads/EASO-Practical-Guide\\_-Evidence-Assessment.pdf](https://easo.europa.eu/wp-content/uploads/EASO-Practical-Guide_-Evidence-Assessment.pdf).

<sup>6</sup> <https://easo.europa.eu/wp-content/uploads/EASO-Practical-Guide-Personal-Interview-EN.pdf>.

<sup>7</sup> <https://bit.ly/2TQfBCM>.

The **nature of the evidence** that could be presented to substantiate an international protection claim was very diverse, with several Member States stating that any type of evidence could be accepted. Some Member States pointed out that forged documents were an issue, but that original documents were rare. A few did not accept copies as evidence.

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

Applications for **international protection arising *sur place*** played a **minor role overall** in absolute numbers as well as in the total number of applications in the consulted Member States. The vast majority of Member States had **no separate procedure** in place and had not foreseen a higher level of scrutiny by law nor applied it in practice for the assessment of **first applications** for international protection arising *sur place* (AT, BG, CY, CZ, EE, IE, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PT, RO, SE, SI, SK and UK). Despite most countries' laws not foreseeing a different level of scrutiny, some of them did so in practice by putting a slightly **higher burden of proof** on the applicant when first applying for international protection arising *sur place* (BE, DE, EL and PL). **Malta** on the other hand did not apply a higher level of scrutiny for *sur place* applications in practice, although the relevant Maltese law (Refugee Act) allowed for it.

**A higher level scrutiny** was applied for **subsequent applications** in a few Member States (CZ, DE, EL, LU, MT, SE and SI), in line with Article 5(3).

### Actors of persecution or serious harm – Article 6

Article 6 sets out that actors of persecution or serious harm can be the State, parties or organisations controlling the State or a substantial part of the State and non-State actors, if the State and parties or organisations controlling (part of) the State are unable or unwilling to provide protection. Five Member States applied particular methods, guidelines or criteria to define actors of persecution or serious harm (BE, DE, MT, NL and SE), whereas the others applied COI, UNHCR or EASO guidelines, training and national case law. Out of those applying special methods, particularly detailed guidance existed for cases where the actors of persecution were parties or organisations controlling the State or a substantial part of the territory.

### Actors of protection – Article 7

The assessment of actors of protection in most Member States mainly focused on the type of protection provided rather than on the type of actor, however **higher scrutiny** was applied when protection was offered by a **non-State actor** compared to State actors. All Member States applying Article 7 used COI, UNHCR guidelines, EASO information and national (case) law in combination with an individual assessment. Five Member States applied in addition guidelines and internal instructions as to the assessment of actors of protection (BE, IE, MT, NL, SE). However, the quality and level of detail of such support measures differed vastly.

Most Member States assessed the main elements of protection, i.e. effectiveness of protection, durability of protection and access to protection, to at least some degree when examining the protection needs of applicants. The majority of Member States' laws provide that actors of protection must be **willing and able to protect** (with the exception of AT, CZ, EE, ES, FR, HR, IE, LV, PT, SE and UK). Although most national laws have transposed the requirement that protection should be of a **non-temporary nature**, only a few Member States particularly assessed the durability of such protection in practice (AT, BE, BG, CY, HU, IE, LU, NL and UK) and out of those, different interpretations of non-temporary were applied.

### Internal protection alternative – Article 8

Article 8 of the Directive foresees the option for Member States to deny protection when they consider that the applicant can avail him-/herself of protection in a certain part of the country of origin, the so-called internal protection alternative (IPA).<sup>8</sup> Almost all Member States' laws had transposed Article 8 (except for ES, IT and SE). All Member States applying the IPA confirmed that they assessed the **effectiveness of protection**, however, the study found that the criteria applied for such assessments

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<sup>8</sup> This concept is addressed by different names: Internal Protection (Qualification Directive), Internal Flight Alternative (used by UNHCR and by most PS), Internal Relocation (UK), Internal Protection Alternative (used by some Member States).

differed significantly. In most cases, the responsibility to demonstrate the viability of a protection actor or the IPA was a shared duty. The majority of the consulted Member States assessed the IPA **as part of the status determination**, which meant that the applicant carried most of the burden as he or she had to prove that there was no such alternative anywhere in the country of origin (AT, BG, CY, CZ, EL, FI, HR, HU, IE, LT, LU, MT, PL, PT, RO, SI and SE). Several Member States provided guidance on how to assess the accessibility of protection in parts of the country of origin, including written guidelines, established practice, and/or existing jurisprudence. All consulted Member States applying the IPA considered the individual's personal circumstances with regard to the general living conditions in the region (with the exception of the UK). Although Member States also considered that the living conditions in the relocation region needed to reach a certain 'minimum standard', this standard was not clearly defined in any Member State.

### Acts of persecution – Article 9

Article 9 stipulates the forms and acts of persecution in order to offer interpretative guidance for this notion. Most Member States (AT, BG, CY, EE, EL, FI, FR, HR, IE, LT, LU, LV, MT, NL, PL, RO, SI, SK) had **not further elaborated on these (and other) acts of persecution** in their national law or in internal guidelines but rather examined each case on its own merits. It was not clear, however, which criteria were used to conclude that an act was of a sufficient level of seriousness to be considered an act of persecution. The non-derogable rights of Article 15(2) ECHR constituted the highest threshold set by the Recast QD that Member States seemed to consider as guidance in many cases.

