



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

Final report



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## List of abbreviations

APD – Asylum Procedures Directive

AU – African Union

AVR – Assisted Voluntary Return

AWAS – Maltese Agency for the Welfare of Asylum Seekers

BFA - Austrian Federal Office for Immigration and Asylum (*Bundesamts für Fremdenwesen und Asyl*)

BMEIA – Federal Ministry of Europe, Integration and Foreign Affairs (*Bundesministerium für Europa, Integration und Äußeres*)

CGRA – Belgian Office of the Commissioner General for Refugees and Stateless Persons (*Commissariat général aux réfugiés et aux apatrides*)

CJEU – Court of Justice of the European Union

CNDA – Council of State confirmed a judgment of the Asylum Court (*Cour nationale du droit d'asile*)

COA - Central Agency for the Reception of Asylum Seekers

COI – Country of Origin Information

DG HOME - European Commission's Directorate-General for Migration and Home Affairs

EASO – European Asylum Support Office

ECHR – European Convention of Human Rights

ECRE – European Council on Refugees and Exiles

ECtHR - European Court of Human Rights

EU – European Union

FMG – Female Genital Mutilation

ICF - ICF Consulting Services Limited

INAIL – National Insurance Agency (*Istituto Nazionale per l'Assicurazione contro gli Infortuni Sul Lavoro*)

IND - Immigration and Naturalisation Service (the Netherlands).

INPS – National Pension and Social Security Agency (*Istituto Nazionale della Previdenza Sociale*)

IOM – International Organisation Migration

IPI – Individual Integration Programmes

ISAF - International Security Assistance Force

KFOR - Kosovo Force

LAIC – Latvian Academic Information Centre

LGBT – Lesbian, Gay, Bisexual and Transvestite

LTR - Long-Term Residence

MFSS – Maltese Ministry of Family and Social Solidarity

MHAS – Maltese Ministry of Home Affairs and Security

MSDC – Ministry for Social Dialogue, Consumer Affairs and Civil Liberties

NAP – National Action Plan



NARIC – National Academic Recognition Information Centres in the European Union

NCFHE – National Commission for Further and Higher Education

NCP – National Contact Point

NCPE – Maltese National Commission for the Promotion of Equality

NCSS – National Centre for Social Solidarity

NGO – Non-governmental organisation

NOKUT - Norwegian Agency for Quality Assurance in Education

OCMA – Office of Citizenship and Migration Affairs

OFPRA – French Refugee Office (*Office français de protection des réfugiés et apatrides*)

PES – Public Employment Service

PIP - Pravno-informacijski center nevladnih organizacij (Slovenian NGO)

Recast APD – Recast Asylum Procedures Directive

Recast QD – Recast Qualification Directive

SMA – Swedish Migration Agency (*Migrationsverket*)

SP – subsidiary protection

UNHCR – United Nations High Commissioner for Refugees

UNRWA – United Nations Relief and Works Agency for Palestine Refugees in the Near East

VAAP – Vulnerable Adults Assessment Procedure

## 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.

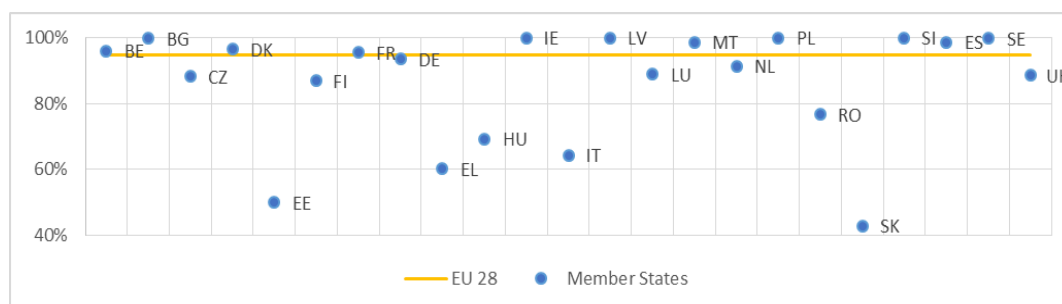
## Key cross-cutting findings

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\_asydcfsta*, 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

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

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 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

<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>

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.

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 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

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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).

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).

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

## 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 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 *refouler* 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

<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.

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 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.

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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.

## 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. 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**

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

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 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

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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.

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 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.

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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.



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>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]

# 1 Introduction

## 1.1 Aim of the study

The aim of the study is to examine the practical application of Directive 2011/95/EU<sup>18</sup> (Recast QD or Directive 2011/95/EU or the Directive). This Directive lays down standards for the qualification of third-country nationals as beneficiaries of international protection as well as for the content of such protection.

In addition to the Member States' obligation to transpose a Directive into national law, they must also ensure that its provisions are actually applied and functioning in practice. This may require the issuing of guidance, the further elaboration of concepts and the introduction of new practices, or even the establishment of new operational units and/or departments. In addition, the Recast QD not only affected authorities directly involved in the asylum system, but required a much wider group of stakeholders to introduce changes, ranging from civil society, public employment and social services, to healthcare agencies, etc.

The study undertakes a static analysis of the situation in the Member States<sup>19</sup> in 2015, as well as a dynamic analysis, to compare, where possible, the situation in 2015 with the situation prior to 2013, when the Recast QD came into force.

In line with the Terms of Reference, the aim of this study is thus to:

- Examine how and to what extent Member States have implemented the common standards and to identify shortcomings;
- Examine whether the Recast QD has changed the situation in the Member States when compared to 2013 and whether it has led to greater convergence at EU level;
- Identify shortcomings which may justify possible amendments to improve the effectiveness of (part of) the Directive.

## 1.2 Purpose of the report

This report is the last deliverable of the 'Evaluation of the application of the recast Qualification Directive (2011/95/EU)', an assignment undertaken by ICF Consulting Services Limited (ICF) on behalf of DG HOME.

In line with the Terms of Reference and ICF's initial proposal, this report includes the following:

- An executive summary;
- A description of the methodology applied, including a description of the main obstacles encountered and countermeasures taken – section 2;
- The full results of the study, i.e. the answers to all research questions through a large data collection exercise, including face-to-face and telephone interviews, desk research, case law analysis, stakeholder workshops and case studies, good application examples, possible application issues, recommendations as well as benchmarking tables – section 3;

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<sup>18</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 SP, and for the content of the protection granted (recast).

<sup>19</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.

**Annexes:**

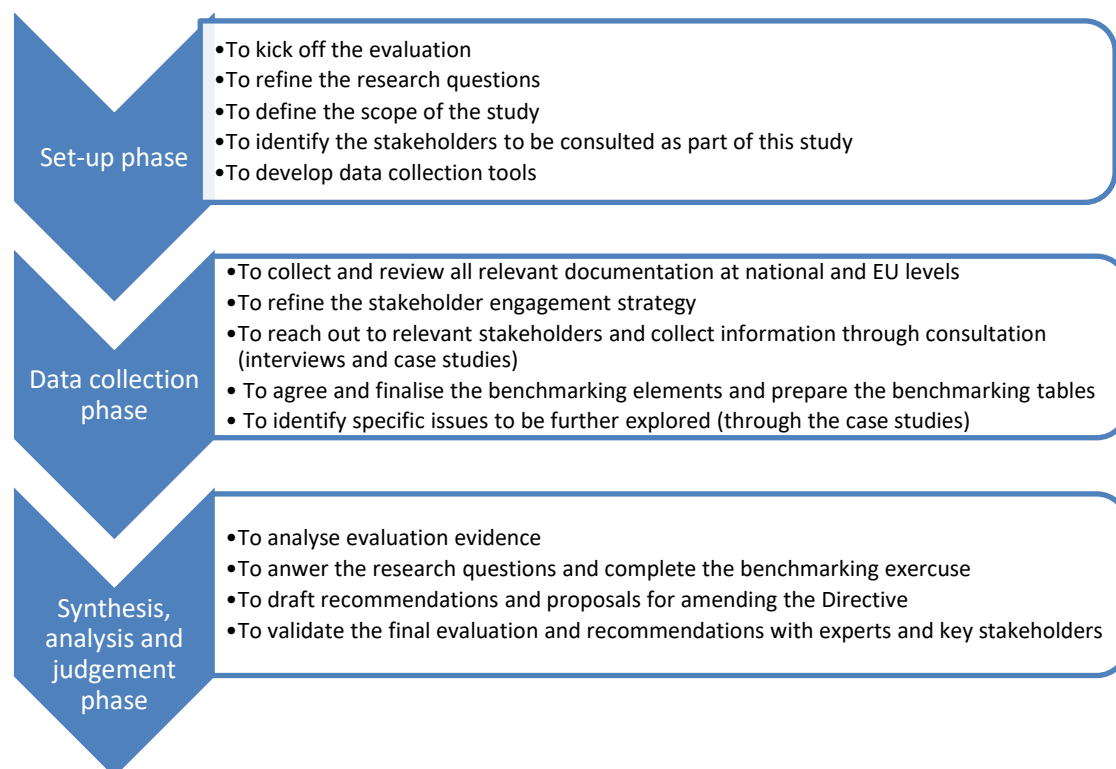
- Annex 1: Stakeholder consultation questionnaires
- Annex 2: Bibliography
- Annex 3: Case studies

## 2 Methodology

This section provides an overview of the evaluation approach showing the main phases and tasks as well as challenges faced and mitigation measures taken to address the challenges.

Figure 2.1 provides an overview of the evaluation methodology.

**Figure 2.1 Main phases of the evaluation and their main objectives**



### 2.1 Set-up phase

#### 2.1.1 Kick-off meeting and scoping interviews

A kick-off meeting to clarify DG Home's priorities for the study, its wider background and scope, was held on 10 June 2015. A total of 12 scoping interviews were held with relevant stakeholders from DG HOME, the European Asylum Support Office (EASO), UNHCR, the Ministry of Justice in Sweden, the Cooperation Department Asylum Service in Greece as well as academic experts. Write-ups and further details on these interviews were submitted in the inception report.

#### 2.1.2 Collection, organisation of relevant information & stakeholder mapping

Under this step the following activities took place:

- Relevant information, such as literature and case law of the Court of Justice of the European Union (CJEU) and of the European Court of Human Rights (ECtHR), was reviewed and is presented in Annex 2 of this report.
- National experts identified representatives of the civil society, the judiciary and law associations for all 27 Member States and populated a stakeholder database with contact details of persons to be involved in the study.

- An ICF delegation was invited to the headquarters of EASO in Valletta, Malta, for a study visit on 27 and 28 July 2015. Seven meetings with relevant units, including one with the agency's then Director Dr Robert K. Visser of EASO took place to:
  - Conduct scoping interviews to further improve the understanding of the key issues of the application of the Directive (write-ups were submitted with the inception report);
  - Define synergies between the activities and goals of the study with EASO's work. As a result, EASO provided the study team with the results of the EASO Quality Matrix, a large stakeholder consultation which took place in 2013 on the practical application of the Recast QD. The information from the interviews and the EASO Quality Matrix enabled the study team to further develop and detail the analytical framework following particular issues identified in the EASO Quality Matrix.
  - Establish contacts with the EASO's National Contact Points (NCPs). EASO kindly offered to set up a first contact with their NCPs, asking them to provide the study team with relevant stakeholders to be consulted for the study. The initial contact points established by EASO were then followed up by the national experts to set up and conduct interviews.

### **2.1.3 Brainstorming with external experts and the exploratory workshop**

Two brainstorming meetings took place with Steve Peers and Madeleine Garlick and internal team members. The discussions focused on the main issues to be covered by the study and the further development of the analytical framework.

On 11 September 2015, a workshop was organised with representatives of DG HOME, EASO, the European Council on Refugees and Exiles (ECRE), UNHCR, EASO NCP (BE) as well as the two academic experts. The aim of this meeting was to further shape the research questions to be covered by the assignment and to have an initial discussion on the benchmarks to be used in the study.

### **2.1.4 Redefinition of methodological tools**

Seven different tailored questionnaires were drafted for each Member State, aimed at finding out how Member States applied each Article of the Directive, what challenges they faced in the application and what changes in practices the Recast QD had brought in comparison to Directive 2004/83. These questionnaires took into account desk research on the specific asylum systems, the information obtained through the EASO Quality Matrix and a completeness assessment on the transposition of the Directive into national law for all Member States undertaken by another service provider (completeness assessment report). As a result, the following questionnaires were used for the stakeholder engagement:

- Questionnaire for public authorities;
- Questionnaire on changes of the Recast QD from Directive 2004/83;
- Questionnaire on quantitative information;
- Questionnaire for national NGOs;
- Questionnaires for lawyers;
- Questionnaires for representatives of the judiciary.

Interviews were undertaken through detailed stakeholder consultations as part of field visits (AT, BE, BG, CY, EL, FR, HU, IT, MT, NL, PL, SE and UK), and by phone in the remaining Member States. Criteria

for the selected countries were high numbers of applications and recognitions as well as best practice.<sup>20</sup>

All questionnaires are included in Annex 1 of this report.

## 2.2 Data collection phase

### 2.2.1 Stakeholder engagement and consultation

Following the completion of desk research and the preparation of tailored questionnaires per type of stakeholder and Member State, **a total of 186 face-to-face and telephone interviews** were conducted by 25 national experts in all Member States bound by the Directive. Each Member State bound by the Directive, with the exception of **Spain**, was consulted. In **Spain**, despite the study team's efforts including several reminders via emails and phone calls as well as an official request via email from DG HOME, all stakeholders approached refused to take part in any interviews. The information gaps were – to the extent that was possible – filled through desk research, the completeness assessments, as well as answers given by the Contact Committee 'Qualification Directive' (2011/95/EU) of 27 March 2015 regarding the transposition and implementation in practice of Articles 6, 7, 10, 11, 12, 14, 16, 17 and 19 of the Directive.

### 2.2.2 Challenges and mitigation measures in the data collection phase

#### *Differences in amount and quality of data per Member State*

The amount and quality of detail in information provided by Member States differed significantly. This was partly due to the fact that in some Member States more stakeholders were willing to give interviews and because some stakeholders were better informed than others and partly because some Member States had more detailed guidance or concepts in place or kept better track of such particulars than others. This may occasionally give the impression that some Member States are more represented in this report, in terms of the number of examples given to describe their practices and concepts, than others.

#### *Limited quantitative data*

It was impossible to gather reliable and comparable statistical data on the application of most Articles. Only eleven Member States (BG, CZ, EE, FI, HR, HU, MT, PL, RO, SE and SI) provided quantitative data, which was, however, mostly incomplete. The unavailability of (complete) data is primarily caused by the fact that Member States do not record certain categories of data, such as the grounds for rejecting an application for international protection. The gaps were – as far as possible – addressed by using Eurostat data.

### 2.2.3 Organisation of evaluation evidence

Under this step, quantitative and qualitative evidence collected from the review of documentation and stakeholder consultations was populated in a central database organised by Article of the Directive, Member State and evaluation question. The information obtained through interviews and case studies (see below) was supplemented with the following:

- EASO Quality Matrix answers regarding the evidence assessment, eligibility and exclusion;
- Completeness assessments on the legal transposition of the Directive in all Member States, undertaken by a different service provider on behalf of DG HOME;

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<sup>20</sup> It was envisaged to also visit Germany, however, due to the high influx of asylum applicants in Germany, authorities and NGOs lacked capacity for face-to face interviews.

- Replies given by the Contact Committee ‘Qualification Directive’ (2011/95/EU) of 27 March 2015 regarding the transposition and implementation in practice of Articles 6, 7, 10, 11, 12, 14, 16, 17 and 19 of the Directive;
- Literature, policy papers, case law and legislation as presented in the bibliography in Annex 2 of this report;
- Member State documentation, where available, including guidelines and other forms of written guidance and instructions for case handlers.

This database is included in Annex 1 of this report.

#### **2.2.4 Validation workshop**

A second workshop took place on 8 March 2016 in order to present and validate the first findings on a number of selected key aspects emerging with 19 participants, including representatives of DG HOME, EASO, NGOs, EASO NCPs (BE, SE NL) as well as national and academic experts.

#### **2.2.5 Case studies**

Five case studies were conducted with the aim of collecting additional in-depth information and examples of good practice at national/local level on the following topics:

- Grounds for rejecting applications for international protection and Member States’ practices to grant refugee or subsidiary protection status;
- Differences in accessing rights between applicants and beneficiaries of international protection;
- Access to integration programmes;
- Access to social assistance and housing;
- Recognising qualifications and skills assessment of and beneficiaries of international protection.

The case studies are presented in Annex 3 of this report. They have also informed the study’s findings presented in section 3 below.

### **2.3 Synthesis, analysis and judgement phase**

The data organised by Article of the Directive, Member State and evaluation question was populated in a central data base, synthesised and analysed. In particular good practice, application issues as well as recommendations and proposals for amendments to the Directive were formulated. In addition, benchmarking tables were developed for each Article and completed for each Member State. The findings are presented in section 3 of this report.

### 3 Findings of the study

This section of the report presents a full analysis of the application of the Recast QD. The first subsection 3.1 presents cross-cutting findings which are relevant for several Articles of the Directive.

From subsection 3.2 onwards detailed findings for each Article of the Directive are presented, closely following the benchmarks and evaluation questions which were listed in the Terms of Reference. The application of each Article is evaluated in a separate subsection and each subsection is structured as follows:

- **Background to the Article**, introducing its content and drawing attention to key issues.
- **Findings**, including a summary of the main findings and the full analysis of the Article. This part also includes statistical information, where such was available.
- **Changes in Member States’ practices since the Recast QD in 2013**, only where the recast introduced new elements with respect to the Directive 2004/83.
- **Examples of good application**, highlighting practices in Member States which are fully in compliance and consistent with the spirit of the Recast QD or which go beyond the strict legal requirements.
- **Possible application issues**, identifying practices that could be considered as being non-compliant, not properly implemented and/or not ‘within the spirit’ of the Directive.
- **Recommendations** for legislative amendments to the Directive and other non-legal changes, such as the further elaboration of guidance and training, which aim at making the Directive’s application more effective.
- **Benchmarks** for measuring the implementation of each Article in all Member States.