Some Member States confirmed that in their law and practice, an **accumulation of various measures** – including violations of human rights but not limited to them – could qualify as acts of persecution as long as they affected an individual in a similar manner (AT, BE, EL, FR, LV, PL, SE). Member States applied Article 9(1)(b) less frequently, which is possibly related to a lack of clarity of the provision and/or to the prevalence of a higher threshold perception of persecution than in Article 9(1)(a).

Most Member States had transposed Article 9(2) and considered the list of acts of persecution as indicative and non-exhaustive. Other Member States (EL, IE, MT, NL, PL and SE) mentioned that there was no further definition or explanation in their law or internal guidelines of what the **cumulative measures** could be and how they could affect one's life in a similar manner, but Article 9(2) was used as guidance in order to assess these acts. All Member States assessed the connection between the reasons for persecution and the absence of protection against acts of persecution.

### Reasons for persecution – Article 10

Article 10 refers to the reasons for persecution and offers guidance as to the content and the elements to be taken into consideration when assessing whether the reasons of race, religion, nationality, political opinion or membership to a particular social group are linked to the well-founded fear of persecution of the applicant. Public authorities in most Member States (BE, BG, CY, DE, EE, EL, FI, FR, IE, IT, LV, LU, MT, NL, PL, RO, SE, SI) confirmed that the assessment of the reasons for persecution could not be influenced by considerations of the possibility for **the applicant to behave 'discreetly'** in the country of origin in order to avoid persecution. Most Member States (BE, BG, CY, CZ, DE, EE, FI, FR, HR, IT, LT, MT, NL, PL, RO, SE, SK, SL) have adopted both approaches for the establishment of a particular social group and apply them **cumulatively**: the **'protected characteristics approach'**, which is based on an innate or fundamental characteristic that a person cannot or should not be compelled to forsake; and the **'social perception approach'**, which is based on a common characteristic that leads to the bearers being perceived as a distinct group from society and require the application of both criteria. A few Member States apply the criteria alternatively (EL, IE, IT, LT, LV).

Only a few Member States (CZ, HU, LT, LV and SE) have not transposed the new Article 10(1)(d) second paragraph, to take into consideration **gender-related aspects**, including gender identity for the purpose of defining membership of a particular social group into national legislation and deleted the statement that gender creates no presumption of membership of a group where it existed.

## Cessation – Articles 11 and 16

Article 11 defines the conditions under which a third-country national or stateless person ceases to be a refugee, while Article 16 applies to beneficiaries of subsidiary protection. Overall, in **only a few cases** the **cessation provisions** were applied by the Member States.

In most Member States, the application of the cessation provisions could mainly be **triggered by either new elements** regarding the individual concerned (BE, BG, CY, CZ, FI, HU, IT, LV, MT, NL, PL, RO, SE and SI), or by evidence of a significant and non-temporary change in circumstances in the country of origin. However, due to the current crisis, the practice of some Member States seemed to be evolving, with initiatives to limit the length of residence permits for refugees, with the intention to allow for a more regular review of the validity of the protection grounds.

Several Member States indicated that they relied on **COI** available at national level or shared with other Member States (AT, BE, CY, CZ, EL, IE, IT, MT, NL, RO, SI), as well as **reports by UNHCR and other international organisations** on cessation and UNHCR country of origin guidance (AT, BE, CY, FI, IE, IT, LV, MT, NL, RO, SE, SK). Several Member States confirmed assessment of the **significant and non-temporary** nature of the change in circumstances (AT, BE, CY, IT, EL, LT, NL, SI). While none of the Member States confirmed to have defined a **'grace period'** (i.e. setting a minimum time period to determine the stability and significant nature of the change in circumstances), the majority of them assessed the change in circumstances on a case-by-case basis and made sure that enough time had elapsed, and therefore that the situation was stable, before starting a cessation procedure (AT, BE, BG, FI, IE, IT, LT, MT, SE, SI).

## Exclusion – Articles 12 and 17

Articles 12 and 17 define the respective conditions under which a third-country national or a stateless person is excluded from being a refugee or from qualifying for subsidiary protection. Overall, Articles 12(1)(a) and 12(1)(b) seemed to be **rarely applied** across Member States.

With regard to Article 12(1)(a), **several Member States proceeded to an individual assessment** of the circumstances (BE, CY, EL, FI, IE, LU, SI), including by contacting UNRWA or UNHCR directly to obtain information. A **general examination** of the situation in the country of origin could supplement the individual assessment (CY, EL, HU, RO, SI, SK). The **Bolbol jurisprudence**<sup>9</sup> was **applied in the majority of the responding Member States**, who therefore examined the **'present' capacity of UNRWA** to provide protection but also **whether the applicant had availed himself or herself of the protection** of the agency (AT, BE, CY, EL, HU, IT, NL, PL, RO, SI, SK). Seven Member States stated that the cessation of the protection or assistance granted by UNRWA would **automatically lead to the recognition of the refugee status** of the person concerned (AT, BE, EL, HU, LV, RO and SE).