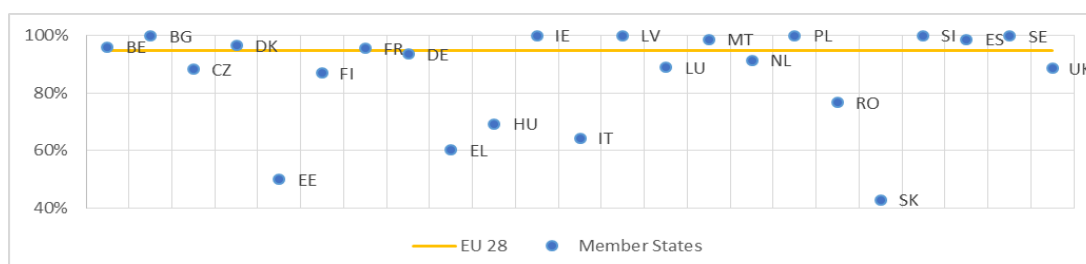
For each Article, a footnote has been included to indicate for which Member States information was *not* (made) available and which were therefore not included in the analysis. The entire text also includes boxes which present more detailed examples of certain Member State practices.

#### 3.1 Cross-cutting findings

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

While the Directive has in some areas contributed to a higher level of approximation of the national rules, it appears that in other fields, the practical application of the Directive still varies significantly. This can lead to different outcomes of asylum applications across Member States in terms of recognition rates, even when applicants with similar profiles came from the same country of origin. 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 3.1 Recognition rate of persons with Syrian citizenship per Member State in 2014, %**



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



Evidence suggests that divergences may have been due to different interpretations and applications of the Articles which set out the grounds for granting and rejecting applications for international protection statuses. 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), reasons of persecution (Article 10) and the application of cessation clauses (Articles 11 and 16).

Even among those Member States that have transposed the optional clauses of the Directive, practices were far from uniform in its respective application. For example regarding the IPA in Article 8, even though most Member States apply it, they seem to have different interpretations of what regions in the country could be considered as 'safe'. As a consequence, the application of the concept of IPA was not the same from one Member State to another.

Regarding Article 15(c) and the assessment of the level of violence as well as its indiscriminate character, all Member States claimed to take into consideration COI. While some (CY, HR, IE, IT, PL) did not identify any criteria to perform this assessment, others applied various criteria. Some Member States considered that the level of violence observed in a third country was not high enough and did not apply Article 15(c) at all, others applied it partially to different regions or even districts. In those Member States, different classifications of what regions/provinces might be considered safe, might require an assessment of the individual situation on a case-by-case basis, or might be considered unsafe altogether. Only two Member States applied the Article to a whole third country.

Finally, not only the practices to grant protection or not seem to differ, but also divergences between the types of status granted for applicants from a given country of origin were noted across Member States. Examples of possible explanations for differences were:

- **Economic considerations** in order to avoid an excessive number of challenges of decisions to grant subsidiary protection before the courts by favouring refugee status for Syrian applicants already in first instance decisions;
- **Resort to humanitarian statuses** over international protection statuses foreseen in the Qualification Directive for applications by certain countries of origin.

### 3.1.2 Differences in transposition, interpretation and application of Articles

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

However, variations among Member States' practices in granting rights to refugees and beneficiaries of subsidiary protection remain in several Member States. Such differences are, on the one hand, the result of different interpretations of the provisions and, on the other hand, related to the extent to which Member States have transposed certain 'may-clauses' – in the form of optional limitations or the possibility for more favourable rules – into national legislation. For example:

- Following the discretion foreseen in Article 24, 15 Member States applied a difference with regard to the period of validity for residence permits granted to refugees and to beneficiaries of subsidiary protection. In four Member States, both refugees and beneficiaries of subsidiary protection were granted a residence card of the same duration while 11 Member States went beyond Article 24(1) granting a longer residence permit to refugees. Finally, nine Member States went beyond Article 24(2) by granting longer residence permits to beneficiaries of subsidiary protection.
- Accessing social assistance for refugees and beneficiaries of subsidiary protection can differ vastly across the EU. First, the option to limit social assistance to 'core benefits' for beneficiaries of subsidiary protection was not applied by all Member States. Four Member States (BE, LT, LV and MT) granted different entitlements to the two categories, and distinctions were made in **Austria** at regional level. Second, those that did make use of the option seemed to understand

the concept differently. Finally, since the beginning of the refugee crisis, several Member States (DE, FI, RO and SK) are planning, or at least discussing the option, to introduce changes to their existing policies to limit the benefits available to beneficiaries of subsidiary protection.

### 3.1.3 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 seem to differ considerably across Member States. The lack of harmonisation of practices to collect and analyse COI across Member States leads to different COI being used to assess international protection claims from one Member State to another and ultimately influences the outcome of such assessments.

For instance, the question to what extent COI units were (politically) independent, how much financial and human resources were invested to set up COI, to what extent the Member States coordinated the content of COI with other Member States, UNHCR and the European Asylum Support Office (EASO) information led to different levels of detail and quality of COI. Overall, it seems that the awareness of the existence of the EASO COI Portal<sup>21</sup> was generally low among case handlers.

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

While more harmonisation of country reports used by national determining authorities could limit the risk of divergence, it appeared that the set-up of COI was not necessarily the only reason behind divergent recognition rates. The issue also lays in *how* such information was interpreted and applied. Member States' divergent practical interpretations of COI seemed to also contribute to different outcomes of asylum decisions. In particular, the extent to which an applicant was given a 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 are considered safe, and the type of documents admissible to support or rebut COI had an impact on the way applications are assessed and decided upon.

### 3.1.5 Safe country of origin mechanism

Differences in the assessment of asylum applications across Member States seem to also depend on whether they apply safe country of origin lists or not. Member States using such lists tend to set a higher standard of proof on the applicant from a safe country of origin and chances for such applicants to be granted international protection seem lower (e.g. BE, DE, FR). For example, in **Germany** an NGO stated that unsubstantiated claims could be rejected on the grounds that insufficient evidence had been submitted, in cases where the applicant originated from a safe country of origin.

### 3.1.6 Practical obstacles in accessing rights

In principle, Member States grant beneficiaries of international protection access to the rights listed in Chapter VII of the Directive and often guarantee the same rights as nationals or other legally residing third-country nationals. However, the notion of 'equal treatment' to nationals or legally third-country nationals may not always be sufficient to access those rights at all, given that beneficiaries of international protection start from a disadvantaged position.

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), access to social assistance (Article 29) and access to accommodation (Article 32) were reported across Member States. Such obstacles include the fulfilment of administrative residence conditions, 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

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<sup>21</sup> <https://coi.easo.europa.eu/>

beneficiaries, a lack of awareness on the part 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 by beneficiaries of international protection (e.g. showing original certificates in order to access education or training).

### 3.1.7 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, on Evidence Assessment and on the Personal Interview as well as UNHCR's Handbook, 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. For example, only 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.

## 3.2 Sequence of the examination of an application – Articles 2(d) and 2(f)

### 3.2.1 Background on the sequence of the examination of an application

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. A single procedure is considered to provide the “clearest and swiftest means of identifying those in need of international protection”.<sup>22</sup> This is because it enables asylum seekers who may *not* be eligible for refugee status, but who may still be eligible for other forms of protection, to apply for protection through a single application procedure, rather than first applying for asylum and having to reapply for subsidiary or other forms of protection if their application for refugee status fails. Articles 2(d) and (f) refer to the need to establish that persons, in order to be granted international protection status, need to have a **well-founded fear of persecution or of the real risk of suffering serious harm**, should they return to their country of origin. The definition of refugee, as well as the definition of beneficiary of subsidiary protection, is **forward-looking**, meaning that the issue is not whether the claimant had good reasons to fear persecution in the past, but whether, at the time the claim is being assessed, the claimant has good grounds for fearing persecution in the future.

There are no differences between Articles 2(d) and 2(f) as set out in the Recast QD and Articles 2(c) and 2(e) of Directive 2004/83/EC.

The following evaluation questions were assessed:

*How is it ensured, across the Member States, that the procedure is truly single, e.g.:*

*Does a single unit assess both statuses?*

*Does the same case handler follow the applicant from start to end?*

*Are there any other measures to ensure the single procedure?*

*How do Member States ensure that the concepts of ‘well-founded fear of persecution’ or of the ‘real risk of suffering serious harm’ are forward-looking in practice?*

<sup>22</sup> See <http://www.unhcr.org/43661f6f2.pdf>

### 3.2.2 Findings for Article 2

#### *Summary of main findings*

The main findings in relation to Article 2 can be summarised as follows:

- All Member States for whom information was collected reported that they **were implementing a single procedure** (except for *Ireland* which was not bound by the Directive but is expected to amend its system in the near future) and no evidence was collected to suggest otherwise.
- All Member States had in place a system to support **forward-looking assessments** of applications for international protection; however, some NGOs and lawyers consulted for this study reported that in practice some applications were not consistently assessed in terms of what would happen (in the future) should the applicant return to their country of origin. This meant that – in practice – not all assessments were forward-looking.

#### *The format for the single procedure in Member States*

In all Member States reviewed,<sup>23</sup> within the framework of the single procedure, applications for international protection were first examined to establish whether the applicant qualified for refugee status and only subsequently whether the applicant qualified for subsidiary protection. In *Ireland*, which is not bound by the Recast QD, refugee status and subsidiary protection status were assessed through separate applications and separate personal interviews, though it was noted that this was likely to change in the future, as in November 2015 the Minister for Justice and Equality published a new International Protection Bill which would introduce a single protection procedure.

To ensure that these statuses were assessed within a single procedure, in most Member States reviewed (AT, BE, BG, CY, CZ, EE, EL, FI, FR, HR, HU, IT, LT, LU, LV, MT, PL, RO, SE, SI, SK) a **single unit assessed both statuses**.

In most Member States (AT, BE, BG, CY, EE, EL, FI, FR, HR, HU, IT, LT, LV, MT, RO, SE, SI, SK), as far as possible, **the same case handler followed the applicant from start to end**. Naturally, where the original case handler was off work sick or where the handler left the organisation, the case handler could be changed. In *Bulgaria*, a “significant turnover” among case handlers was reported by the relevant public authority which meant that **in practical terms applicants often did not have the same case handler from start to finish**. In the *Czech Republic, Luxembourg* and *Poland*, different case handlers dealt with different aspects of the procedure (e.g. in *Luxembourg*, one official is responsible for the interview and another responsible for decision-making).

*Greece* mentioned that they had developed templates or guidance to support the implementation of a single procedure. This was also likely to be the case in other Member States.

#### *‘Forward-looking nature of the concepts of well-founded fear of persecution’ and ‘real risk of suffering serious harm’*

Information collected amongst public authorities suggested that a **similar process was followed in Member States to assess the forward-looking nature of the concepts** of “well-founded fear of persecution” and “real risk of suffering serious harm”.<sup>24</sup>

- The **testimony of the applicant** was collected. This would usually include:
  - A description and other evidence of past persecution/serious harm (where this had occurred);

<sup>23</sup> Information regarding all EU Member States bound by Directive 2011/95/EU or 2004/83/EC are reflected regarding Article 2, with the exception of ES, where no information could be collected for reasons explained in Section 2 of this report.

<sup>24</sup> For more information, see Section 3.3 on Article 4 – Assessment of facts and circumstances

- A description of the applicant’s fear of persecution/serious harm should they be returned (most Member States reported that they ask the question ‘what would happen if you returned to your country of origin?’, but there is variety between Member States as to the importance that is given to the question);
- The applicant’s testimony of fear of persecution or risk of suffering serious harm was then assessed against **COI**.

There appeared to be some variation between Member States as to whether they applied standard definitions or criteria to the assessment of ‘well-founded fear’ and ‘serious risk of suffering harm’. For example, the public authority in **Bulgaria** reported that it did not apply specific criteria or thresholds to establish or assess the probability of future persecution/harm, whereas the public authorities in **Greece** reported that there needed to be a certain likelihood of future persecution/harm of “approximately 30%”.<sup>25</sup>

Many stakeholders consulted for this study emphasised that **evidence of past persecution/harm was a key indicator of future persecution/harm**, especially when the context behind the past persecution/harm still existed (as demonstrated by COI, the applicant’s testimony, evidence from other asylum applications or by expert opinion).<sup>26</sup>

However, some stakeholders consulted, reported that case handlers and decision-makers sometimes gave **too much emphasis to establishing the credibility of past persecution** as a criterion for granting asylum at the expense of establishing whether there was *forward-looking* risk of persecution or harm. Indeed, NGOs or lawyers interviewed in several Member States (BE, EL, FR, HR, IT, MT, PL, PT, SI, UK) stated that in practice case handlers did not always conduct a forward-looking assessment. In other Member States (BE, EE, HR, NL, SI and UK), NGOs and lawyers stated that they had not experienced assessments that were problematic due to not being forward-looking. It was suggested that **decisions and assessments be subjected to greater quality assurance** to ensure that they are always forward-looking.

The **quality of COI** can also affect the accuracy of forward-looking assessments: if the COI is outdated, it might lead to an incorrect assessment. A number of stakeholders interviewed considered that COI was not updated on a sufficiently frequent basis and suggested that **case handlers and decision-makers could do more to conduct independent research to triangulate applicant’s testimonies rather than depending solely on COI**.<sup>27</sup>

### **Guidelines and training**

A few Member States (LV, MT) reported that they used **guidelines** on how the assessment should be conducted (it is likely other Member States also made use of such guidelines) and many (AT, BG, EE, EL, FR, HR, LT, LV, MT) reported that national case handlers participated in **training** on the topic. Most Member States referred to EASO or UNHCR as providers of this training, highlighting the importance of these organisations in supporting the implementation of the Recast QD. In **Estonia**, case handlers are mentored and attend weekly meetings where specific cases or methodologies are discussed. After each meeting the topics and agreements are sent to the whole team in order to maintain uniformity of decision-making and processing methods, including on theoretical issues such as past and future persecution concepts.

<sup>25</sup> No further information on how this likelihood was estimated was provided in the interview.

<sup>26</sup> For more information, see Section 3.3 on Article 4 – Assessment of facts and circumstances.

<sup>27</sup> For more information, see Section 3.3 on Article 4 – Assessment of facts and circumstances.

### 3.2.3 Examples of good application

In general, to improve consistency and quality of the procedure for assessing asylum applications, it is good practice that most, if not all, Member States invest in the training of their case handlers, though this practice should be standard and therefore not particularly unusual.

The efforts by **Estonia** to enable case handlers to exchange experience and discuss approaches to decision-making can be considered good practice in improving the quality and consistency of assessments, though it might be challenging to implement such a method in countries that are significantly larger than **Estonia** and which have a larger number of case handlers.

### 3.2.4 Possible application issues

That some Member States are reportedly **failing to conduct a forward-looking assessment for cases** suggests that there is an application issue, because it means that applicants might be returned to countries where there is a risk of persecution or harm.

### 3.2.5 Recommendations

Based on the above findings, the following recommendations can be put forward:

- The European Commission should continue to fund EASO training for case handlers specifically in *good practice methods* for assessing the *forward-looking nature* of the fear of persecution and risk of harm (beyond the posing of the question “what would happen to you if you returned?”). Such guidance could possibly be incorporated into the existing training module on ‘Evidence Assessment’. It could potentially go some way to preventing case handlers and decision-makers from giving too much emphasis to establishing the credibility of past persecution as a criterion for granting asylum at the expense of establishing whether there is a forward-looking risk of persecution.
- Also to increase the forward-looking nature of the assessment of fear of persecution and risk of harm, EASO should encourage Member States to set up ‘quality assurance’ systems for checking whether asylum applications are being consistently assessed as to the *future* risk of persecution/harm. Such systems could include checklists for case handlers and ad hoc reviews of application decisions.
- Recommendations relating to the improvement of the use of COI, as detailed under 3.3.5 for Article 4, are also relevant to the application of Article 2. The quality of COI can also affect the accuracy of forward-looking assessments: if the COI is outdated then it might lead to an incorrect assessment.

### 3.2.6 Benchmarks for measuring the implementation of Article 2

Table 3.1 Benchmarks for measuring the implementation of Article 2

Whether or not the MS first examines whether the applicant qualifies for refugee status and subsequently whether the applicant qualifies for SP:	
Single procedure	AT, BE, BG, CZ, CY, DE, EE, EL, FI, FR, HR, HU, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK, UK
Separate (consecutive) procedures for refugee and other protection statuses	IE
No information	ES
Whether or not the same case handlers in the MS assess whether applicant qualifies for refugee status and whether they qualify for SP:	
Same case handler (where possible)	AT, BE, BG, CY, EE, EL, FI, FR, HR, HU, IT, LT, LV, MT, RO, SE, SI, SK
Do not have the same case handler from start to finish	CZ, LU, PL
No information	DE, ES, IE, NL, PT, UK

## 3.3 Assessment of facts and circumstances – Article 4

### 3.3.1 Background on assessment of facts and circumstances

Article 4 of the Recast QD defines the conditions under which Member States should assess the **facts and circumstances of the application** for international protection.

According to Article 4(1), Member States and applicants have a **shared duty to cooperate** actively in order to assess the relevant elements of an application. However, Member States also have the **option** to consider it the applicant’s duty to substantiate his or her claim with all the elements needed. This provision is central to the credibility assessment that is at the core of the decision-making process on international protection claims. However, its **understanding may vary** depending on Member States’ legal traditions. Indeed, while the concept of **burden of proof**, which consists in assuming that the party who asserts facts presents the evidence, is common to most judicial systems, its meaning may be different between Member States and systems. In addition, the concept of **standard of proof**, referring to the required degree of certainty or probability of accuracy of the evidence, is widely used in Common Law systems. However, in many continental systems, based on the Civil Law tradition, it is “not so objectively, or perhaps scientifically, defined by the judge.”<sup>28</sup> Such differences may in practice lead to different approaches to applying the provisions of the Directive.

Article 4(2) defines the **elements that can be used to assess a claim** for international protection, namely:

- The applicant’s statements;
- All the documentation at the applicant’s disposal regarding the applicant’s age, background, including that of relevant relatives, identity, nationality, country and place of previous residence, previous asylum applications, travel routes, travel documents, and the reasons for applying for international protection.

<sup>28</sup> International Association of Refugee Law Judges, *Discussion paper on the burden of proof and standard of proof in refugee and subsidiary protection claims and appeals in the EU*, in *Assessment of Credibility in Refugee and Subsidiary Protection claims under the EU Qualification Directive – Judicial criteria and standards*, 2013.

Article 4(3) sets the principle that an application for international protection **must be carried out on an individual basis**. In addition, it provides a list of elements including facts, statements, and circumstances that should be assessed by the determining authority in charge of processing the application. These elements include:

- Facts relating to the country of origin (including laws and regulations of the country of origin and the manner in which they are applied);
- Relevant statements and documentation presented by the applicant; the individual position and personal circumstances of the applicant;
- Whether the applicant's activities since leaving the country of origin were engaged in solely for the purpose of the application; and
- Whether the applicant could reasonably be expected to avail himself or herself of the protection of another country where he or she could assert citizenship.

Article 4(4) of the Directive focuses on the fact that **past persecution** or previous harm, or direct threats of such treatment are a **serious indication of the applicant's well-founded fear of persecution or real risk of suffering serious harm**. An exception can be made in the event the determining authority has good reasons to consider that the persecution or harm will not be repeated.

Finally, under Article 4(5), the Directive defines the **conditions under which aspects of the application do not require confirmation** in the event Member States choose to apply the optional duty to cooperate with applicants, as provided under Article 4(1) of the Directive. The list is the following:

- The applicant made a genuine effort to substantiate his/her application;
- The applicant submitted all relevant elements at his/her disposal and provided a satisfactory explanation in cases where any element was missing;
- The applicant's statements were coherent and plausible, and did not contradict specific and general information relevant to the case;
- The applicant lodged his/her claim for international protection at the earliest possible time or had a good reason for not having done so;
- The general credibility of the applicant was established.

The Directive **did not introduce any change** under Article 4.

The following evaluation questions were assessed:

*How have the Member States 'allocated/distributed' the burden of proof in practice? Where have the Member States de facto placed most 'burden', on the participant or on the Member States themselves?*

*How does the allocation of the burden take account of the fact that very often applicants are unable to support their statements by documentary or other proof (closely linked to Article 4(5))?*

*Have the Member States developed a concept similar to giving the applicant 'the benefit of the doubt'?*

**Substantiation of applications "as soon as possible" – Article 4(1)**

*How do the Member States assess whether the applicant submitted all elements needed to substantiate the application 'as soon as possible'? Has any maximum period been put in place for the submission of evidence and can this be extended?*

*Can evidence be added during the application? If so, what are the conditions/criteria for adding evidence?*

**Evidence required to substantiate the application – Article 4(2)**

*What evidence is required by the Member States?*



*Is it possible to reject an application solely based on a lack of evidence provided by the applicant? If so, how have the Member States discharged themselves from having to cooperate with the applicant in establishing the factual circumstances which may constitute evidence supporting the application?*

*Does the inability of the applicant to provide some or all documents affect the assessment of the application (e.g. is the applicant held accountable for the lack of documents)?*

**Assessment on an individual basis – Article 4(3)**

*How do the Member States identify COI and how do they take the COI into account in its assessment and decision? (Art. 4(3)(a))*

*How do the Member States ensure that the applicant's individual circumstances are taken into account in the procedure? (Art. 4(3)(b),(c))*

*Do the Member States check whether the activities of the applicant since leaving the country of origin were engaged in for the sole or main purpose of creating the necessary conditions for applying for international protection? (Art. 4(3)(d))*

*Do the Member States check whether the applicant can avail him-/herself of the protection of another country where s/he could assert citizenship? (Art. 4(3)(e))*

**Previous persecution or serious harm – Article 4(4)**

*How is the existence of previous persecution or serious harm, or of threats thereof, assessed in the Member States?*

*Can the assessment result in the presumption that there is no continued risk and can this hence contribute to the decision to reject the application?*

**Exceptions to the duty to substantiate the application with documentation or other evidence – Article 4(5)**

*Are the following concepts clearly defined:*

- *Genuine effort (Art. 4(5)(a))*
- *Satisfactory explanation concerning missing information or other elements (Art. 4(5)(b))*
- *Coherent and plausible statements (Art. 4(5)(c))*
- *Application at earliest possible time (Art. 4(5)(d))*
- *General credibility of the applicant? (Art. 4(5)(e))*

*How do the Member States match the applicant's statements with specific and general (objective) information available to the competent authorities?*

### 3.3.2 Findings for Article 4

#### **Summary of main findings**

The main findings in relation to Article 4 can be summarised as follows:

- In a majority of Member States, the burden of proof was shared between the applicant and the determining authority. It could shift between them depending on the phase of the procedure. In some Member States, as part of their duty to cooperate, the determining authority could request the support of experts (for instance medical practitioners, psychologists) in order to assess the credibility of applicants who claimed to have suffered specific trauma.
- The standard of proof demanded of the applicant was recognised to be higher in certain circumstances, such as when applicants were from a safe country of origin.

- The notion of ‘benefit of the doubt’ was applied in most Member States 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. This could introduce the risk of overly subjective assessments.
- Issues were pointed out in several Member States regarding the credibility assessment, often resulting from a strict interpretation of or excessive weight placed on 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 absence of evidence to substantiate the applicant’s claim. As a consequence, in a majority of the Member States consulted, rejecting an application solely on the grounds of the absence of documents was not possible.
- 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. Amongst those Member States that had set such a deadline, some indicated that 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 cases where the decision was appealed. However, nine Member States indicated that the late submission of evidence could affect the credibility of the claim in the absence of a plausible explanation.
- 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.
- Almost all Member States indicated that they set up a specialised unit in charge of collecting, analysing and updating COI, and most of them specified that case handlers could contact them on an ad hoc basis to get advice on a specific case.
- Amongst public sources of information, the European Country of Origin Information Network,<sup>29</sup> and Refworld<sup>30</sup> seemed to be widely used amongst Member States.
- Some Member States pointed out that it could be challenging to keep up-to-date information, especially regarding grounds relating to subsidiary protection. For this reason, some of them focused on updating COI about the most common countries of origin on a regular basis.
- In a majority of Member States, case handlers in the determining authority had followed the EASO training on evidence assessment. Despite the use of EASO COI reports by case handlers, divergences between their interpretations of COI for applicants originating from the same country were noted in some Member States.
- The individual assessment of the claim was done by comparing the COI obtained by the determining authority with the applicant’s statements given during the personal interview and evidence provided to substantiate the claim. It could be facilitated by the use of specific interview techniques or through the involvement of specialised case handlers, especially for interviews with vulnerable applicants. However, in some Member States, situations where only the COI was taken into account in order to assess the application were identified, leading to cases where the

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<sup>29</sup> <https://www.ecoi.net/>.

<sup>30</sup> <http://www.refworld.org/>.

applicant was granted subsidiary protection automatically without an assessment of his or her individual circumstances and the potential grounds for receiving refugee status.

- Most Member States considered the existence of past persecution or serious harm as a strong indication that the applicant might be exposed to a risk in the future, although such risk would also have to be assessed. In most of them, it was possible for the authority to conclude that there was no continued risk, which contributed to the rejection of the application.

### **Burden of proof and credibility assessment**

A majority of Member States indicated that the **burden of proof was shared** between the applicant and the national authority in charge of status determination (AT, BE, BG, CY, CZ, DE, EE, EL, FI, FR, HR, IE, LU, LV, MT, NL, PL, PT, RO, SE, SI and UK).<sup>31</sup> While the applicant was expected to provide the authority with all the elements at his/her disposal to substantiate his/her claim, the authority had a duty to cooperate with him/her in order to decide on the application.

In **Belgium**, the optional provision about the applicant's duty to submit all available evidence had been transposed into national law, but the mandatory provision on Member States' duty to cooperate had not. The Belgian Office of the Commissioner General for Refugees and Stateless Persons (*Commissariat général aux réfugiés et aux apatrides* – CGRA) specified that it was going to be transposed into Belgian law in the months following the interview. However, the principle was already applied in practice and described in the CGRA's internal guidelines.

#### **Example of shared burden of proof – the Netherlands**

- The applicant provided all evidence at his/her disposal;
- The authority checked the credibility of the evidence provided and considered what would happen should they return (Article 3 ECHR assessment)
- In cases of rejection, the decision was communicated to the applicant, who could respond in writing.
- Possibility for the applicant to ask for a second opinion on facts such as the COI or language analysis

If no ID document was provided, the burden of proof shifted more towards the applicant: the concept of positive persuasiveness applied (the statements should not contain any gaps, be vague, contradictory, etc.). The standard of proof asked of an applicant was even higher in cases where the applicant provided a false identity.

In **Germany**, applicants were required to cooperate in establishing the facts of the case, including by presenting the facts justifying his/her fear of persecution or serious harm and by providing the necessary evidence. However, the Federal Office also had a duty to investigate the facts of the case and the evidence. In addition, administrative procedures in **Germany** were governed by the 'principle of investigation' (*Untersuchungsgrundsatz* or *Amtsermittlungsgrundsatz*), according to which the authority must determine the facts of the case *ex officio*, takes into account all circumstances of importance in an individual case, including those favourable to the parties, and shall not refuse to accept statements and evidence as long as they fall under its remit. In the asylum procedure, the applicant had an obligation to cooperate (*Mitwirkungspflicht*). The burden of proof depended on the nature of his/her claim. Indeed, if the claim was based on well-known and documented facts, such as the fact that the applicant was from Syria, s/he only had to prove that s/he was indeed from Syria, while a claim based on the applicant's individual story placed the burden of proof on the applicant.

In **Greece**, the authorities explained that the burden of proof shifted to the case handler when assessing the possibility for internal flight or exclusion. However, Greek lawyers denounced inconsistent practices regarding the burden of proof, as not all case handlers understood the notion and its application. National legal provisions on the subject did not specify how the burden of proof should be shared during the status determination procedure.

In **France**, the determining authority stressed the importance of the adversarial principle when conducting the interview and assessing the claim. Case handlers received training on the subject, and

<sup>31</sup> All Member States bound by Directive 2011/95/EU or 2004/83/EC are reflected regarding Article 4, with the exception of ES where no data could be collected for reasons explained in section 2 of this report.

the protocol in place was strengthened in recent years in order to provide stronger guidance on the motivation of the decision. When the applicant submitted documentary evidence such as medical certificates or judgments, the standard of proof shifted to the authority, which then had to provide very detailed justification if it decided to reject the application.

In some Member States, the determining authority could request the support of experts (for instance medical practitioners, psychologists) in order to assess the credibility of applicants who claimed to have suffered specific trauma (AT, BE, EL, SE). In **Austria**, the Federal Asylum Office could request a medical report in cases involving medical issues. The applicant could also request a DNA test if s/he could not prove an alleged family relationship, the costs of which would need to be covered by him-/herself. However, in **Belgium**, the services of some specialised units were discontinued for budgetary reasons, due to the current crisis.

The standard of proof placed on the applicant was recognised to be higher in certain circumstances, such as when applicants were from a safe country of origin (e.g. BE, DE, FR).

However, in **Croatia, Estonia, Germany** and **Luxembourg**, NGOs indicated that the burden of proof was mostly placed on the applicant and that cooperation was rare in practice. It only shifted to the authority when it came to proving the existence of an IPA or exclusion (e.g. EE, LU). On the contrary, in **Latvia**, the authorities indicated that the burden of proof lay mostly on the determining authority.

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, UK). In **Austria**, the application of this notion was closely linked to the credibility assessment. In the event the applicant's story was credible and did not contradict the available COI, the benefit of the doubt could be granted to the applicant. In **Greece**, the notion was applied in cases where no documents were available and the available COI did not confirm the claim. However, lawyers criticised the fact that its application was inconsistent and subjective. In the **Netherlands**, the notion applied when the grounds defined under Article 4(5) were fulfilled. In **Poland**, the concept was described as precluding the authority from presuming that the applicant is lying. However, Polish lawyers claimed that inaccuracies in the applicant's statements could be a serious challenge to his/her credibility.

In some of the Member States, the benefit of doubt was explicitly mentioned in the law, or in guidelines and other documents issued by the determining authority (e.g. BE, CY, HR, IT, PT, SE, UK) and in court rulings (e.g. BE, CZ). In other Member States, the concept was not defined in the law or elaborated in guidelines but applied in practice (e.g. BG, EE, FR, LT, LU). In **Croatia** however, an NGO stated that the notion was transposed into national law but not applied in practice. Under the French Courts' interpretation of the notion, the 'absolute conviction' of the judge (or lack thereof) was said to be more important than the 'benefit of the doubt'.

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 (e.g. BE, FR, MT). In **France**, NGOs indicated that the applicant would have to provide more justifications in the event s/he did not present documents that could be obtained in **France**, such as medical or UNHCR certificates. However, in **Malta**, NGOs claimed that vulnerable people were not clearly identified as such. Particularly, in some cases, illiterate women from a rural area in Eritrea were asked general questions about their country, that they could not answer.

The notion of benefit of the doubt was not applied in **Germany**. A German NGO indicated its view that the notion was only applied in criminal law but "unfamiliar in refugee and subsidiary protection law",<sup>32</sup> which may be why the approach set out in Article 4 was strictly followed.

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<sup>32</sup> International Association of Refugee Law Judges, op. cit. p. 50.

Finally, **issues were pointed out in several Member States regarding the credibility assessment**. For instance, an NGO in **Croatia** stated that applicants were often said to lack credibility because of contradictions in their statements and without being given the chance to justify these contradictions. They added that contradictions were frequent in statements made by refugees due to their vulnerability and stress. In **Greece**, it seemed that in some cases, rejection decisions were justified on the grounds of a general lack of credibility rather than a detailed explanation of grounds that were specific to the case.

In the **Netherlands**, lawyers stated that applicants were not often confronted with possible contradictions in the evidence during the interview, but only after the decision was made, which left them little chance to explain the contradictions or justify their claim. They also knew of cases where the applicant's claim had been rejected on the grounds that one element of his or her application was not credible, thereby discrediting the rest of the evidence submitted. In all cases, the Courts had quashed the determining authority's decision. Similar issues were pointed out in **Poland**, where the lack of reliability of an applicant's statement (e.g. fake identity) could lead to the application being rejected. Lawyers added that inconsistencies between the declarations made when lodging the claim at the border and the personal interview as part of the status determination procedure could also be used against the applicant. Statements made at the border were generally considered as the most reliable ones, and in case of contradictions at a later stage of the procedure, the applicant could be accused of lying. An NGO in **Portugal** criticised the inadequate cooperation of the authority with the applicant in establishing issues such as allegations of torture, allegations of gender-based or sexual-orientation-based violence, as no expert assessment was available and the assessment of credibility was deemed as insufficient. NGOs in several Member States stated that incoherent and confusing statements were frequent amongst protection seekers due to the hardship they had endured and their particular vulnerability. Subsequent meetings with NGOs or legal counsels helped them organise their statement and identify elements that could be relevant to their claim, so variations in their declarations at different stages of the procedure were common.

### **Substantiation of applications "as soon as possible" – Article 4(1)**

Some Member States set time limits within which evidence had to be submitted (LU, MT, NL, SI). For this reason, practices seemed to vary quite significantly from one Member State to another. In other Member States, contextual elements influenced the implementation of this requirement. For instance, lawyers in **Greece** stated that it was impossible for applicants to substantiate their claim 'as soon as possible' in the current context.

In **Luxembourg**, a time limit of 10 days to one month was usually set for the submission of documents. In cases where the evidence submitted was insufficient, this was communicated to the applicant at the beginning of the interview. In **Malta**, applicants were given 15 days to submit evidence and could justify a potential delay in providing evidence to the case handler during the personal interview. In that case, they were given an extra 15 days during the first instance procedure to submit additional evidence. In the **Netherlands**, a reasonable timeframe to submit additional evidence was considered to be 48 hours. In **Slovenia**, a deadline was set on a case-by-case basis during the first instance assessment, but in practice all evidence could be submitted until the decision

### **French case by the Administrative Supreme Court on credibility assessment**

The CNDA that had rejected an applicant's claim, despite the presentation of a medical certificate by the applicant, on the grounds that his statements were basic, imprecise and contradictory.

This decision was quashed by the State Council, recalling the obligation for the CNDA to:

- Consider all relevant evidence submitted by the applicant;
- Assess the credit to be granted to the evidence and confront it to the applicant's statements;
- Assess the risks revealed by the evidence;
- Specify whether these risks should be considered as 'serious'.

(State Council, 10 April 2015, *M.B.A.*)

### Example of assessment of application with missing documents submitted in *Belgium*

When examining what documents are missing and how long it may take for the applicant to obtain them, the CGRA took into account:

- *Individual circumstances* (age, health, trauma, contacts with the family members in the country of origin, etc.)
- *Contextual circumstances* (security situation, access to public services, etc.).

If it became clear that an applicant did not provide all the documentation at his disposal, and could be reasonably expected to obtain certain documents, the protection officer could grant the applicant an extra five days to submit additional evidence. A longer deadline could be granted under exceptional circumstance. Documents submitted after the deadline would still be accepted until a decision is made.

was made. During further instances, there had to be a well-founded reason for the delay or the evidence would not be taken into account. In the **United Kingdom**, the determining authority gave the applicant a reasonable time frame to provide relevant information, which was usually defined as five days after the personal interview. Applicants could request an extension of the deadline, which could be granted on a case-by-case basis.