A number of Member States indicated that they **did not apply Article 12(1)(b)**, either because they had not transposed it into their national law (SE) or because they had never encountered a relevant case (CY, CZ, DE, EL, FR, LV, MT, NL, SI and SK).

## Granting of protection status – Articles 13 and 18

Articles 13 and 18 provide for the obligation for Member States to grant refugee or **subsidiary protection** status to third-country nationals or stateless persons who respectively qualify for the relevant protection status as defined under Chapters II and III or Chapters II and V of the Recast QD. The analysis of statistical data showed important **divergences in the recognition rate of protection statuses** from one Member State to another. Several factors were identified as possible explanations for these rates. First of all, the asylum procedure is mostly centred on the individual assessment of the applicant's statements, which by nature will always be somewhat subjective. The **lack of harmonisation** of practices to collect and analyse **COI** across Member States could lead to different COI being used in order to assess international protection claims from one Member State to another. **Differences in the interpretation** of certain Articles were named as another reason, even within a given Member State. This concerned, for example, the optional provision of the IPA (Article 8) as well as the assessment of the level of violence under Article 15(c). Finally, depending on the Member

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<sup>9</sup> CJEU, C-31/09, Nawras Bolbol v Bevándorlási és Állampolgársági Hivatal, 17 June 2010.

State, applicants in the same situation could be granted a different protection status, based on the Member State's assessment of the security situation in the country of origin.

### Revocation of, ending of or refusal to renew refugee status – Articles 14 and 19

Articles 14 and 19 define the respective conditions under which the refugee or subsidiary protection statuses can be revoked, ended or not renewed. Overall, Member States **rarely revoked, ended or refused to renew international protection statuses**. In a majority of Member States, a person subject to a revocation, ending or non-renewal procedure had the **possibility to contradict the evidence of the competent authorities** (AT, BE, BG, CZ, EL, FI, FR, HR, HU, IE, IT, LU, LV, NL, PL, RO, SE, SK and UK).

Generally, **practices in the Member States to interpret 'danger to national security or the community' diverged significantly from one Member State to another**. Some Member States used detailed criteria and definitions set in national law, while others considered all the factors and elements of a case in order to determine if someone constitutes a danger to national security or the community, suggesting that this was done primarily on a case-by-case basis rather than through a standard threshold, procedure or list of criteria.

### Serious Harm – Article 15

Article 15, read in conjunction with Article 2(f), defines the criteria of eligibility for subsidiary protection. Regarding **Article 15(a) most Member States** (AT, BE, BG, EE, EL, FR, HR, IT, LT, LV, MT, PL, RO, SE, SI, SK) confirmed **assessment of the risk of the death penalty individually** and for many (AT, BE, EE, EL, FR, SE) the mere existence of the death penalty in the law was not a sufficient reason to grant protection. However, the **standard of proof** required by the applicant as well as the assessment of this likelihood and the required likelihood for the risk to be *real* **varied between Member States**.

In order to assess both **the risk of torture and that of inhuman and degrading treatment in Article 15(b)**, Member States indicated that they took into account the **applicant's claims, COI and the relevant case law** of the European Court of Human Rights (ECtHR) based on Article 3 of the respective Convention.

With regard to the application of **Article 15(c)**, **Austria, Belgium** and **Germany** are among the Member States that **have not transposed the term 'individual'** in their national law. Member States which have included the term 'individual', indicated that they did not so much **assess** the individual character of the threat but **the level of indiscriminate violence**, based on the COI, and that they used the **sliding scale method** of the *Elgafaji* case, in order to find a balance between the two. **The method and the criteria used to assess the level of violence varied across Member States**; while some of them apply specific criteria and consider both the direct the indirect effects of the violence, when assessing its indiscriminate character, others do not use any specific methods or criteria.

### Content of international protection – Articles 20(1) and (2)

Articles 20(1) and (2) of the Recast QD approximated the rights granted to beneficiaries of international protection (refugees and beneficiaries of subsidiary protection) in relation to access to employment, healthcare, and access to integration facilities, whilst allowing for a differentiation between rights as regards residence permits and social welfare. For the majority of the content-related Articles, differences in treatment were overall not identified and only limited exceptions were reported.

**Table 1.1 Differences in rights and benefits between refugees and beneficiaries of subsidiary protection**

Articles	Differences
24 – Residence permits	In line with the provisions of Article 24, 15 MS, for which information was available (AT, BE, CY, CZ, EE, FR, HR, HU, IT, LV, PL, PT, RO, SK, SI) applied differences with regard to the period of validity for residence permits granted to refugees and to beneficiaries of SP. However, the Austrian Parliament is debating changes to the current legislative framework on asylum and refugees. In <b>Greece, Finland, Italy</b> and the <b>Netherlands</b> , refugees and beneficiaries of SP were granted with a residence card of the same duration. Eleven MS went beyond Article 24(1) granting longer residence permits to refugees, while nine MS went beyond Article 24(2), granting longer residence permits to beneficiaries of SP.
25 – Travel documents	In the vast majority of MS, differences existed as to the type of travel document provided to refugees and beneficiaries of SP (in line with the provisions of the Directive). Only <b>Italy, Hungary</b> and <b>Luxembourg</b> issued the same document to both refugees and beneficiaries of SP.
26 – Access to employment	In most MS beneficiaries of SP are treated as refugees, except in <b>Belgium</b> (where beneficiaries of SP need a type C work permit to get access) and <b>Malta</b> (where beneficiaries of SP might be subject to labour market tests and could not register with the Employment Training Corporation).
29 – Social welfare	<b>Belgium, Latvia</b> and <b>Malta</b> granted different entitlements to each of the two categories as regards the provision of social assistance. In <b>Austria</b> , the choice to differentiate or not was left to the federal states ( <i>Länder</i> ). <sup>10</sup>
30 – Healthcare	No differences in treatment were identified in relation to access to healthcare except in <b>Malta</b> , where refugees have access to all the state medical services free of charge, and SP beneficiaries are entitled only to ‘core’ state medical services free of charge).