### **Evidence required to substantiate the application – Article 4(2)**

Twelve 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, DE, EE, EL, FI, LU, NL, PL). Some Member States added that documentary evidence was not the most important element in the assessment, especially since in many cases applicants

could not submit any original documentation, and due to the frequency of forged documents (FR, HR, MT). In **Bulgaria** and **Romania**, originals were considered as sufficient evidence but copies needed to be supplemented with other forms of evidence.

In most Member States it was **impossible to reject an international protection claim solely on the grounds that documents were missing** (AT, BE, BG, CY, CZ, DE, EL, FI, FR, HR, HU, IE, LT, LV, NL, PL, PT, RO, SE, UK). However, in **Cyprus**, lawyers were aware of cases where the application had been rejected solely on the basis of the absence of documents. In **Estonia**, the rejection of an application on the grounds of missing evidence is only possible in cases where the applicant has “failed to present a document or other evidence of essential importance to the processing of his/her application for asylum” or “has knowingly failed to provide information or give explanations which are of essential importance to the processing of his or her application for asylum”. In **Germany**, the applicant was not held accountable for the absence of documents, except in cases where documents could reasonably be expected from him/her (in cases where the documents could be obtained in **Germany**). The claim was assessed by the determining authority, independently from the evidence submitted. If no proof or evidence was submitted, the assessment was conducted on the basis of the overall substantiation and credibility of the claim. However, a German NGO stated that unsubstantiated claims could be rejected on the grounds that insufficient evidence had been submitted, in cases where the applicant originated from a safe country of origin. In **Greece**, lawyers contradicted the authorities by indicating that it was common for applications to be rejected on the grounds that information or evidence was missing. For instance, in 2013, most first instance rejection decisions were justified by the fact that the applicant had not provided travel or identity documents from his or her country of origin. In other cases, the determining authority requested unofficial documents, such as party-member cards, or threatening letters, which the applicant could not provide. In the **United Kingdom**, documentary evidence was generally not expected, except for specific documents that could be obtained in the **United Kingdom**. If the applicant indicated that they had been supported by a solicitor in their country of origin, they could be expected to have more evidence in their possession.

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 (AT, BE, CY, CZ, DE, EL, FI, FR, LT, PL, RO, SE). In **Austria**, the authorities specified that the delay in the submission of evidence had to be notified by the applicant to the determining authority or the Court. In **Cyprus**, a deadline (usually one month) could be set by the

authority depending on each case. In **Germany**, the applicant could submit additional evidence after the interview depending on the circumstances of the case, as long as it did not delay the assessment of the claim, otherwise it would be ignored. The determining authority in **Greece** allows late submissions in agreement with the case handler, within a reasonable time limit. In **Romania**, the additional evidence could only be submitted if an explanation for the delay was offered by the applicant and if the case handler deemed it relevant.

Some Member States specified that **even after the first instance decision was made**, additional evidence could be submitted before the Court in case of appeal (e.g. BE, CZ, EE, FR, LT) or an additional interview could be organised (e.g. BE, BG, EL, LT). In the **Czech Republic** and **Lithuania**, the procedure could be extended in order to allow for the submission of complementary evidence. In **France**, the Council of State confirmed a judgment of the Asylum Court (*Cour nationale du droit d'asile* – CNDA) closed the examination of the case five or 10 days before the hearing.

Eight Member States stressed that the **late submission of evidence** could affect the credibility of the claim (AT, BE, EE, FI, LU, NL, RO, SE). In **Belgium**, the authorities stated that applicants who had not submitted elements at their disposal and for whom there was no satisfactory explanation as to the lack of evidence were not considered as having made a “genuine effort” (Article 4(5)) to substantiate his/her claim. In **Germany**, an NGO stated that applicants were asked to submit evidence immediately, and that failure to comply with this could result in the rejection of the evidence submitted, notably before courts in the event the decision by the determining authority is appealed.

Several Member States indicated that they **informed the applicant prior to the interview** about the requirements of the procedure (BE, BG, FR, HR, HU, LV, MT, UK). In **Belgium**, the applicant is informed of the notion of burden of proof and its application, as well as on the information and evidence requested, during his/her registration interview at the Immigration Department, in reception centres, in the convocation letter for the personal interview at the CGRA, and at the start of the interview. An interpreter is always present when this information is communicated. In **France**, applicants receive a form before the interview listing the types of evidence that can be submitted. In **Hungary**, applicants received an information note before the interview in which the next steps of the procedure, including the nature of the information that would be requested to them during the interview, are explained to them. In **Malta**, an information session was organised with the applicant right after the claim was lodged, during which they were informed about the documents and evidence required from them. Booklets were also distributed during this session and a video available in several languages was shown, to provide information about the application procedure. In the **United Kingdom**, applicants were asked to provide all the documentation available to them and they received information about the asylum procedure, but not about the burden of proof.

Finally, Member States indicated that **various types of evidence** were accepted to substantiate the international protection claim. Examples included written material (BE, FI, LV, PL), digital material (BE), visual and audio recordings (BE, LT, PL, SK), physical evidence such as scars and medical reports (BE, NL, PL), testimonies by third parties (PL, SK), including family members (BG) or other refugees (LT), and court decisions (LV, SK). The authenticity of evidence could be checked by the police (e.g. the Federal Criminal Police Office in **Austria**) or in some cases with the country of origin, while preserving the anonymity of the applicant (AT).

#### Application of the principle of free evidence examination in Sweden

The examination of evidence in Sweden follows two principles:

- Free argumentation, which means that the applicant is allowed to present all forms of evidence available to him/her. There is no limitation to the sources that can be used to determine the truth.
- Free assessment, which means that there are no legal rules regulating how the assessment should be performed.

The applicant and the authority share the responsibility to establish the truth.

#### COI analysis and individual assessment

Almost all Member States indicated that they had set up a **specialised unit** in charge of collecting, analysing and updating COI (e.g. BE, BG, CZ, DE, EE, EL, FI, FR, HR, HU, LT, NL, PL, RO, SE, UK). Some published their COI online (e.g. BE, FR, NL, SE). In the **Czech Republic**, the unit uploaded the COI on a database, where case handlers could find the information they needed to assess their case. Case handlers could also send ad hoc requests for information to the unit. In **Germany**, all COI used was checked against uniform quality standards and is used to produce country policy guidelines. However, an NGO denounced the fact that the COI was drafted on the basis of guidelines issued by the Ministry of Interior, which were often based on political considerations, especially as regards safe countries of origin. In **Greece**, case handlers could also submit ad hoc requests to the COI Unit. In **France**, the unit was a relatively recent creation. The authorities noted that it had been a considerable improvement compared to when case handlers used to research COI themselves. Sources used varied and included contacts with specialists and journalists, which were cross-checked with objective sources and other COI units in other Member States. In **Poland**, the case handler could request specific/further information from the COI Unit via a specialised database. The standard time frame to receive this information was three weeks. Selected COI was made available to the applicant. In **Romania**, the information provided to case handlers could come from various sources, including mainly specialised sources but also, when no primary sources were available, sources such as corroborated media could also be used. In the **United Kingdom**, case handlers examined published resources which were already available, but could also commission further research from the team responsible for gathering and publishing COI, or send an enquiry to the **United Kingdom's** Foreign and Commonwealth Office.

Yet, it seemed that in other Member States, **case handlers were expected to gather information themselves** by reviewing a variety of sources of information, such as publicly available information or information to be requested from other authorities such as diplomatic services in third countries (IT, LV, MT, UK). In **Italy**, case handlers received guidelines from the Ministry of Interior indicating a grid of questions to ask to the applicant, details about the country of origin situation and the risks. UNHCR played a prominent role in the assessment of the case. An intranet page was also available to case handlers. There was a database for each territorial Commission, including access to the EASO portal, Refworld and the COI Portal. In **Latvia**, case handlers did not receive guidelines but were trained to identify COI themselves. In **Malta**, case handlers were specialised in a specific geographical area.



**The organisation of the CEDOCA (Centre de documentation et de Recherche – Documentation and Research Centre) in Belgium)**

The research centre **compiles information from various and objective sources** such as UNHCR, EASO, relevant international human rights organisations, NGOs, professional literature and media sources literature and media sources.

The **information is selected and analysed**, and made available to case handlers.

CEDOCA researchers are **specialised in given geographical areas**.

They produce COI reports ('COI Focus') that are regularly updated. They can also be **contacted for ad hoc input**. On average, about 2,000 questions on individual files are answered by CEDOCA yearly. The researchers also give **specific training sessions and distribute an electronic daily press review** focusing on current events in the countries of origin. All CEDOCA information, as well as a selection of relevant and reliable COI from other sources, is available on a user-friendly platform called InSite.

For their research, the CEDOCA can rely on an **extended network of contacts** in *Belgium* and in the countries of origin. Contact persons provide information on a voluntary basis. Information is also exchanged with their counterparts of the asylum departments in other EU MS.

Amongst public sources of information, the European Country of Origin Information Network<sup>33</sup> and Refworld<sup>34</sup> seemed to be widely used amongst Member States. However, in some Member States, **issues with the sources of information used** by the determining authority were identified. Indeed, *Cypriot* NGOs and legal representatives cited instances where Wikipedia was used by the authorities as a source for COI. In *Italy*, lawyers stated that there used to be no reference to COI in decisions, and although this had now improved, references were generally vague and generic. In *Portugal*, an NGO criticised the fact that COI was very rarely cited in rejection decisions. This was particularly true regarding decisions taken in the context of an accelerated procedure, probably due to the shorter deadline applicable (seven days). In *Slovenia*, NGOs indicated that national law provided that the determining authority should share a compilation of the COI they were going to use with the applicant's legal representatives. In response, legal representatives would prepare their own COI and share it with the authority. However, based on the content of the decisions, it seemed that COI provided by legal representatives was used very little by the authority in first instance, but it was used by the Courts when the decision was appealed.

Some Member States pointed out that it could be **challenging to keep information up to date**, especially regarding grounds relating to subsidiary

protection. For instance, a *Belgian* NGO claimed that the CGRA froze their decisions on a given geographical area on several occasions, following sudden changes in the situation in countries of origin. This was recently observed as regards the Baghdad area in Iraq, and Burundi. In *Bulgaria*, the COI for the main countries of origin, such as Syria, Iraq or Afghanistan, but also Ukraine, was updated every two to three months. For other countries, updates are not as regular. In *Luxembourg*, the COI about the most frequent countries of origin was updated every month.

In a majority of Member States, case handlers in the determining authority followed the **EASO training on evidence assessment** (including BE, BG, EE, EL, HR, HU IT, LT, MT). In *Malta*, all case handlers received specific training on document analysis and were provided with a forensic kit for this purpose. The best six case handlers were then selected to attend advanced training with case handlers from the *United Kingdom*. Following this, two persons in this group went to the *Netherlands* in order to observe the work of the Dutch evidence assessment team. **Divergences between case handlers' interpretations of COI** for applicants originating from the same country were noted in some Member States (including BE, EL, IT, MT, NL, SI). In *Greece*, this was particularly problematic as the current crisis obliged the Member State to hire a lot of new case handlers with little time to train and prepare them for the task.

The **individual assessment** of the claim was undertaken by **comparing the COI obtained by the determining authority with the applicant's statements** given during the personal interview and evidence provided to substantiate the claim. Twenty Member States stated that the individual circumstances of the applicant were taken into account throughout the procedure (BE, BG, CY, CZ, DE,

<sup>33</sup> <https://www.ecoi.net/>.

<sup>34</sup> <http://www.refworld.org/>.

EE, EL, FR, HR, HU, IT, LT, LV, MT, NL, PL, PT, SE, SI, UK). In **Belgium**, cases regarding minors were handled by specialised case handlers who were trained to interview UAMs. Applicants who claimed to be victims of Female Genital Mutilation (FGM) were interviewed by female case handlers. In **Germany**, case handlers were instructed to assess the COI according to the standards set in the ECtHR case law on the assessment of the situation in a country and the risks of breaches of Article 3 ECHR: individualisation of the information, objectivity, diversity and actuality of the sources used.<sup>35</sup> According to a **German** NGO, little attention was paid to individual circumstances during the assessment of claims originating from safe countries of origin. In **Greece**, case handlers were trained to use appropriate interview techniques to get relevant information from the applicant, including the use of open or closed questions as necessary, funnel techniques, and questions that were adapted to the age, vulnerability and education of the applicant, etc. In **Croatia** and **Italy**, NGOs expressed concerns that the justification for decisions concerning applicants from the same country of origin was often the same, without reflecting the individual circumstances of the case. In the **Netherlands**, case handlers could request individual reports on the case to the Ministry of Foreign Affairs, and the COI was carefully reviewed against the applicant's statements. Similarly, in the **United Kingdom**, case handlers could undertake further COI research in relation to the case after the interview, before reaching a decision on the application. The interview was aimed at assessing the credibility of the applicant but also the risks s/he incurred in his/her country of origin.

However, in some Member States, situations were identified where only the COI was taken into account in order to assess the application. For instance, in **Cyprus**, NGOs had discovered that the individual circumstances of Syrian applicants were not taken into account and that they were automatically granted subsidiary protection.

A great majority of the responding Member States checked whether **Articles 4(3)(d) and (e)** applied to the case (AT, BE, CY, CZ, EE, EL, FI, FR, HR, HU, IT, LT, LU, LV, MT, NL, PT, RO, SE, SI, SK, UK):

#### **Activities engaged in solely for the purpose of the application**

In **Austria**, case handlers were trained to ask 'test questions', notably on religion, to assess the motivations of the applicant to engage in a given activity. **Poland** indicated that there were no such cases. The **Slovenian** authorities stated that such cases were almost impossible to assess in practice. Most of the responding Member States assessed the opportunistic character of the activity, which was considered irrelevant if the fact that the applicant engaged in this activity exposed him/her to risk of persecution or serious harm (BE, EE, EL, FR, HU, IT, LU, MT, NL, RO). In **France**, the authorities stated that in practice, the opportunistic character of the claim could not be opposed to the applicant.

#### **Applicant who could reasonably be expected to avail himself or herself of the protection of another country where he or she could assert citizenship**

Seven Member States stated that instances where **the applicant could reasonably be expected to avail himself or herself of the protection of another country where he or she could assert citizenship** were rarely encountered (AT, DE, FR, LV, NL, PT, UK). In **France**, the scope and application of the Article were not clear, and the French Refugee Office (*Office français de protection des réfugiés et apatrides* – OFPRA) indicated that they were currently working on clarifying this issue. Judges added that establishing the facts linked to Article 4(3)(d) was difficult. **Belgium** had not transposed the Article into their national law and only applied it with regard to refugees in application of the Geneva Convention. Such cases were very rare in practice in **Germany**.

#### **Previous persecution or serious harm<sup>36</sup>**

<sup>35</sup> Such as ECtHR, 11 January 2007, *Salah Sheekh v Netherlands*, Application No 1984/04.

<sup>36</sup> See also Section 3.9 on Article 10 – Reasons for persecution.

Most Member States stated that the existence of past persecution or serious harm was taken as a strong indication that the applicant might be exposed to risk in the future (AT, BE, CY, DE, EE, EL, FR, HR, HU, LU, MT, NL, PL, RO, SE, SI, UK). However, they added that the future risk would also have to be assessed (AT, BE, BG, CY, CZ, DE, EE, FR, HR, HU, IT, LT, LV, MT, NL, PL, SE, SI, UK). In **Belgium, Greece, Estonia** and **France**, the burden of proof would shift to the authority in cases where it was established that the applicant had already suffered persecution or previous harm. In **Belgium, Malta**, and **Romania**, for future oriented risk assessments, the standard of proof used was the reasonable degree of likelihood. In **Cyprus**, the authorities stated that the time that had elapsed from the moment the person had suffered the harm or persecution played an important role in the final outcome of the assessment. **Germany** applied a test to verify whether there was 'sufficient safety from repeated persecution' and a presumption of continued risk. However, the standard of proof expected from the applicant varied depending on whether s/he had suffered previous persecution or serious harm. If the person had not been previously at risk, the standard of proof was defined as 'reasonable probability', while the existence of previous persecution or serious harm lowered the standard of proof. In **Greece**, the applicant was not required to have been engaged in the same conduct for the provision to apply. Lawyers pointed out that in several cases involving past persecution or serious harm, the authorities had excessively justified their rejection of the case by the time elapsed since the harm took place, without considering elements such as intelligence service practices or prescription delays in the country of origin. The **Lithuanian** authorities stated that there needed to be enough proof of the past harm/persecution or the application would be rejected.

In several Member States it was possible for the authority to conclude that there **was no continued risk**, which contributed to the rejection of the application (BE, CY, CZ, DE, EL, FI, HR, NL, SE, SI). In **France**, the conditions were that there was a sufficiently deep and constant change in the circumstances in the country of origin between the moment the persecution had happened and the moment the country had been left. In **Germany**, such a possibility occurred only exceptionally.

However, the **Czech Republic** and the **Greek** authorities as well as a Dutch NGO indicated that there could be cases where the persecution had been so severe that the protection status should be granted, even in the absence of continued risk. In the **Netherlands**, the test to verify this was the following:

- The statements by the applicant about the event were plausible;
- The applicant could make it plausible that the departure from the country was due to the traumatic event; and
- The Immigration and Naturalisation Service – *Immigratie en Naturalisatiedienst* – did not require the applicant to return because of the traumatic event.

## Exceptions to the duty to substantiate the application with documentation or other evidence Article 4(5)

### Assessment of the concepts under Article 4(5) in the Netherlands

- **Genuine effort:** According to national guidelines, an application that cannot be fully substantiated needs to have a 'positive persuasiveness', which puts more emphasis on applicant's credibility rather than efforts.
- **Application at earliest possible time:** 48 hours upon arrival is indicated in the policy as reasonable. The interpretation of the concept was mainly put forward by the Ministry as courts have only rarely applied it. On 8 September 2011 the Council of State ruled that when the applicant has not applied for international protection at the earliest possible time, the positive persuasiveness test is applied.
- **Satisfactory explanation:** This is checked and the explanation should be specific.
- **General credibility:** Two-stage approach.
  - Stage 1: Any factor related to credibility is first assessed, then the internal and external credibility of the applicant's factual circumstances are assessed. If the statements about the factual circumstances are considered (partially) plausible, then it will be assessed whether the statements on the alleged events and assumptions are plausible (internally and externally credible).
  - Stage 2: It is assessed whether the applicant's presumptions about the risk upon return are convention-related, plausible and sufficiently compelling.

Several Member States stated that they did not have a definition in their national law of the concepts listed under Article 4(5) of the Recast QD, favouring an assessment on a case-by-case basis (AT, CZ, DE, EE, FR, HR, LT, MT, SE and SI). In **France**, the assessment of the concepts is rather *a contrario*: indeed, case handlers will tend to examine whether the applicant had hindered the assessment of his or her application by being uncooperative, rather than whether s/he made a 'genuine effort'.

Some Member States indicated that their case handlers had followed training on the assessment of credibility. A few Member States (LV, MT, UK) reported that they used **guidelines** on how the assessment should be conducted (it is likely other Member States also made use of guidelines) and several (AT, BG, EE, EL, FR, HR, LT, LV, MT) reported that national case handlers participated in **training** on the topic. It was likely that more Member States made use of guidelines and training on the subject, but did not specify it during the interview. Many Member States referred to EASO or UNHCR as providers of such training, highlighting the importance of these organisations in supporting the implementation of the Recast QD. In particular, in **Cyprus**, case handlers followed extensive training on the issue as part of the project 'Towards Improved Asylum Decision-

Making in the EU' (CREDO), organised by UNHCR, which aims to improve asylum decision-making in the EU. In **Estonia**, case handlers were mentored and attended weekly meetings, where specific cases or methodologies are discussed. After each meeting the topics and agreements are sent to the whole team in order to maintain uniformity of decision-making and processing methods, including on theoretical issues, such as past and future persecution concepts. The **United Kingdom** recently published a revised version of its credibility instructions, following UNHCR's CREDO project in 2012. Case handlers were also required to be familiar with relevant COI prior to the interview, so that the interview could be conducted in light of the context of the country of origin.

Still, the concept of general credibility seemed to be the most problematic, as several stakeholders pointed out that it was too vague and general to be applied in practice (CY, EL, FR, SE). As a result, in **Cyprus**, NGOs criticised the fact that very specific questions on religious beliefs or cultural issues were sometimes asked in order to assess the applicant's credibility, even though the applicants could not reasonably be expected to answer them. Still, the applicant's failure to provide the correct answer might affect the assessment of his or her credibility.

### 3.3.3 Examples of good application

The following practices have been identified as examples of good application of the Directive:

- Granting a higher benefit of the doubt in the event the applicant cannot be expected to have certain knowledge/evidence about his/her situation due to his/her particular circumstances (level

of education, vulnerability, gender, age, etc.) may allow for a better consideration of applicants' individual circumstances.

- Providing applicants with details of the entire asylum procedure prior to the interview, including the nature of the evidence and information that will be requested from the determining authority. Such practice enables the applicant to prepare adequately for the interview and may limit the risk of late submission of information.
- Availability of experts within the determining authority to assess the applicant's individual situation where needed (e.g. torture victims, FGM).
- The publication of COI on the determining authority's website allows for greater transparency on the relevance and accuracy of the information used to assess international protection claims.
- Allowing late submission within reasonable time limits enables applicants to obtain additional information and evidence that might not be at their disposal at the time of the interview. The 'reasonable' character of the time limit could be determined on a case-by-case basis by examining the particular circumstances of the case and possible expectations that can be placed on the applicant.
- Existence of a specialised unit gathering, analysing and updating COI, at least for the main countries of origin of applicants in the relevant Member State, or cooperation between determining authorities in the different Member States and EASO to share COI in order to make sure that all case handlers use the same COI at national level.
- Lower standard of proof expected from applicants who have suffered previous persecution or serious harm.

### 3.3.4 Possible application issues

The following practices can be considered as being incompliant, not properly implemented and/or not 'within the spirit' of the Directive.

- In Member States where the burden of proof lies exclusively or mainly on the applicant, practice may not be conform to Article 4(1) of the Directive, which foresees the applicant's duty to submit information at his/her disposal as an option, and to national authorities' duty to cooperate with the applicant.
- Resorting to a general statement about the credibility of the applicant in order to justify a rejection, rather than justifying the decision on the individual grounds of the case may not be in line with the spirit of the Directive as it does not highlight that the individual dimension of the case has been taken into account.
- Considering that one element that is not credible discredits the whole application does not allow for the assessment of every element submitted by the applicant. Similarly, inconsistencies between statements made at different phases of the procedure should not automatically lead to a rejection of an application.
- Rejecting applications solely on the grounds that specific documents are missing would appear to be an excessively narrow interpretation of the Directive if the applicant is not requested to provide an explanation for the absence of the document. This is even more problematic if the applicant cannot reasonably be expected to obtain the document requested.
- Excessive reliance on unofficial COI sources may lead to inaccurate or outdated information being used as a benchmark to assess the credibility of the applicant.
- The automatic granting of subsidiary protection due to COI without examining individual circumstances may not be conform to the obligation under the Directive to have a single procedure, during which the grounds for asylum and subsidiary protection are assessed.

### 3.3.5 Recommendations

Based on the above findings, the following recommendations can be put forward:

- Member States should be encouraged to make use of EASO's Practical Guides on Tools and Tips for Online COI Research, on Evidence Assessment and on the Personal Interview as well as UNHCR's Handbook. National case handlers as well as other relevant authorities should attend relevant EASO training modules on Interview Techniques, Evidence Assessment, Interviewing Vulnerable Persons, Interviewing Children, and Country of Origin Information. A consistent application of existing guidance would mitigate the risk of Member States resorting to a general statement about the credibility of the applicant in order to justify a rejection, rather than thoroughly assessing the individual grounds of the case and the credibility of particular aspects of the claim, in particular the fear of persecution or serious harm.
- The optional character of Articles 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. Such obligatory provisions should ensure further harmonisation of the elements considered by Member States in order to determine whether an applicant should be granted refugee status or subsidiary protection. This would therefore contribute to limiting the risk of divergent outcomes of asylum applications across Member States, as described under section 3.12 on Article 13 and 18 of the Directive in this report. As a majority of the Member States indicated that the burden of proof was shared in their national procedure, this amendment would likely not require considerable change but should ensure a more consistent approach to claim assessment in line with good practice standards.
- 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.
- Joint COI reports should be further developed by EASO, in order to ensure the 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. The reports should cover at least all the main countries of origin and thematic issues, supplementing existing EASO publications on countries of origin.<sup>37</sup> The content of the reports should be updated on a regular basis, based on a common analysis, which could use the model of the current pilot project conducted by EASO with the support of the European Commission and the Dutch Presidency, aimed at establishing common guidelines on the assessment of claims for international protection from Afghanistan. The development of this common analysis should be coordinated by EASO.<sup>38</sup> The collection of additional information through the creation of networks on COI, as proposed in Article 9 of Proposal COM (2016)271,<sup>39</sup> would also enable EASO to update national reports and make sure adequate information is used. Similar recommendations were supported in the JHA Council Conclusions approved on 21 April 2016.<sup>40</sup> New content should be

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<sup>37</sup> EASO has published Country Overview reports on Eritrea, Pakistan, and South and Central Somalia, as well as reports on sex trafficking of women in Nigeria; the security situation in Afghanistan and Somalia; a comparative analysis of trends, push-pull factors and responses in the Western Balkans; a report on women, marriage, divorce and child custody in Chechnya and a report on insurgent strategies intimidation and targeted violence against Afghans. These reports are available on <https://easo.europa.eu/asylum-documentation/easo-publication-and-documentation/>

<sup>38</sup> European Commission, Proposal for a Regulation on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010, COM(2016)271, 4 May 2016, Article 10.

<sup>39</sup> European Commission, Proposal for a Regulation on the European Union Agency for Asylum, *op. cit.*, Article 9..

<sup>40</sup> Council conclusions on convergence in asylum decision practices, 21 April 2016, 8210/16, available at <http://www.consilium.europa.eu/en/meetings/jha/2016/04/21/>

systematically uploaded on the COI Portal and its use should be promoted so that Member State authorities have access to all available relevant COI.

- Consistent interpretations and a coherent application of COI reports by case handlers and national courts across Member States should be fostered via the organisation of COI-related workshops, meetings and conferences, and the development of COI methodologies and training. EASO should coordinate Member States' actions to develop a common analysis of the situation in given countries of origin and to keep it up to date.

### 3.3.6 Benchmarks for measuring the implementation of Article 4

**Table 3.2 Benchmarks for measuring the implementation of Article 4**

<b>Whether or not the burden of proof is shared between the applicant and the determining authority:</b>	
Burden of proof on both parties	AT, BE, BG, CY, CZ, DE, EE, EL, FI, FR, HR, IE, LU, LV (in law), MT, NL, PL, PT, RO, SE, SI, UK
Burden of proof on applicant only in practice	As indicated by NGOs: DE, EE, HR, LU
Burden of proof on authority only in practice	LV
<b>Whether or not the benefit of the doubt is granted to the applicant:</b>	
In law/guidelines and in practice	BE, CY, CZ, HR, IT, PT, SE, UK
In law only	HR (stated by NGO)
In practice only	BG, EE, FR, LT, LU
The concept is applied but its source was not specified	AT, EL, FI, HU, IE, MT, NL, PL, RO, SI, SK
No	DE
<b>Whether or not there is an obligation for the applicant to substantiate the application as soon as possible after lodging the claim:</b>	
Time limit set	LU, MT, NL, SI
Delays permitted	SI, UK
<b>Whether or not there is a possibility to submit additional evidence later:</b>	
To the determining authority	AT, BE, CY, CZ, DE, EL, FI, FR, LT, PL, RO, SE
Before the Courts	BE, CZ, EE, FR, LT
<b>Whether or not some pieces of documentary evidence are compulsory:</b>	
Overall credibility of the applicant prevails over availability of documents	AT, BE, BG, CY, CZ, DE, EE, EL, FI, LU, NL, PL
Possibility to reject the application solely due to absence of evidence	EL in practice (as indicated by lawyers)
Impossibility to reject the application solely due to absence of evidence	AT, BE, BG, CY, CZ, DE, EL, FI, FR, HR, HU, IE, LT, LV, NL, PL, PT, RO, SE, UK
Applicants were expected to provide certain types of documents	Documents available in the MS: DE, FR, UK
<b>Whether or not there is a specialised Unit within the determining authority to prepare COI and guidance:</b>	
Yes	BE, BG, CZ, DE, EE, EL, FI, FR, HR, HU, LT, NL, PL, RO, SE, UK
Case handlers collect information themselves	IT, LV, MT
<b>Whether or not the credibility of the applicant are assessed using both COI and individual statements :</b>	

Yes	BE, BG, CY, CZ, DE, EE, EL, FR, HR, HU, IT, LT, LV, MT, NL, PL, PT, SE, SI, UK
Issues identified for the applicant to justify contradictions in the evidence	HR (as indicated by NGOs), NL (as indicated by lawyers), PL (as indicated by lawyers), PT (as indicated by NGOs)
<b>Whether or not the existence of past persecution or previous harm is examined:</b>	
The existence of past persecution is considered as an indication of future risk	
The future risk is also assessed by the case handler	AT, BE, BG, CY, CZ, DE, EE, FR, HR, HU, IT, LT, LV, MT, NL, PL, SE, SI, UK
It is possible to conclude that there is no continued risk	BE, CY, CZ, DE, EL, FI, HR, NL, SE, SI
<b>Whether or not the exceptions of Article 4(5) are applied:</b>	
The concepts are not defined in national law and assessed on a case-by-case basis	AT, CZ, DE, EE, FR, HR, LT, MT, SE, SI

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

#### 3.4.1 Background on *sur place* applications

Article 5 stipulates three types of international protection arising *sur place*, i.e. for reasons that happened after the applicant left the country of origin. First, the need for protection can arise on account of objective events that have taken place in the country of origin (e.g. changes of the security situation in Syria).<sup>41</sup> Second, the applicant can become in need of protection because of subjective activities that the applicant has engaged in since he or she left the country of origin (e.g. conversion to a religion whose members are persecuted in the country of origin).<sup>42</sup> Finally, Article 5(3) refers to ‘subsequent applications’ which may require specific scrutiny as to whether the asylum seeker has created the situation giving rise to persecution or serious harm by his or her own decision. Such assessment must be without prejudice to the Geneva Convention. Even though the Directive does not provide for a definition of subsequent applications, it is assumed that these applications should be confined to situations in which the applicant creates the relevant circumstances *after* the initial application has been rejected.<sup>43</sup> Special attention should be paid to the question whether Member States indeed only apply such a higher level of scrutiny to subsequent and not to first applications.<sup>44</sup>

Article 5 did not change in the Recast QD.

The following evaluation questions were assessed:

*What is the scale of sur place applications, in absolute numbers and as a share of total applications?*

*As part of the asylum procedure, do Member States have a separate procedure to assess international protection needs arising sur place in first applications?*

*For subsequent applications, do Member States apply a different level of scrutiny on sur place applications and if so, how do they ensure that the Geneva Convention is still applied as a minimum standard?*

<sup>41</sup> Article 5(1).

<sup>42</sup> Article 5(2).

<sup>43</sup> Steve Peers, Violeta Moreno-Lax, Madeline Garlick, Elspeth Guild, EU Immigration and Asylum Law (Text and Commentary): Second Revised Edition (2015), p. 94.

<sup>44</sup> COM(2010) 314, p. 5. describes a risk of Member States of applying a higher level of scrutiny also to first applications *sur place*.



### 3.4.2 Findings for Article 5

#### Summary of main findings

The main findings in relation to Article 5 can be summarised as follows:

- The scale of *sur place* applications, in absolute numbers and as a share of total applications appeared to be very low in all Member States. However, in many countries this data is not recorded.
- Standards to assess first *sur place* applications vary greatly across Member States. Several Member States also apply a higher level of scrutiny for first-time applications *sur place*.
- A higher level scrutiny than for first-time application was applied for subsequent applications in only a few Member States.
- None of the stakeholders consulted in the Member States applying a different level of scrutiny for subsequent applications considered the conformity with the Geneva Convention a problematic issue.

#### Statistical information

**Estonia** stated the following *sur place* applications in 2014 and 2015 (out of all applications):

2014: 147 (155)

30 November 2015: 218 (230)

Applications for **international protection arising *sur place* overall played a minor role** in absolute numbers as well as in the total number of applications in the consulted Member States.<sup>45</sup> However, the reasons for this observation differed across Member States. Eleven Member States responded to the request to provide quantitative data regarding *sur place* applications (AT, BE, BG, CY, EE, FI,

HR, HU, PL, SE and SI). Of these, except for **Croatia, Estonia, Poland** and **Slovenia**, most Member States stated that they did not differentiate between Article 5 and any other applications for international protection and therefore did not record this data.

**Croatia, Poland** and **Slovenia** indicated that no such applications had been lodged between 2012 and 2015.

#### Assessing first applications *sur place*

Broadly, three different approaches to assess first applications for international protection *sur place* were identified: Member States foreseeing the same procedure to assess such claims by law and in practice (1); Member States that enshrine the same procedure by law while applying a higher level of scrutiny in practice (2); and the case of **Malta** foreseeing a higher level of scrutiny for *sur place* applications by law, but not applying it in practice (3).

1. The vast majority of Member States stated that **no separate procedure** and no higher level of scrutiny was foreseen by law nor applied 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).<sup>46</sup> For example, in the **United Kingdom**, the Court of Appeal<sup>47</sup> held that a claimant could be entitled to asylum also if s/he had manufactured their

<sup>45</sup> This confirmed the results of a European Migration Network (EMN)'s Ad-Hoc query from 2010 concerning similar provisions in Directive 2004/83 which found that the scale of *sur place* applications was overall considered to be low to non-existent and most Member States: European Migration Network: Ad-Hoc Query 228 on Réfugié, May 2010: <https://europa.eu/!kN36xy>.

<sup>46</sup> Information regarding all EU Member States bound by Directive 2011/95/EU or 2004/83/EC are reflected regarding Article 5, with the exception of Spain, where no interviews were possible as elaborated in section 2 of this report.

<sup>47</sup> YB (Eritrea) v Secretary of State for the Home Department [2008] EWCA Civ 360.

claim by reason of their activities. Opportunistic activity *sur place* was not an automatic bar to asylum, because whether a claimant's related fear of persecution or ill treatment was well-founded was an objective question.

2. Despite most countries' **laws not foreseeing** a different level of scrutiny, **in practice**, some of them did apply a slightly **higher burden of proof** on the applicant when **first applying for international protection arising *sur place*** (BE, DE, EL and PL).

**Belgium** did not transpose Article 5 into national law and thus claimed to assess *sur place* applications following the same procedure as any other application for international protection. However, evidence showed that a higher standard of proof was placed on *sur place* applicants in practice, despite the existence of elaborate guidelines. The applicant would have to bring forward comprehensive, detailed and coherent statements on the reasons for this fear of persecution. The determining authority would then assess the case with more than normal scrutiny requiring three categories of evidence: first, the real risk of persecution; second, the gravity of persecution and third, a close link to the grounds of the Geneva Convention.

**German** law only provided for a higher level of scrutiny for subsequent applications, but, according to an NGO, in practice this was also the case for first-time *sur place* applications. Generally, the scope of *sur place* application was narrow. Such applications were mainly treated differently depending on the age of the applicant leaving the country of origin. In cases of adult applicants who claimed being persecuted because of their activities in exile, international protection was only granted if such activity could be considered as a continuation of activities the applicants were already involved in in the country of origin. Otherwise, a change of mind would be considered as unnecessarily provoking danger and thus not credibly causing well-founded fear. For example, applicants from Iran who converted to Christianity would need to persuade the authority that their belief already existed in some way in the country of origin. Applicants on the other hand that had left their country of origin as minors were not expected to have fully developed their mindset and changes would be considered more plausible. For example, Iranian students who left Iran as children under the Shah's regime before the Islamic revolution under Khomeini who had become politically active in exile were more likely to be granted international protection.