*Nb. Articles marked in blue are those where the Recast QD allows for a differentiation.*

### Specific situation of vulnerable persons – Articles 20(3) and (4)

Articles 20(3) and (4) stipulate that Member States have to take into account the situation of vulnerable persons when fulfilling all the obligations contained in Chapter VII. The vast majority of Member States for which information was available relied on the **vulnerability assessment made during the asylum procedure**. Only **Bulgaria, France** and **Italy** indicated that guidance and training were in place to support case handlers and other competent staff when undertaking such assessments. With regard to the subsequent use of assessment information, evidence showed that **special needs might be overlooked** in practice despite the presence of specialised staff during the assessment and/or the use of specific assessment tools. This was particularly reported in countries witnessing a strong influx of migrants during the past few years.

### Protection from *refoulement* – Article 21

Article 21 requires Member States to comply with the principle of *non-refoulement* in accordance with their obligations under international human rights law. Even where legislation allowed Member States to *refoule* based on Article 21(2), these exceptions were very rarely applied in practice (only a few cases were reported in **Croatia** and the **Czech Republic**). Deportation/return practices were undertaken only when the refugee status had been formally revoked, ended, or refused for renewal and only when not prohibited by international obligations. This meant that, in practice, Member States, instead of returning foreigners to their country of origin, had to provide them with a different status or residence permit, or leave the person in ‘limbo’. Generally, **practices described by Member States diverged significantly** from one Member State to another regarding **the assessment of the existence of a serious danger for their security or their community**. Some Member States used

<sup>10</sup> In Germany, discussion have been ongoing to limit the benefits available to beneficiaries of SP since the beginning of the “refugee crisis”, however these discussions were mainly focused on other rights and not on social assistance. Social assistance in Germany is only meant to secure a very basic minimum that is guaranteed for everybody living on the territory und the German constitutional requirements under the Basic Law. (“Grundgesetz”). Limiting social assistance to a level below that minimum would violate German constitutional law.

detailed criteria and definitions set in national law, while others considered all the factors and elements of a case in order to determine whether someone constitutes a danger to national security or the community, suggesting that this was done primarily on a case-by-case basis rather than through a standard threshold, procedure or list of criteria. Great discrepancies were observed between the definitions applied in each Member State in their conception and application of the two criteria. In **Croatia** and **Hungary** final judgements seemed to constitute an irrefutable presumption of causing a danger to the security of the Member State.

### Information – Article 22

Article 22 stipulates that Member States should provide beneficiaries of international protection with access to information regarding the rights and obligations attached to their status. The timeliness in the provision of information across the EU was assessed positively and in the majority of the Member States (BG, CZ, EE, EL, FR, HR, HU, IT, NL, PL, PT, RO, SE, SI) the **information** on the rights and obligations relating to the status granted was **delivered together with the positive decision**. Both State actors and NGOs were involved in the provision of information. Information to beneficiaries of international protection was comprehensive overall across the EU as well as, in most of the cases, provided in a language that they understand (the use of interpreters was widespread). The main obstacles to information provision mainly related to inadequate/insufficient information in some sectors (for example, family union and social security), the technical/legal language used in written communication as well as difficulties providing information to all beneficiaries of international protection (the latter especially in countries being confronted with a high influx of migrants).

### Maintaining family unity – Article 23

Article 23 requires Member States to respect family unity for beneficiaries of international protection. This involves ensuring that family members who do not qualify for international protection status nevertheless have access to the same rights as the family member with refugee or subsidiary protection status. **All Member States applied the definition of family member as set out in Article 2(j)**. Some restrictions were identified in seven Member States in particular in relation to permanent partners. For example, five Member States (EL, IT, LU, MT and RO) did not recognise unmarried couples, whereas **Poland** did not recognise an 'informal relationship'. In **Finland**, partners were recognised as family members but they had to prove that they have been living together for at least two years. **Broader definitions were applied in nine countries** (BE, BG, CZ, EL, FR, HR, PT, RO and SE). Some stakeholders called for the application of a broader definition (for example including dependent ascendants, permanent partners, families formed following the entry of the refugee in the country of asylum, etc.).