In **Greece**, the practical assessment distinguished between first *sur place* applications based on changes of objective factors related to the country of origin and changes of subjective factors related to the applicant. If the application was based on subjective factors, the caseworker would first check the credibility of the applicant, i.e. whether this change was plausible. If the application was based on changes of circumstances in the country of origin (e.g. change of circumstances in Syria), no credibility check took place, but COI was consulted.

The reason why a different level of scrutiny was applied in **Poland**, as noted by a lawyer, was also due to the nature of such applications. It was generally more difficult to provide sufficient evidence for situations that happened after the applicant had left the country of origin. The level of 'fairness' of the proceedings was thus considered greater when evaluating a situation before the applicants had left the country of origin rather than after their flight.

3. **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) did not transpose Article 5 of the Directive correctly: While Article 5(3) in the Recast QD only allowed a higher level of scrutiny for subsequent applications, the Maltese Refugee Act gave the competent authority the right to exclude applications "based on circumstances which the applicant has created by his own decision since leaving the country of origin" also for first applications.<sup>48</sup> While Maltese NGOs consulted

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<sup>48</sup> Art. 8(2) of the Refugees Act (Cap. 420 of the Laws of Malta): A well-founded fear of persecution may be based on events which have taken place after applicant has left his country of origin or activities engaged in by applicant since leaving the country of origin, except when based on circumstances which the applicant has created by his own decision since leaving the country of origin.

were not aware of any *sur place* applications that were rejected, they nevertheless expressed their concerns about this incompliance. Protection should not be based on the goodwill and discretion of the competent authority, but enshrined in law.

### **Assessing subsequent applications *sur place***

A **higher level of scrutiny** than for the first application was applied for **subsequent applications** (in CZ, DE, EL, LU, MT, SE and SI). The possibility that applicants could *intentionally* create the *sur place* needs through their own activities was taken into consideration. For example in **Greece**, subsequent applications *sur place* were assessed in two stages. In an initial stage of admissibility, the file was checked solely for any new and substantive elements. An element was considered new, if the applicant had not expressed it in a previous application. In that case, if the applicant provided plausible and sufficient explanation for not having expressed this claim earlier, or the crucial fact took place after the examination of the first application, the application would be considered admissible. At this stage, it was not checked whether this new element would be true or credible. An element was substantive if it was important/crucial according either to the Geneva Convention or the conditions for subsidiary protection. This means it may either refer to the conditions in the country or to the profile of the applicant. Only if the application was deemed admissible would it be judged on its merit in a second stage.

In **Malta**, the **Netherlands**, and **Poland** subsequent *sur place* applications may be processed faster than other applications for international protection, as only new elements were assessed.

Stakeholders consulted in those Member States that apply a different level of scrutiny for subsequent applications considered the procedures to be in conformity with the Geneva Convention except for **Poland** where general concerns regarding the compliance of the Polish law with the Geneva Convention existed.

### **3.4.3 Examples of good application**

Member States that **apply the same level of scrutiny** for first or for subsequent applications for international protection can be considered as good practice. This observation supports UNHCR's view in which the *sur place* analysis should not require an assessment of whether the asylum seeker had created the situation giving rise to persecution or serious harm by his or her own decision.<sup>49</sup> UNHCR argues that, as in every case, it should suffice if all elements of the refugee definition were in fact fulfilled. The person who was objectively at risk in his or her country of origin should be entitled to protection notwithstanding his or her motivations, intentions, conduct or other surrounding circumstances.

In order to avoid a different treatment of applications, **detailed guidance on the assessment of *sur place* applications** ensuring equal treatment of *sur place* and other applications in practice are useful. However, no particular country could be identified as an example of good application in this regard. For example, the **internal guidelines** in **Belgium** and **Greece** propose standard operation procedures on refugee *sur place* cases, however in practice both countries still apply a different standard for such applications.

### **3.4.4 Possible application issues**

The following practices can be considered as being incompliant, not properly implemented and/or not 'within the spirit' of the Directive.

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<sup>49</sup> UNHCR comments on the European Commission's proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted (COM(2009)551, 21 October 2009), p. 16.

- Member States applying a heavier burden of proof on the applicant when first applying for international protection arising *sur place* (BE, DE, EL and PL).
- Member States' laws foreseeing a heavier burden of proof for first-time *sur place* applications. Even if this is not applied in practice, as in **Malta**, discrepancies between the transposing national legislation and the actual application of the Article can lead to legal uncertainties. Protection should not be based on the goodwill and discretion of the competent authority, but enshrined in law.
- Treating applications differently depending on the age of the applicant at the time of leaving the country of origin (DE).

### 3.4.5 Recommendations

Based on the above findings, the following recommendations can be put forward:

- Deleting paragraph 3 of Article 5, allowing Member States the option to apply a different level of scrutiny in cases of subsequent applications, is suggested. Needs arising *sur place* should not be assessed based on whether the asylum seeker has created the conditions giving rise to persecution or serious harm by his/her own decisions, but only whether the activities may reasonably be expected to give rise to a well-founded fear of being persecuted in the country of origin.<sup>50</sup> Deleting this paragraph would ensure that *sur place* applications are consistently assessed throughout the Member States. This is currently not the case with several of them applying a higher level of scrutiny to first-time *sur place* applications, and not just for subsequent applications as foreseen by the Directive.
- In any case, the reference “without prejudice to the Geneva Convention” in Article 5(3) should be deleted. Since the Geneva Convention does not contain a provision according to which its protection is excluded for persons applying for *sur place* protection; such a reference can be considered superfluous.
- EASO should continue to issue guidance on the assessment of Article 5, for example further elaborating on the EASO Practical Guide: Personal interview in combination with EASO's training modules 'Inclusion' and 'Inclusion Advanced' (in development) and Member States should be encouraged to apply these measures systematically. It is particularly important to clarify that the absence of persecution/serious harm in the past does not allow for the presumption that it would not exist in the future, thus allowing for a different level of scrutiny.

### 3.4.6 Benchmarks for measuring the implementation of Article 5

Table 3.3 Benchmarks for measuring the implementation of Article 5

Whether or not MS have a specific procedure/approach in place to assess <i>sur place</i> <u>first</u> applications:	
In law and in practice	-
In law only	MT
In practice only	BE, DE, EL, PL
None (treated like any other application for international protection)	AT, BG, CY, CZ, EE, IE, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PT, RO, SE, SI, SK, UK
Whether or not MS as part of <i>sur place</i> subsequent applications:	
Did not apply any specific approach	AT, BG, CY, EE, IE, FI, FR, HR, HU, IE, IT, LT, LV, NL, PT, RO, SK, UK

<sup>50</sup> See also the European Council on Refugees and Exiles (ECRE) in their Comments on the European Commission Proposal to recast the Qualification Directive, p. 16.

Apply more scrutiny focusing on whether the protection needs created 'intentionally'	CZ, DE, EL, LU, MT, SE, SI
Adopted a faster procedure (only assessing the new elements)	MT, NL, PL

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

#### 3.5.1 Background on actors of persecution or serious harm

Article 6 lists three types of actors of persecution or serious harm. These include (1) the State; (2) parties or organisations controlling the State or a substantial part of the State and (3) non-State actors, if the State and parties or organisations controlling (part of) the State are unable or unwilling to provide protection.

The following evaluation question was assessed:

*What are the methods used in practice to identify the actors, in particular the non-State actors, and to assess the 'unwillingness' or 'inability' of the actors mentioned in Article 6(a) and (b) to provide protection?*

*Are there any additional definitions and concepts to clarify 'parties controlling the State', 'parties controlling a substantial part of the territory of the State', and 'non-State actors'?*

*Are guidance and training made available to staff (including guidelines, criteria, etc.) in particular also to assess the inability or unwillingness to provide protection?*

#### 3.5.2 Findings for Article 6

##### **Summary of main findings**

The main findings in relation to Article 6 can be summarised as follows:

- Five Member States applied particular methods, guidelines or criteria to define actors of persecution or serious harm, whereas the others applied COI, UNHCR or EASO guidelines, training and national case law.
- Out of the countries applying special methods, two approaches of assessing actors of persecution or serious harm seem to be in place: Some Member States mainly focus on the type of actor of persecution whereas others focus on the state's capacity to provide protection.

##### **From the 'accountability theory' towards the 'protection approach'**

All Member States<sup>51</sup> broadly followed the '**protection approach**' as introduced by the Directive 2004/83/EC instead of the '**accountability theory**'.<sup>52</sup> In the protection approach, the emphasis is on the practical availability of protection that the State provides from persecution or harm of abuses of non-State actors. The accountability theory on the other hand stresses the need for the State to be "complicit or at least indifferent to harm caused by a non-State actor".<sup>53</sup> Small variations of the understanding of the concept have however remained.

<sup>51</sup> Information regarding all EU Member States bound by Directive 2011/95/EU or 2004/83/EC are reflected regarding Article 6. Information regarding Spain, where no interviews were possible as elaborated in section 2 of this report, was obtained through replies of the Contact Committee as well as the completeness assessment report provided by DG HOME.

<sup>52</sup> With further references: *Satvinder Singh Juss, Colin Harvey, Contemporary Issues in Refugee Law*, p. 298.

<sup>53</sup> *Daniel Wilsher, Non-State Actors and the Definition of a Refugee in the UK: Protection, Accountability or Culpability?* (2003) *International Journal of Refugee Law* (January) p. 71.

For example, **France's** practice had shifted from the accountability theory that was the standard to the protection approach. This was, as noted by a French judge, linked to the obligation to transpose Directive 2004/83/EC into French legislation,<sup>54</sup> which was a challenging innovation for the French system. As opposed to the French system, Directive 2004/83 placed the focus on the failure to protect rather than on the accountability of the State. In 2004, the first important judgment based on the protection approach was issued granting refugee status to an Algerian citizen fearing persecutions from a fundamentalist group in the context of the state's inability to provide effective protection.<sup>55</sup> It was noted that it was not relevant whether the actor was the State or not, but only the **authorities' capacity to protect** the individual from persecution or serious harm that would be assessed. However, assessing the unwillingness or inability of the State (or agents mentioned in Article 6(b)) to provide protection in case of non-State persecutions/threats proved to be a difficult exercise. French courts tended to not be highly demanding regarding this condition, as long as future risks in relation to such actors were ascertained. The inability or unwillingness to protect could be inferred from the facts of the case and from what was known about the availability of protection in the country of origin. In many family or clan-related cases, the lack of protection was inferred from the reluctance of public authorities to interfere in what they considered as 'private matters'.

**Greece** on the other hand focussed the assessment more on the specific **characteristics of the actors of persecution**. Criteria such as the size and the type of the group, the percentage of the population that collaborates with the group, the part of the country under its control, and also the state's capacity to control the situation were taken into consideration. Besides the UNHCR guidelines, there were no internal guidelines, rather, general criteria to apply, like the efficiency of the authorities to control and protect citizens from non-State actors, the legal framework and how it was applied, the efficiency of law enforcement authorities, and if there was a plan of action against non-State actors. Non-State actors could be armed groups, gangs, even persons were recognised as actors of persecution, however, subsequently, it was examined if there was state protection. Such claims were also always checked against the COI.

### **Concepts to identify actors of persecution or serious harm**

All Member States applied COI, UNHCR or EASO guidelines, training and national case law to identify actors of persecution or serious harm. In addition, five Member States had particular methods to interpret Article 6, such as internal guidelines or recommendations in place (BE, DE, MT, NL and SE). Table 3.4 below provides an overview of the methods applied in the different Member States.

**Table 3.4 Methods of interpretation of Article 6**

	Internal guidelines	UNHCR guidelines	Training	National case law	EASO guidelines	COI
AT				X		X
BE	X					X
BG						X
CY		X			X	X
CZ		X				X
DE	X			X		X
EE	-	-	-	-	-	-
EL		X			X	X

<sup>54</sup> Article L. 713-2 of the CESEDA originates in the 10 December 2003 Asylum act.

<sup>55</sup> CRR SR 25 June 2004 M. B. n° 446177 R.

	Internal guidelines	UNHCR guidelines	Training	National case law	EASO guidelines	COI
ES					X	X
FI		X				X
FR			X	X		X
HR		X				X
HU			X		X	X
IE			X			X
IT		X			X	X
LT						X
LU						X
LV						X
MT	X	X	X			X
NL	X					X
PL						X
PT						X
RO						X
SE	X <sup>56</sup>					X
SI						X
SK						X
UK						X

In **Belgium**, national case law specified that anyone could be a persecutor; the focus was on well-founded fear, not on the type of actor. In addition, internal policy guidelines per country were applied. These guidelines foresaw that if the **actor of persecution was the State**, a thorough examination must take place to ascertain whether the actor was one person who acted on an individual basis. If that was the case, protection could still be possible. If the actor of persecution and protection were the same, protection would (in most cases) not be possible.

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.

Factors to assess where the actors of persecution were **parties or organisations controlling the State or a substantial part of the territory** in **Belgium**:

- The control over the civilian population, including through the imposition of parallel justice structures and illegal punishments, as well as by means of threats and intimidation of civilians, restrictions on freedom of movement and the use of extortion and illegal taxation;
- Forced recruitment;

<sup>56</sup> Recommendations of the Director for Legal Affairs in a judicial position paper (SR01/2015).

- The impact of violence and insecurity on the humanitarian situation as manifested by food insecurity, poverty and the destruction of livelihoods;
- Increasing levels of organised crime and the ability of warlords and corrupt government officials to operate with impunity in government-controlled areas;
- Systematic constraints on access to education or basic healthcare as a result of insecurity;
- Systematic constraints on participation in public life, including in particular for women.

**Germany's** national jurisprudence and national policy guidelines foresaw a close link of persecution by **non-State actors** with the willingness and ability of actors of protection to offer protection according to Article 7 (which had been literally transposed into national law). The focus of the assessment, as confirmed by German NGOs, was thus on whether the State could protect from non-State actors, rather than what type of actors would qualify for non-State actors of persecution. In this regard the internal (general) guidelines list criteria, for example if actors of protection tolerated, condoned or promoted persecution by non-State actors. In this case protection (refugee or subsidiary protection) had to be granted if all other conditions were met. For example, state authorities in Afghanistan (police, justice) were generally not considered to provide sufficient protection according to Article 7 (§ 3 d of the Asylum Procedure Act) against gender-specific persecution by non-State actors. The same applied for gender-specific persecution/ serious harm by parents, husbands, relatives with regard to forced marriage (e.g. Iran, Turkey, Iraq), domestic violence (not limited to specific States) or FGM (esp. African States) and/or where the state was unable or unwilling to offer effective protection.

Similarly in **Malta** the main focus of the internal guidelines seemed to be on the effectiveness of protection of the state rather than on the type or activities of the **non-State actor of persecution**. Case handlers would thus first assess whether the state was stable and had a solid ability to protect and defend the applicant.

In the **Netherlands**, the decision whether parties or organisations controlling the State or a substantial part of the territory was made based on country reports and may subsequently be laid down in specific country guidelines. For example, the country guidelines for the Russian Federation established that in the case of lesbian, gay, bisexual and transgender applicants from the Russian Federation, the State was found to be unable or unwilling to provide protection against persecution or serious harm. Furthermore, non-State actors, such as ethnic groups, tribes or religious groups were recognised as potential actors of persecution or serious harm if the country reports by the Ministry of Foreign Affairs indicated that these groups control the State or a substantial part of the territory of the State. The non-State actors may also be recognised as potential actors of serious harm for the purpose of subsidiary protection.

Examples for **non-State actors of persecution** in **Belgium** where no protection was possible would be

- A policeman who raped an applicant in the country of origin acting on an individual basis and not in the capacity of a policeman; or
- A village comity of religious leaders in Senegal who punished people for adultery.
- Sexual violence and dead threats by a rebel who detained the applicant because she refused to marry him. Protection by the authorities of *Bouaké* (Ivory Coast) was not possible because they were under control of the rebels.

- the lack of protection by national authorities of Cameroon against forced prostitution. The effectiveness of the protection was doubtful despite sufficient protection according to the law, but not in practice.

Examples of **non-State actors of persecution** in the **Netherlands**:

- The Al-Shabaab in South and Central Somalia;
- Civilians in the Russian Federation who discriminate lesbian, gay, bisexual or transgender applicants



In **Sweden**, non-State actors needed to fulfil the same criteria as the state. The Director for Legal Affairs issued a judicial position paper (SR01/2015) giving detailed recommendations for the case handlers to assess non-State actors.

Criteria for case handlers for the assessment of 'willingness' of the State or the parties or organisations controlling the State in **Sweden** if:

- a. There are any general biases to investigate crimes committed against certain groups in society.
- b. Widespread corruption affects the legal process.
- c. There is a will to take action against corruption.

Criteria for case handlers for the assessment of the 'ability' of the State or the parties or organisations controlling the State the case worker must investigate if:

- d. There is a judicial system (legislation and judicial authorities).
- e. The judicial system *de facto* works. If there is a judicial process that works under the rule of law and reported crimes are prosecuted and criminals convicted.
- f. The judicial authorities have enough resources to handle their incoming caseload.
- g. There is an acceptable legislation that provides penalties for offenders.
- h. There is a complaints procedure available to the public in case of inadequate management of officials in the judiciary.
- i. There are disciplinary measures against offending officials and if these measures are applied.
- j. The operation of an effective legal system is necessary according to the jurisprudence of the Swedish Migration Court of Appeal.

### 3.5.3 Examples of good application

Detailed guidance and questionnaires based on the protection approach, such as in **Belgium** or **Sweden**, can be considered as good practice. The good application of Article 6 is thus closely linked to Member States' (good) practices of applying strict requirements for the availability of protection according to Articles 7 and 8 of the Recast QD.

### 3.5.4 Possible application issues

The following practice can be considered as being incompliant, not properly implemented and/or not 'within the spirit' of the Directive.

- Where Member States put the main focus of the assessment on the type of non-State actors or the characteristics of the parties or organisations instead of assessing the ability and willingness of the State to offer effective and non-temporary protection.

### 3.5.5 Recommendations

Based on the above findings, the following recommendations can be put forward:

- EASO should further elaborate their existing guidance on the concepts of actors of persecution in combination with strict requirements for State actors of protection, such as in the EASO Practical Guide: Personal interview. These should be compliant with international law, as well as relevant UNHCR Handbook and Guidelines on procedures and criteria for determining refugee status<sup>57</sup> and should be revised regularly. In particular, such guidance should clarify that the main focus of the assessment should be on the ability and willingness of the State to offer effective and non-temporary protection, rather than on the type of non-State actors or other, less relevant characteristics of the parties or organisations.

<sup>57</sup> <http://www.unhcr.org/3d58e13b4.html>, p. 83.

### 3.5.6 Benchmarks for measuring the implementation of Article 6

Table 3.5 Benchmarks for measuring the implementation of Article 6

Whether or not MS have particular methods, guidelines or criteria to define actors of persecution or serious harm in place:	
National, UNHCR or EASO guidelines	BE, CY, CZ, DE, EL, ES, FI, HR, HU, IT, MT, NL, SE
No such support measures in place	AT, BG, EE, FR, IE, LT, LU, LV, PL, PT, RO, SI, SK, UK

## 3.6 Actors of protection – Article 7

### 3.6.1 Background on actors of protection

The concept of actors of protection has been revised in the Recast QD and defines who can provide protection and what level of protection this actor needs to provide. Protection can only be provided by the State or by parties and organisations, including international organisations, controlling the State or a substantial part of the territory of the State. Article 1A(2) of the Refugee Convention on the other hand associates protection only with states.

Compared to Directive 2004/83, Article 7 of the Recast QD clarifies that the list of actors of protection is exhaustive (“Protection against persecution can *only* be provided by...”). Furthermore, the Recast QD introduced the requirement that actors need to be willing and able to protect.

Another change of the Recast QD was that protection against persecution or serious harm must be effective and of a non-temporary nature. Such protection is generally provided when the actors of protection take reasonable steps to prevent the persecution or suffering of serious harm, *inter alia*, by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm. Furthermore, the applicant must have access to such protection. The CJEU provided guidance for the assessment of the concept of ‘non-temporary nature’: “The competent authorities [must] assess, ... the conditions of operation of, on the one hand, the institutions, authorities and security forces and, on the other, all groups or bodies of the third country which may, by their action or inaction, be responsible for acts of persecution against the recipient of refugee status if he returns to that country. In accordance with Article 4(3) of the Directive, relating to the assessment of facts and circumstances, those authorities may take into account, *inter alia*, the laws and regulations of the country of origin and the manner in which they are applied, and the extent to which basic human rights are guaranteed in that country.”<sup>58</sup>

Article 7(3) foresees that Member States should take into account any guidance provided in relevant Union when assessing whether an international organisation controls a State or a substantial part of its territory.

The following evaluation questions were assessed:

*How many applications have been rejected on the basis of Article 7 since the adoption of the Recast QD?*

*Do the Member States take into account the laws and regulations of the country of origin and the manner in which they are applied? If so, how do the Member States assess the application?*

*How do the Member States verify that the individual applicant has access to such protection in reality?*

*Do the Member States apply a due diligence test (i.e. focusing on whether the State or non-State actors have reasonably taken steps to protect)? Do they also examine the quality of the protection provided? If so, what are the criteria for such ‘quality tests’?*

<sup>58</sup> CJEU, Joined cases C-175/08, C-176/08, C-178/08, C0179/08, *Aydin Salahadin Abdulla, Kamil Hasan, Ahmed Adem, Hamrin Mosa Rashi & Dier Jamal v Bundesrepublik Deutschland*, 2 March 2010, para. 71.

*What criteria are applied to define 'reasonable steps' ensuring an effective and non-temporary protection from persecution or suffering of serious harm?*

*What criteria/definitions do the Member States apply to define whether the actors are operating an effective legal system for the detection, prosecution and punishment of persecution? In the case of a non-State actor, how is the influence of such an actor on the legal system assessed?*

*Were examples of cases where the application was rejected on the basis that protection was granted in the country of origin identified?*

*What are the criteria for the Member States to assess whether parties or organisations controlling the State are willing and able to offer protection?*

*Regarding non-State organisations, do the Member States provide for a list of 'reliable' organisations?*

### 3.6.2 Findings for Article 7

#### Summary of main findings

The main findings in relation to Article 7 can be summarised as follows:

- No data existed or had been made available on the number of applications that have been rejected on the basis of Article 7. Overall, in practice most Member States indicated they had little experience with the assessment of protection provided by non-State actors. None of the countries provided for lists of actors of protection.
- 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. 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. Five Member States also applied guidelines and internal instructions as to the assessment of actors of protection.
- Although most national laws have transposed the requirement that protection should be of non-temporary nature, only a few Member States specifically assessed the durability of such protection in practice.

#### Statistical information

Almost all Member States' laws accepted parties or organisations, including international organisations controlling the State or a substantial part of the territory of the State, except for **Finland** which only accepted States and international organisations controlling the State, but not other parties or organisations, as actors of protection.<sup>59</sup>

However, almost no data existed or had been made available on the number of applications that have been rejected on the basis of Article 7. Only **Lithuania** and **Italy** stated they had not rejected a single application on the basis of Article 7 between 2012 and 2014 whereas **Latvia, Malta** and **Poland** seemed to have never applied the concept of a non-State actor of protection.

In practice most Member States seemed to have little experience with the assessment of protection provided by non-State actors (AT, BE, BG, EL, IE, IT, LT, LU, LV, MT, PT, RO, SE, SI and UK).

<sup>59</sup> Information regarding all EU Member States bound by Directive 2011/95/EU or 2004/83/EC are reflected regarding Article 7. Information regarding Spain, where no interviews were possible as elaborated in section 2 of this report, was obtained through replies of the Contact Committee as well as the completeness assessment report provided by DG HOME.

### **Actors of protection**

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. For example in **Austria**, if a non-State actor was considered as an actor of protection, the actor must have had *de facto* the same power as a state. The threshold of having *de facto* such power as a state became even higher when a real state actor existed at the same time.

None of the countries provided for lists of actors of protection, although there was a possibility to compile such a list in the **Netherlands**. This had however never happened in practice.

All Member States applying Article 7 used COI, UNHCR guidelines, EASO information and national (case) law in combination with an individual assessment. The criteria to assess whether parties or organisations controlling the State were willing and able to offer protection included:

- The existence of a legislative framework for the possibility of granting such protection;
- Up-to-date information based on COI, whether parties or organisations were willing and able to offer protection in similar cases on the specific territories;
- Individual information about status (position) of the applicant.

**Five Member States applied**, in addition, **guidelines** and internal instructions as to the assessment of actors of protection (BE, IE, MT, NL, SE). Evidence showed significant divergences of the effectiveness of such support measures and their application in practice among Member States.

Guidance in **Belgium, Ireland** and **Sweden** had the following questions for the assessment in common: *Does the actor of protection take reasonable and effective measures to prevent persecution or serious harm, i.e. is the rule of law, independent judiciary, non-partisan police force and effective penalties in place to punish and protect against human rights violations?*

In addition, in **Belgium** a binding internal note gave instructions and guidance on who was to be considered a State actor that could offer protection, including national, regional, local authorities, police or the army. Also, it was specified that, when persecuted by a State actor, sufficient protection would still be possible if the persecutor acted individually and personally. When protection was offered by non-State actors, the note specified that this party or organisation must be stable and organised, such as a liberation movement, international intergovernmental organisations (UN), regional organisations or military alliances (NATO), but never NGOs. It was important to check what the EU said about the parties or organisations in question and whether they were stable and organised actors controlling the territory and the population. The definition had changed slightly before 2014 following the Recast QD, when NGOs were still considered as actors of protection in gender-related cases.

The Office of the Refugee Applications Commissioner (ORAC) Guidance in **Ireland** stated that the protection afforded by non-State bodies would however usually not constitute “sufficient state protection”. The most notable exception to this rule was where the non-State body would be constituted under international law as a body responsible for the protection of the citizens of a state (e.g. the Kosovo Force (KFOR) and the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNWRA)).

When assessing whether a party or organisation is controlling the State or part thereof, the guidance of the Office of the Refugee Commissioner in **Malta** foresaw an assessment whether protection could be provided in the country of origin. In addition, detailed research was carried out accordingly to determine whether accessing such protection would be reasonable for the applicant. The guidance foresaw such strict criteria for the assumption of effective protection through non-State actors that in practice this concept was never applied. Elements in this guidance to take into account were, for instance, if the applicant was from a tribe and lived in an area where his/her tribe was not dominant it was assumed that such a tribe could not provide sufficient protection. Despite the guidance, Maltese

NGOs highlighted that excessive discretion of case workers existed and thus this concept of protection was applied inconsistently.

In the guidelines applied in the **Netherlands**, only NATO and the UN were recognised as international organisations which could offer protection. There were no (explicit) decisions of District Courts or the Council of State indicating whether clans or tribes could be considered actors of protection on their own. The laws and regulations of the country of origin and the manner in which they were applied

should be checked, but no further elaboration of how to do so exists.

Guidelines in **Sweden** oblige case handlers to assess the following questions:

- Do the judicial authorities have enough resources to handle their incoming caseload?
- Is there a complaints procedure available to the public in case of inadequate management of officials in the judiciary?
- Are there disciplinary measures against offending officials and are these measures applied in practice?
- Is, following an individual assessment in every single case, the protection available to the applicant, depending on personal circumstances?

In order to assess ‘willingness to provide protection’, case handlers in Sweden are required to investigate the following questions:

- Is there any general bias to investigate crimes committed against certain groups in society?
- Does corruption affect the legal process and is there a will to take action against corruption?
- Is there a judicial system (legislation and judicial authorities) that *de facto* works? Is there a judicial process that worked under the rule of law and are reported crimes prosecuted and criminals convicted?

**Training** was foreseen on the concept of actors of protection in four countries (AT, EL, IE and MT), however mostly not in a continuous and mandatory manner.

Practices of those **Member States that did not apply further guidance** on the interpretation of the concept of actors of protection differed even more.

**France** used to only consider State authorities and international organisations as actors of protection. Other parties and organisations were not deemed stable and effective enough by the French lawmaker. As a result of the transposition of the 2004/83 Qualification Directive, the capacity to protect was defined more clearly in the law and now included the possibility for non-State actors to protect from persecution and harm. In **France**, the notion of capacity/will to protect was added, as well as the non-temporary character of the protection. However, demonstrating this in practice was considered difficult when it came to parties/organisations. Therefore, the French Refugee Office (*Office français de protection des réfugiés et apatrides* – OFPRA) did not venture into this assessment but rather concluded that State authorities did not provide protection. In a 2012 case, the National Court of Asylum implicitly

admitted that the Sadr movement (led by Ayatollah Sadeq al-Sadr) constituted a group in Iraq that was able to provide protection because of its political and military importance.<sup>60</sup> In 2014, the Council of State confirmed a judgment of the Asylum Court (*Cour nationale du droit d’asile* – CNDA) had assessed the claim of a Gaza resident against the legal frame of the Palestinian authority, implicitly admitting that the Palestinian authority could be both an actor of persecution and an authority of protection.<sup>61</sup>

- In **Greece**, no specific interpretation was applied with regard to what actors could be subsumed under parties and organisations controlling the State or part of the State with regard to providing protection and it was not generally accepted that non-State actors provide protection. UNHCR however stated that there were no particular problems in the practical application of Article 7, as it was very rare that actors of protection could be non-State actors. In **Spain**, according to a case analysis financed by the European Refugee Fund, decision-makers assessed whether the country

<sup>60</sup> CNDA 9 February 2012 M. H. n° 10015626 C+.

<sup>61</sup> CE 5 November 2014 M.H. n° 363181 B.

of origin provided protection, but without further assessing the concept of actors of protection.<sup>62</sup> **Slovakia** understood under the notion of ‘parties and organisations controlling the State or part of the State’ they were mainly governmental parties and organisations or those that were tolerated or supported by the government of the third country.

The **United Kingdom** did not apply any specific criteria as to the type of actor, but rather assessed whether and how protection could be provided, for example by examining the level of corruption in the country of origin.

In several Member States (AT, BG, CY, CZ, DE, EE, FI, HR, HU, IE, LT, LU, MT, PL, PT, RO, SI and SE), the assessment of protection was closely linked to Article 6, i.e. the well-founded fear of persecution, often without distinguishing the risk of persecution and the potential for protection. In other words, if an applicant could avail him-/herself to protection, s/he would not have a credible reason for having well-founded fears.<sup>63</sup> This makes it difficult to know whether, to what extent and how the assessments of actors of protection are being undertaken.

#### Examples of non-State actors of protection used by Member States are:

- IGOs (such as the UN): (BE, FR, NL), in particular UNWRA: (all MS)
- Regional organisations (such as European Union (EU), African Union (AU)): (BE)
- Military alliances (such as NATO): (BE, NL), in particular the Kosovo Force (KFOR): (IE)
- Liberation movement: (BE).
- ‘Quasi states’, such as Kurdistan or Palestine (EL, FR).

### Effectiveness of protection

Most Member States confirmed that they assessed the effectiveness of protection, mainly basing their assessment on COI, some on UNHCR guidelines and on individual assessments. Several Member States stated that protection must not be absolute (AT, DE, FR, HU, NL, PL, SE and UK) taking into account the **United Kingdom’s Horvath case**.<sup>64</sup> This case set the standard of protection to be applied “not that which would eliminate all risk and would amount to a guarantee of protection in the home state. Rather it is a practical standard, which takes proper account of the duty which the state owes to all its own nationals.”

Consideration of factors affecting vulnerable groups was carried out in most Member States but on a case-by-case basis rather than as a matter of consistent policy.

Otherwise, the study found that the criteria applied for assessing the effectiveness of protection assessments differed significantly. The main criterion used for such assessment was the **existence and operation of a legal system** for the detection, prosecution and protection of acts of persecution or serious harm. The majority of the consulted Member States took **laws and regulations of the country of origin** into account (AT, BE, CY, CZ, EL, FR, HR, HU, IE) as part of the COI analysis in the appeal stage (IT, LT, LU, LV, NL, RO, SE, SK and UK).

In **Austria**, the analysis of the nature of protection mainly seemed to take place following the ‘even if – approach’, meaning that when the authority had first dismissed other elements of the claim, it would then assert that even if the applicant was ‘threatened by wrongful conduct’ upon return, protection would be available in their former place of residence.

The assessment of the effectiveness of protection was further elaborated in seven Member States, for example through specific questionnaires, case law and guidance on how to assess the effectiveness of protection (BE, EL, FI, HU, IE, NL and SE).

<sup>62</sup> European Refugee Fund of the European Commission: Actors of protection and the application of the internal protection alternative, European comparative report, 2014, p. 42.

<sup>63</sup> See further details on the assessment of Article 8 below in Section 3.7.

<sup>64</sup> UKHL, *Horvath v. Secretary of State for the Home Department*, 06.07.2000.

For example in **Belgium**, detailed internal guidelines were available on the criteria actors of protection must fulfil. The actors of protection must take reasonable measures to prevent persecution or serious harm and the protection must be effective and not temporary. When assessing whether the applicant actually had access to protection in reality, the suggestion was made to assess this taking possible barriers into account, such as: barriers related to his/her personal situation (e.g. if they are minors, illiterate, or have psychiatric disorders), culturally related barriers, barriers related to discrimination and finally, barriers related to the position of the actor of persecution. In this context it was stressed that a law prohibiting these acts of persecution was as such not sufficient, but the focus must be on how these laws were implemented in practice, and if the actor of protection took reasonable and effective measures to prevent persecution or serious harm, i.e. if the rule of law, independent judiciary, non-partisan police force and effective penalties were in place to punish and protect against human rights violations. How the authorities were involved in the persecution and/or what the general policy was regarding this persecution or serious harm should be ascertained. Finally, the influence of the persecutors on other civil servants in the country of origin was assessed.

In **Finland**, the following aspects were examined:

- General human rights situation in the country;
- Level of democratic development and existence of functioning government;
- Established independent judiciary, access to justice.

Furthermore, the existence of adequate infrastructure to enable residents to exercise their rights implementation of reasonable measures in order to take note of, prosecute and punish persecution, and the applicant has access to this process.

In **Greece**, the following elements were assessed in order to verify whether the individual applicant had access to such protection in reality: COI, the personal profile of the applicant, the possibility to access protection (e.g. by the police or justice system), the stability in the country and its institutions, and the state's plan of action as well as the non-temporary nature and effectiveness of the protection. Criteria for an effective legal system were e.g. the absence of corruption and bribery and whether the country recognised the problem (e.g. expressed its disagreement, denounced the phenomenon, tried to search for, investigate, prosecute and convict the actors).

The requirement of quality of the protection was fulfilled in **Hungary** if the State (a) possessed efficient laws for the detection of acts qualifying as persecution or serious harm, and persecution and punishment of such acts through criminal proceedings, and institutions dedicated to their enforcement, and (b) was making appropriate and efficient steps in particular with the help of the tools identified under (a) to prevent persecution and suffering of serious harm. Examples where applications were rejected on the basis that protection was granted in the country of origin included homosexual applicants from Kosovo.

**Ireland** assessed whether the state in practice used its machinery to protect its citizens against human rights violations, in particular against the persecution alleged by the applicant.