### Residence permits – Article 24

Article 24 stipulates that, as soon as possible after refugee or subsidiary protection status has been granted, Member States should provide beneficiaries of international protection with residence permits (valid for no less than three years for refugees and at least one year for beneficiaries of subsidiary protection). The average **length of the procedure to grant the residence permit varied greatly across** the Member States, ranging from two weeks to six months. In line with the provisions of Article 24, 15 Member States (AT, BE, CY, CZ, DE, EE, FR, HR, HU, LV, PL, PT, RO, SK, SI) applied differences with regard to the **period of validity for residence permits** granted to refugees and to beneficiaries of subsidiary protection. In the majority of the Member States, the associated **rights and benefits** granted to beneficiaries of international protection **were attached to the status, not to the residence permit**. If a residence permit was not renewed or revoked, this could only mean that the status itself ceased and/or was revoked, ended or not renewed (as also confirmed by stakeholders interviewed in AT, BE, CY, CZ, DE, FI, FR, IT, LV, NL, PL, RO, SI and SK). In **Greece**, where if a residence permit was not renewed or revoked, beneficiaries of international protection did not lose the status but they lost access to the rights prescribed by the Directive.

All Member States, for which information was provided, indicated they used the provisions that allowed for the **status to be revoked, ended or refused** (Articles 14 and 19). None of the Member States seemed to have used the **compelling reasons** to reduce the duration of the residence permit granted or to not renew it.

## Travel documents – Article 25

Article 25 stipulates that Member States have the obligation to deliver travel documents to beneficiaries of international protection, which was the case in all Member States. However, in the vast majority of Member States, **differences existed as to the type of document provided to refugees and beneficiaries of subsidiary protection** (in line with the provisions of the Directive). The main difference between the two types of documents was linked to visa requirements. Firstly, it was easier to obtain a visa with a Convention passport than with a foreigner passport. Secondly, refugees were exempt from visa requirements when travelling to all countries, which had signed the European Agreement on the Abolition of Visas for Refugees.

Another **difference** with regard to the travel documents granted to both categories related to the **validity of such documents**. The validity of documents provided to refugees was usually longer than for beneficiaries of subsidiary protection. **Issuance times varied significantly amongst Member States**, ranging from a few days to six months. Some **restrictions**, with regard to granting a travel document, were applied to family members of beneficiaries of international protection in three Member States (FR, MT and PL). Such restrictions seemed to contradict Article 23(2), which indicates that family members of beneficiaries of international protection, who do not individually qualify for such protection, are entitled to claim the benefits referred to in Articles 24 to 35. There were no specific compelling reasons of national security or public order relied upon in practice by the Member States to withdraw or deny a travel document other than the reasons taken into consideration to revoke or refuse the protection status.

## Access to employment – Article 26

**Most Member States** allowed beneficiaries of international protection **access to the labour market without applying additional administrative conditions**. However, such conditions existed for all beneficiaries of international protection in five Member States (EL, LT, MT, PT, SK) and for beneficiaries of subsidiary protection in two Member States (BE, MT). Numerous **practical obstacles** prevented beneficiaries of international protection from accessing employment, including language barriers, problems having qualifications recognised and negative attitudes of employers towards employing beneficiaries of international protection. As permitted by Article 26(1) several Member States **restricted beneficiaries of international protection from accessing certain professions** requiring licences (such as lawyer, architect, engineer, social worker, etc.) (e.g. EL) and the public sector (e.g. EE, EL, FI, FR, MT, PL) in line with their national legislation.<sup>11</sup>

In all Member States, beneficiaries of international protection were legally entitled to **access the same employment-related education opportunities**, vocational training and counselling services, etc. as nationals. However, this also meant that beneficiaries of international protection would be subject to the *same eligibility conditions* for employment-support activities and services as those applicable to nationals, while it was less easy for them to meet these conditions. For example, to enter mainstream employment-support activities and services, beneficiaries of international protection usually had to provide proof of schooling, proof of qualifications and a certain level of language ability, which was not always possible for them. These requirements could thus create **practical obstacles** and *de facto* make it more difficult for beneficiaries of international protection to meet the eligibility requirements as well as national and EU citizens, who would often also be competing for a place on the course or competing for service resources.

## Access to education – Article 27

Article 27 provides that Member States should grant full access to the education system to all minors granted international protection under the same conditions as nationals, and to all adults under the same conditions as legally residing third-country nationals. **All Member States granted access to education** to child beneficiaries of international protection under the same conditions as nationals, and to adult beneficiaries of international protection and as legally residing third-country nationals.

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<sup>11</sup> This list may not be comprehensive since information was not available for all Member States. Indeed, it is likely that more Member States restrict access to employment in the public sector to beneficiaries of international protection or to third-country nationals in general.

Most Member States provided additional support to minors to access education, mainly in the form of preparatory/induction courses or additional language classes.

**Knowledge of the national language** in the Member State was reported to be the **main obstacle** to accessing education at all levels. Most Member States provided language classes and induction or transition courses to support migrant pupils and students. These were not specifically targeted at beneficiaries of international protection. Due to scarce funding, language courses were limited in terms of number of participants and in terms of quality, often provided and funded through NGOs.

### Recognition of qualifications and skills assessment – Article 28

Article 28 constituted a new Article in the Recast QD providing that Member States will ensure that beneficiaries of international protection receive the same treatment as nationals in the context of recognition procedures for foreign diplomas, certificates and other evidence of formal qualifications. Article 28(2) requires Member States to provide beneficiaries of international protection with full access to schemes specifically focused on the assessment, validation and accreditation of skills and competencies when documentary evidence of qualifications cannot be provided.

In **all the Member States, recognition procedures and mechanisms were accessible** to beneficiaries of international protection under the same conditions and requirements as nationals and foreigners. In some Member States, procedures for recognition of qualifications were reportedly free of charge for applicants and beneficiaries of international protection and financial support was provided by public authorities only in a limited number of Member States (BE, EL, HR, MT, SE and SI).

The requirement of Article 28(2) for Member States to “endeavour to facilitate full access for beneficiaries of international protection who cannot provide documentary evidence of their qualifications to appropriate schemes for the assessment, validation and accreditation of their prior learning” was understood and applied differently across the Member States. While several Member States had mechanisms and schemes to assess, validate and accredit prior learning in place, with the exception **Germany**,<sup>12</sup> none of the Member States provided specific support to access such schemes.

The main **practical obstacles** in accessing schemes for the recognition of qualifications were **language barriers, the excessive length and complexity of the procedures, the numerous bureaucratic requirements and the fees** charged to access the schemes. In addition to these, the main obstacles to accessing mechanisms and schemes to assess, validate and accredit prior learning mainly related to the language requirements to access the schemes, understanding the full procedures, etc.

### Social welfare – Article 29

Article 29 of the Recast QD lays an obligation on Member States to ensure that beneficiaries of international protection receive “the necessary social assistance as provided to nationals of that Member State”. Member States can derogate from this general rule and limit the social assistance granted to beneficiaries of subsidiary protection status to core benefits. No evidence was found that Member States did not grant access to social assistance to beneficiaries of international protection under the same conditions as nationals. **Most Member States made no distinction between holders of refugee and subsidiary protection status** as regards the provision of social assistance (with the exception of BE, LV and MT). While **no evidence of discrimination** as regards access to social assistance for beneficiaries of international protection was found, **practical obstacles to accessing social assistance** were identified in a number of Member States.

The concept of ‘**core benefits**’ was **understood differently** across the Member States. Most Member States made no distinction between holders of refugee and subsidiary protection status as regards the provision of social assistance to date. However, four Member States (BE, LT, LV and MT) granted different entitlements to the two categories and distinctions were made in **Austria** at regional level. Two Member States (FI, RO) planned to introduce changes to their existing policies in this area, and in **Slovakia** the possibility of applying measures, restricting the benefits of subsidiary protection beneficiaries, was under discussion. In **Germany**, discussions have been ongoing to limit the benefits

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<sup>12</sup> In Germany, specific support is only available to refugees.

available to beneficiaries of subsidiary protection since the beginning of the 'refugee crisis', however these discussions were mainly focused on other rights and not on social assistance.

### Healthcare – Article 30

Article 30 of the Recast QD requires **Member States to provide access to healthcare** under the same eligibility conditions as nationals, which was the case in all Member States. Some **administrative obstacles** existed, hindering access to healthcare. Language issues constituted the main practical difficulty observed in the Member States. Various measures had been implemented to address this issue, ranging from the provision of intercultural training to relevant staff to the use of interpreters and mediators.

In line with the Directive, in a majority of the Member States, **healthcare for persons with special needs** was not specifically aimed at beneficiaries of international protection but available within the context of the general health services provided to the population as a whole (BE, CZ, EL, FI, FR, IT, MT, PL, PT, SE, SI, SK). Special needs were addressed in various ways.

### Unaccompanied minors – Article 31

The **stakeholders responsible** for appointing guardians for unaccompanied minors (UAMs) **varied** across the consulted Member States. In a number of Member States **different guardians were appointed to deal with different matters** and stages of the procedure (e.g. one guardian was appointed during the asylum procedure and another once protection had been granted). This suggests that continuity of guardianship may not always be guaranteed.

Procedures to **monitor and oversee the work** of guardians were in place in most Member States although in some cases it was unclear whether these were systematically followed and applied. The UAMs were involved in the assessment of the guardian's performance in several Member States.

The placing of UAMs differed across the Member States depending on the reception arrangements in place. The placement options used included assigning minors to specific reception centres (for example in *Malta*) or in family accommodation (for instance in *Italy* in partnership with NGOs). In a number of Member States **practical experience with family tracing was very limited**, despite the fact that the obligation to trace family members was enshrined in law. It appeared that some Member States did not undertake family tracing in practice.

### Access to accommodation – Article 32

Article 32(1) of the Recast QD lays an obligation on Member States to ensure that beneficiaries of international protection have access to accommodation under equivalent conditions as other third-country nationals legally resident in their territories. As regards the **conditions for granting access to accommodation**, eight Member States' stakeholders indicated that beneficiaries of international protection had a right to access accommodation in the same conditions as nationals (BE, EE, EL, FR, HR, IT, PL, RO). In two Member States conditions were more favourable than those applicable to legally residing third-country nationals due to the targeted assistance provided to beneficiaries of international protection (further elaborated upon below) (CZ, SE). In one Member State the conditions applicable were the same as for third-country nationals and hence arguably less favourable than the conditions in place for nationals (SK). In five Member States the stakeholders consulted stated that no difference was made between refugees and beneficiaries of subsidiary protection with regard to access to accommodation (BG, EE, FI, HR, SE). There was no evidence that other Member States made a distinction between the two groups of beneficiaries in relation to housing.

Eight Member States offered some form of **tailored assistance to beneficiaries of international protection in order to facilitate access to accommodation** (BE, BG, CZ, HR, LU, LV, RO, SI).

The lack of affordable rental properties, the limited availability of social housing and the reluctance of locals to rent houses to beneficiaries of international protection of certain nationalities were the main practical obstacles hindering access to housing by beneficiaries of international protection.

### Freedom of movement within the Member State – Article 33

Article 33 of the Recast QD stipulates the beneficiaries of international protection should be able to move freely within the territory of the Member States under the same conditions and restrictions as those provided for other legally residing third-country nationals. In nearly all Member States there were **no restrictions to the free movement** of beneficiaries of international protection. However, residence conditions were imposed by **Germany** on subsidiary protection beneficiaries and in **Finland** and **Portugal** on all beneficiaries of international protection, requiring them to stay in a particular place in order to receive social security benefits. In a preliminary ruling in 2015 on this restriction, the Court of Justice of the European Union (CJEU), however, considered that geographical restrictions were only allowed if they facilitated integration.<sup>13</sup>

Five Member States had some form of dispersal policy in place (BG, FI, PT, RO, SK), against 12 Member States which had no such measures in place.

### Access to integration facilities – Article 34

Article 34 was amended for the Recast QD to establish an obligation upon the Member States to ensure access to integration facilities not only for refugees but also for beneficiaries of subsidiary protection. There was **no evidence of differences in access to integration programmes by refugees/beneficiaries of subsidiary protection** in the Member States. Three groups of Member States could be distinguished in relation to the availability of integration programmes: 1) Member States which had specific integration programmes for beneficiaries of international protection in place (AT, CZ, LT, MT, PL, RO, SE, SI), 2) Member States which had generic integration programmes for third-country nationals in place and gave beneficiaries of international protection access to them (BE, CY, DE, FI, FR, SK), and 3) Member States which had no integration programmes in place at national level, although there were some local initiatives or initiatives taken by non-profit organisations implemented (BG, EL, HR, IE, IT).

**Generally no preconditions** were applied for beneficiaries to access integration programmes, apart from a requirement to lodge a formal application in three Member States. Five Member States had in place personal integration targets and two were considering the introduction of (additional) measures in this area.

### Repatriation – Article 35

Article 35 of the Recast QD provides for the possibility that Member States may offer assistance to beneficiaries of international protection who wish to be repatriated. A majority of Member States offered voluntary return assistance to beneficiaries of international protection wishing to repatriate. **Repatriation** to countries of origin tended to be **requested by beneficiaries of international protection in very few cases**. Some of the consulted Member States would withdraw the status of beneficiaries wishing to repatriate. It was unclear, however, whether formal cessation procedures were launched or not.

The **repatriation assistance packages offered varied** across the Member States. **Practical obstacles** to repatriation were generally linked to difficulties in obtaining the requisite travel documents, to lack of cooperation on the part of the third country concerned or to deficient reintegration conditions in the country of origin.

### Key recommendations

The following key recommendations applicable to several Articles for the improvement of the application of the Recast QD were identified.

#### Removing optional clauses

Optional provisions should be made mandatory, so as to remove the possibility for Member States to transpose the Directive differently and to limit diverging practices as a result. In particular, Articles

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<sup>13</sup> CJEU, Joined Cases C-443/14 and C-444/14 *Kreis Warendorf v Ibrahim Alo and Amira Osso v Region Hannover*, 1 March 2016.

4(1) and 4(5) should be amended into mandatory clauses ensuring that all Member States consider it the shared duty of the determining authority and the applicant to cooperate in view of the assessment of the facts and circumstances of the application. Furthermore, deleting paragraph 3 of Article 5, allowing Member States the option to apply a different level of scrutiny in case of subsequent applications, is suggested. The optional character of Article 8 should be amended into an obligatory clause ensuring that IPA are consistently assessed in all Member States. The provision in Article 12(2)(b) “particularly cruel actions , even when committed with an allegedly political objective, *may* be classified as serious non-political crime” should be made mandatory, in line with the UNHCR Guidelines on International Protection. Finally, the optional character of Article 21(3) should be amended into a mandatory provision, ensuring that residence permits of beneficiaries of international protection who represent a danger to the security or to the community of the Member States on the grounds listed under Article 21(2) are systematically revoked, ended or not renewed.

### **Clarifying concepts and definitions and reducing the margin of discretion for Member States**

Several provisions should be revised in order to ensure a consistent and more approximated application of the Directive. This is particularly relevant for provisions using undefined legal terms and allowing for a large margin of discretion by Member States. For example, the interpretation and application of Article 14(4) regarding revocation of, ending of or refusal to renew refugee status should be clarified, notably the meaning of the terms ‘danger to the security’, ‘particularly serious crime’, and ‘danger to the community’. In particular, the difference between a ‘particularly serious crime’ with the term ‘serious crime’ used under Articles 12 and 17 regarding exclusion grounds should be clarified. Finally, the term ‘individual’ from the requirement of serious harm in Article 15(c) could be deleted as its interpretation created confusion among determining authorities and in order to address inconsistencies with Article 15(a) and (b) which also require an individualised risk, however, without explicitly mentioning it.

The Articles related to the rights of beneficiaries would also benefit from further clarification and/or elaboration. For example, minimum standards as to the content of the information to be provided to beneficiaries of international protection (Article 22) should be added, and the provision regarding access to integration facilities (Article 34) could be amended to state what kind of integration measures should be included as a minimum. Such clarifications would help limit the diverging practices observed across the Member States.

### **Encouraging Member States in applying existing EASO guidance**

Member States should be encouraged to make more coherent use of available EASO guidance, such as EASO’s Practical Guides on Tools and Tips for Online COI Research, on Evidence Assessment and on the Personal Interview.

### **Strengthening EASO’s role in the development of further guidance**

Several Articles of the Directive would benefit from further elaboration by EASO on how to apply them in a coherent manner. These should be compliant with international law, as well as relevant UNHCR Handbooks and Guidelines on procedures and criteria for determining refugee status and should be revised regularly.

### **Strengthening EASO’s role in the development of training and information exchange**

The European Commission should continue to fund EASO training for case handlers and judges specifically in *good practice methods* for assessing the facts and circumstances of an application.

National case handlers as well as other relevant authorities should be encouraged to regularly attend relevant EASO training modules on Interview Techniques, Evidence Assessment, Interviewing Vulnerable Persons, Interviewing Children, and Country of Origin Information.

Finally, in order to facilitate the communication and harmonisation of practices among Member States, EASO could consider the establishment of a forum to discuss and exchange experience on refugee status determination among determining authorities across Member States, including case handlers and judges.

## The adoption of a common list of safe countries of origin

The adoption of a common list of safe countries of origin, based on evidence provided by EASO, would guarantee a uniform approach across Member States and ensure more convergence of recognition rates of international protection in the EU.

## Ensuring consistent guidance and coherent application of Country of Origin Information

In order to ensure consistency of the COI used across the EU and, as a result, the consistency of the decisions on applications for international protection, without prejudice to the individual assessment of the claim, EASO should continue to issue guidance on the practical interpretation and application of COI. This will be in line with the enhanced mandate of the proposed European Union Agency for Asylum strengthening the role of EASO by allowing it to create a more structured and streamlined COI production process that covers all main countries of origin and thematic issues.<sup>14</sup>

## Ensuring further coherence with international law

Several provisions of the Directive should be amended in order to ensure full coherence with international law, in particular the 1951 Convention relating to the Status of Refugees (Geneva Convention) as well as the European Convention of Human Rights (ECHR). This concerns for example *sur place* applications (Article 5) or actors of protection (Article 7).

## Ensuring compliance with case law of the Court of Justice of the European Union

A few Articles should be revised in order to comply with the Court of Justice of the European Union (CJEU). For example, the European Commission may consider adding a clarification to Article 10, in line with CJEU jurisprudence,<sup>15</sup> that would stipulate that determining authorities cannot reasonably expect an applicant to behave discreetly or abstain from certain practices that may attract persecution in order to avoid the risk of persecution.

Furthermore, the interpretation of the exclusion clause Article 12(2)(c) should take into account the upcoming CJEU ruling on the case *Lounani*.<sup>16</sup> The guidance provided by the UNHCR Handbook lacks elaboration (e.g. when it comes to the definition of serious crime) and is only applicable to refugees. Such clarification at EU level would thus help to reduce divergences in the interpretation of exclusion grounds across Member States.

Finally, regarding access to social welfare (Article 29) and freedom of movement (Article 33) in light of the CJEU jurisprudence on the *Alo and Osso* joined cases,<sup>17</sup> the European Commission should clarify that the Recast QD precludes the imposition of a residence condition to beneficiaries of subsidiary protection for the purpose of appropriate distribution of social assistance burdens. In addition, refugees and beneficiaries of subsidiary protection status are entitled to the same catalogue of rights contained in Chapter VII of the Recast QD, unless otherwise indicated.

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<sup>14</sup> COM(2016) 271 final, p. 7.

<sup>15</sup> *Bundesrepublik Deutschland v. Y (C-71/11), Z (C-99/11)*, C-71/11 and C-99/11, European Union: Court of Justice of the European Union, 5 September 2012, available at: <http://www.refworld.org/docid/505ace862.html>, and *X, Y, Z v Minister voor Immigratie en Asiel*, C-199/12 - C-201/12, European Union: Court of Justice of the European Union, 7 November 2013, available at: <http://www.refworld.org/docid/527b94b14.html>.

<sup>16</sup> Case on the interpretation of this provision in the light of Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism. AG Sharpston's Opinion on Case C-573/14 is expected on the 31 May 2016.

<sup>17</sup> *Kreis Warendorf v Ibrahim Alo & Amira Osso v Region Hannover*, C-443/14 and C-444/14, European Union: Court of Justice of the European Union, 1 March 2016, available at: <http://www.refworld.org/docid/56e67d9f4.html> [accessed 5 May 2016]