Similarly, no further criteria to assess protection existed in the **Netherlands**. According to a study financed by the European Refugee Fund,<sup>65</sup> case law indicated that it was insufficient for the Immigration and Naturalisation Service (IND) to merely list institutions that could protect an applicant without having established that these could actually protect the applicant and why it would be reasonable to expect the applicant in his/her particular circumstances to remain in the country of origin (Afghanistan) and request protection. The quoted actors were the tribe, clan, the International Security Assistance Force (ISAF) or private security guards. Furthermore, case law obliged Dutch case

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<sup>65</sup> European Refugee Fund of the European Commission: Actors of protection and the application of the internal protection alternative, European comparative report, 2014, p. 42.

handlers to assess whether the actors could actually protect the applicant and why it would be reasonable to expect the applicant in his particular circumstances to remain in his country of origin and request protection. Under an effective legal system, 'reasonable measures' should be in place to protect people in the applicant's position. Case law also confirmed that the willingness and ability of the authorities played an important role. In addition, it required that the State Secretary must supplement its initial examination of the legal system with regard to a woman who asserted that protection was not available against domestic violence with an assessment of her individual situation and issue a reasoned decision.

The rejection of a claim based on the fact that protection was available was mostly used in decisions concerning applicants whose countries of origin were considered to be safe. Examples of countries of origin where protection of non-State actors was assumed included Kosovo (BE, FR), Albania, Macedonia, Bosnia-Herzegovina, Serbia, and India (BE), Pakistan/Bangladesh, where the state was considered able and willing to provide protection from domestic violence (EL) and Senegal (FR).

### ***Durability of protection***

Although most national laws had transposed the requirement that protection should be of **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. For example, **Croatia** required for protection the complete removal of the grounds on which the applicant bases his/her fear of persecution or serious harm. The Aliens Circular of the **Netherlands** provided that that protection is non-temporary if there are no concrete indications that effective protection will end in the foreseeable future. Case law used to indicate that short-term protection could be sufficient, however, this has changed since the transposition of the Recast QD.

### **3.6.3 Changes in Member States' practices since the Recast QD in 2013**

Almost all Member States' laws foresee an **exhaustive list of actors of protection** (except AT, EE and SK). However, only five Member States added the clarification that 'only' those actors would be accepted (BE, DE, EL, NL and SE). **Finland** only accepts States and international organisation controlling the State, but not other parties or organisations as actors of protection.

As **Austria** assumes that the Recast QD corresponds to the Geneva Convention, to which it is directly bound, it does not consider an exact copy of Articles 6 and 7 necessary. It must be noted however that the Geneva Convention does not foresee non-State actors as actors of protection. However, in practice, **Austria** does consider non-State actors as possible actors of protection by applying a high level of scrutiny.

**Estonia** and **Slovakia** transposed Articles 6 and 7 into the same Article foreseeing that the source of persecution could be non-governmental associations if the State, international organisations or political parties or organisations leading the state or a part thereof are unable or unwilling to offer protection against persecution or serious risk. Neither Member State further specified that such protection must be effective and of non-temporary nature.

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).

The same applies for the change of the Recast QD that protection against persecution or serious harm must be **effective and of a non-temporary nature** (with the exception of AT, EE, ES, IT, LV, SI and UK). **Hungary** foresees the wording that protection must be effective and *sustainable*.

**Ireland** and the **United Kingdom** are not bound by the Recast QD and thus kept the transposing legislation of Directive 2004/83.

Only very few Member States reported changes in their practices, either because the transposition was delayed and thus too recent or because they had already applied the similar concepts of actors



of protection before the recast came into force. Only in the **Netherlands**, following the Recast QD, are tribes no longer considered to be able to apply laws and regulations. In addition, as mentioned above, Dutch case law used to consider short-term protection to be sufficient but has changed such practice recently following the Recast QD.

### 3.6.4 Examples of good application

The more **elaborate the guidance** and support provided to case handlers for the assessment of actors of protection are, in particular regarding non-State actors, the more effective the assessment and less divergent the practices across Member States. Applying binding guidance on what particular actors could be considered as organisations controlling the State or part of the State (BE, FI, FR, HR, IE, RO, SE, UK) can exist in the form of national law, administrative regulations or internal instruction notes taking into account UNHCR guidelines, EASO information as well as CJEU and ECtHR case law. The example of **Sweden** above shows how, with a set of focused questions, case handlers are requested to consider all aspects of the capability of the actors to protect.

### 3.6.5 Possible application issues

The following practices can be considered as being incompliant, not properly implemented and/or not 'within the spirit' of the Directive.

- Guidance on how to assess certain elements of Article 7, in particular those for which updated information and a good understanding of the local actors (e.g. in order to assess their willingness to protect) and the local situation (e.g. to assess whether people can travel safely to an alternative location) is crucial. Absence of guidance can lead to too large a discretion for a case handler to apply the concept of actors of protection and thus inconsistent application of this concept across Member States.
- Linking the assessment of protection to the well-founded fear of persecution without distinguishing the risk of persecution and the potential for protection. While the Directive does not stipulate how the assessment should be undertaken, the assessment of protection as part of the well-founded fear assessment increases the burden of proof of the applicant. S/he in such cases must not only prove that there is a well-founded fear of persecution but also that protection does not exist or is not relevant to their individual situation.

### 3.6.6 Recommendations

Based on the above findings, the following recommendations can be put forward:

- The possibility to consider non-State actors, which are not international organisations, as actors of protection could be deleted from the Recast QD. Their ability to protect is limited as they cannot enforce the rule of law. Such an amendment would have a minimal impact, as most Member States indicated that they very rarely rejected an asylum claim because of protection provided by non-State actors. This would be in line with UNHCR's view that parties and organisations do not have the attributes of a state and do not have the same obligations under international law.<sup>66</sup>
- Alternatively or in addition, EASO should further elaborate on existing guidance, such as the EASO Practical Guide: Personal interview or the EASO's Practical Guide on Evidence Assessment, in particular that they must be willing and able to offer protection and that protection must be effective and of non-temporary nature. Such guidance must make it clear that the reasons for the applicant's fear of persecution or risk of serious harm have been permanently eradicated.

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<sup>66</sup> UNHCR comments on the European Commission's proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted (COM(2009)551, 21 October 2009), p. 5. UNCHR suggests to also delete international organisations from the list of actors of protection.

Particular scrutiny is required when assessing the effectiveness of protection from non-State actors.

### 3.6.7 Benchmarks for measuring the implementation of Article 7

Table 3.6 Benchmarks for measuring the implementation of Article 7

MS practices to assess actors of protection:	
Used existing guidelines (e.g. internal, EASO or UNHCR)	All MS
Further elaborated how to interpret that an actor can be considered as being able to offer protection, e.g. through national guidelines	BE, IE, MT, NL, SE
Provided examples of actors of protection	None
Took laws and regulations of the country of origin into account	AT, BE, CY, CZ, EL, FR, HR, HU, IE, IT, LT, LU, LV, NL, RO, SE, SK, UK
Whether or not MS consider as possible actors of protection:	
Only state parties	None
State parties and international organisations	FI
State parties, international and other parties and organisations	All MS except FI

## 3.7 Internal protection alternative – Article 8

### 3.7.1 Background on internal protection alternative

Article 8 of the Directive allows 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>67</sup> This is the case when the applicant in this part of the country has **no well-founded fear** of being persecuted or is **not at real risk of suffering serious harm**, or has **access to protection** against persecution or serious harm as defined in Article 7.

Article 8 has been revised for the Recast QD: in line with the jurisprudence of the European Court of Human Rights (ECtHR), an applicant now needs to be able to **safely and legally travel, gain admittance and settle** in an area of the country of origin as a precondition for Member States to apply the IPA in Article 8.<sup>68</sup> As for the application of the reasonableness test concerning the ability of the applicant to settle there, ECRE noted that the retention of this element in the Recast QD did not fully reflect the *Salah Sheekh* judgment and considered that the expression ‘can reasonably expected to settle there’, could be used to set a lower standard than the one established by the ECtHR, which

<sup>67</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).

<sup>68</sup> By adding these requirements the Recast QD aligned the definition of IPA with the *Salah Sheekh* judgment of the ECtHR: ECtHR, *Salah Sheekh v. the Netherlands*, No. 1948/04, Judgment of 11 January 2007, §141 “The Court considers that as a precondition for relying on an internal flight alternative certain guarantees have to be in place: the person to be expelled must be able to travel to the area concerned, gain admittance and settle there, failing which an issue under Article 3 may arise, the more so if in the absence of such guarantees there is a possibility of the expellee ending up in a part of the country of origin where he or she may be subjected to ill-treatment”.

requires that the applicant “must be able to ... settle there”.<sup>69</sup> On the contrary, UNHCR advocated for the retention of an explicit reference to the reasonableness test.<sup>70</sup>

The following evaluation questions were assessed:

*In how many cases has the Member State denied protection on the grounds of Article 8? What countries and regions were concerned in those cases and how were these rejections justified?*

*Do the Member States assess the internal protection:*

*i) As part of the status determination, thus being linked to the well-founded fear?*

*ii) After status determination and not linked to the well-founded fear?*

*When an internal protection alternative may be available, do the Member States assess the relevant elements of the application in cooperation with the applicant, as laid down in Article 4(1) of the Directive?*

*How do the Member States determine whether a region of the country of origin can be considered as safe?*

*How do the Member States assess whether the applicant can travel, gain admittance and settle in that part of the country?*

*Are the individual's personal circumstances considered with regard to general living conditions in the region?*

### 3.7.2 Findings for Article 8

#### *Summary of main findings*

The main findings in relation to Article 8 can be summarised as follows:

- Almost all Member States' laws had transposed Article 8 (except for ES, IT and SE). However, almost no data on the application of Article 8 could be obtained. This seemed to be related to the fact that most Member States did not keep record of the grounds of rejecting international protection claims.
- 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 differed significantly.
- The majority of the Member States assessed the IPA as part of the status determination. All of these countries cooperate with the applicant when assessing the IPA.
- Several Member States provided guidance on how to assess the accessibility of protection in parts of the country of origin, including through written guidelines, established practice, and/or existing jurisprudence.
- All consulted Member States applying the concept of an IPA considered the individual's personal circumstances with regard to the general living conditions in the region (with the exception of the **United Kingdom**).
- Member States considered that the living conditions in the relocation region needed to reach a certain 'minimum standard'. However, this standard was not clearly defined in any Member State.

#### *Statistical information*

<sup>69</sup> ECRE, Information Note on the Directive 2011/95/EU, p. 7.

<sup>70</sup> UNHCR, *UNHCR comments on the EC's proposal for a Directive the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted* (COM(2009)551, 21 October 2009), pp. 6-7.

Almost all Member States' laws had transposed Article 8, except for **Italy**, **Spain** and **Sweden**. While **Italy** also in practice had never applied this concept and generally refused to do so, in **Spain**, it was left to the asylum authorities to decide whether to use it.<sup>71</sup> In **Sweden** the IPA seemed to be regularly applied in practice. Almost no data existed or had been made available on the number of applications rejected on the basis of Article 8.

Number of cases where **Estonia** denied protection on the basis of Article 8 between 2012 and 2015 (out of all rejected at the first instance):

2012: 44 (45)

2013: 45 (45)

2014: N/A

30 November 2015: 91 (100)

One exception was **Estonia** which seems to be the only country monitoring these cases and **Malta** which claimed they never rejected a case only because there was the possibility of an IPA. **Poland** stated they had not rejected a single application on the basis of Article 8 in between 2012 and 2014. Overall most Member States agreed that Article 8 was not applied frequently.

### Availability and effectiveness of protection

All Member States applying the IPA confirmed that they assessed the **effectiveness of protection**, however,

the criteria applied for such assessments differed significantly. What they had in common was that all Member States based their assessment on COI, UNHCR guidelines and an individual assessment. The main criterion used for such assessment was the existence and operation of a legal system for the detection, prosecution and protection from acts of persecution or serious harm. This was further elaborated in four Member States, for example through specific questionnaires and guidance on how to assess the effectiveness of protection (BE, IE, NL and SE).

In **Belgium**, the guidelines foresaw that in cases where the **persecutor was a State actor**, it must be assumed that effective protection in another part of the country would not be available, as generally the state had competence on the whole of its territory.

**Belgium** set different criteria for the assessment of protection depending on whether the actor of persecution was a State actor or a non-State actor. Imposing excessive obligations on the applicant was not allowed.

If the **persecutor was a non-State actor** and the state had not been willing to offer protection, it must *a priori* be assumed that the State would not be willing to offer protection in another part of the country, unless it could be shown that it was able and willing to do so by setting high standards of proof.

In **Ireland** the authority used a template which set out the different assessments to be conducted as part of the overall assessment of the claim; one of these was an assessment of well-founded fear and the second an IPA assessment (not linked to the well-founded fear assessment).

<sup>71</sup> Information regarding all EU Member States bound by Directive 2011/95/EU or 2004/83/EC are reflected regarding Article 8.

The interpretation of an ‘effective legal system’ in the **Netherlands** started from the premise that no system could completely or permanently guarantee protection.<sup>72</sup> Similarly in **Sweden**, protection did not have to be absolute, as a legal system could not guarantee absolute protection, but should generally protect through detection and prosecution of crimes.<sup>73</sup> In order to assess whether a region of a country was actually safe, in **Sweden**, the authority would consider relevant national case law of the Migration Court of Appeal, in connection with international judgments, as well as

available information such as COI, recommendations and guidelines, etc., and assess the situation before deciding. In particular, **Sweden** applied guidelines in a legal position paper of the Director of Legal Affairs on travel to an area – how to assess how safe it was to travel and whether a need for protection would arise on the road. However, as case studies financed by the European Refugee Fund revealed, decisions in **Sweden** provided little detail as to which criteria were actually applied to assess the effectiveness of the legal system.<sup>74</sup>

### Accessibility of protection

Some Member States provided **guidance on how to establish that an applicant can safely and legally travel and gain admittance to a part of the country** of his/her origin where protection against persecution or serious harm was available, including through UNHCR guidelines, internal national written guidelines, established practice, and/or existing jurisprudence (BE, EL, FI, FR, IE, NL, RO, SI, SE and UK).

All consulted Member States applying the concept of an IPA considered the **individual’s personal circumstances** (such as being a minor, disabled, victim of torture, rape or other serious types of psychological, physical or sexual violence) when assessing the reasonability to settle in the safe area (with the exception of **Ireland** and the **United Kingdom**, as Directive 2004/83/EC did not yet require such an assessment). Case handlers must consider whether protection afforded by the authorities or organisations controlling all or a substantial part of the State would be available to an individual regardless of their race, ethnicity, sexual orientation, disability, religion, class, age, gender, occupation or any other aspect of their identity (EL, IE). Factors such as the economic status

In assessing the effectiveness and permanence of the protection that could be provided to the applicant in their country of origin, case handlers in **Ireland** must ask themselves the following two questions:

- (i) Is there objectively the machinery (rule of law, independent judiciary, non-partisan police force) in place to punish and protect against human rights violations?
- (ii) Does the state in practice use this machinery to protect its citizens against human rights violations, in particular against the persecution alleged by the applicant and might it reasonably have been forthcoming?

When assessing whether the applicant actually had access to protection in reality, it was suggested in **Belgium** to assess whether the applicant had access to this protection taking **possible barriers** into account, such as:

- Barriers related to his/her personal situation (e.g. if they are minors, illiterate, or have psychiatric disorders);
- Culturally related barriers;
- Barriers related to discrimination;
- Barriers related to the position of the actor of persecution.

<sup>72</sup> European Refugee Fund of the European Commission: Actors of protection and the application of the internal protection alternative, European comparative report, 2014, p.42.

<sup>73</sup> European Refugee Fund of the European Commission: Actors of protection and the application of the internal protection alternative, European comparative report, 2014, p.42.

<sup>74</sup> European Refugee Fund of the European Commission: Actors of protection and the application of the internal protection alternative, European comparative report, 2014, p.44.

of the applicant, educational level, access to the labour market, housing, education and healthcare were taken into account (BE, FR).

Decision-makers in the Member States considered that the **living conditions in the relocation region** needed to reach a certain minimum standard (BE, FR, NL and sometimes in PL). However, this standard was not clearly defined in any Member State. The socioeconomic circumstances in that part of the country needed to be 'normal' and the living conditions must be comparable to the rest of the country. Generally living standards were acceptable if they did not violate Article 3 of the European Convention on Human Rights. (BE, FR, RO). In **Belgium**, when assessing the living conditions in a particular region no excessive obligations on the applicant may be imposed. Guidance helped case handlers ask questions on the internal flight alternative during the personal interview in order to assess whether the person would be able to live a relatively normal life in that region, in terms of housing, food, hygiene, etc. Sometimes, even if the threshold of Article 3 of the ECHR was not reached, it could be ascertained that, based on the personal circumstances of the applicant, internal flight was not considered reasonable. Some countries assessed conditions in light of the living standards of the population in the region.

**Belgium, Greece** and **Ireland** pointed out the importance of assessing whether the part of the country that was considered as an internal flight alternative could be accessible in practice, legally and in full security. This meant for example that an applicant could not be expected to travel through a conflict area. If s/he needed to pass through a third country, s/he must have permission to do so, in order to exclude the risk of *refoulement* to that part of the country in which s/he risks persecution or serious harm.

In **Finland**, the following aspects are examined:

- (1) General human rights situation in the country;
- (2) Level of democratic development and existence of functioning government;
- (3) Established independent judiciary, access to justice;
- (4) Existence of adequate infrastructure to enable residents to exercise their rights, implementation of reasonable measures in order to take note of, prosecute and punish persecution, and the applicant has access to this process.

Furthermore, **Greece** assessed the extent and frequency of violence occurrences.

In **France**, the relocation **region must be precisely identified**. According to the Constitutional Court, the area should be circumscribed in a sufficiently detailed manner and be a substantial part of the country. The fact that the applicant spent time in another part of the home country before leaving could be used as a ground to invoke the IPA. Among the general circumstances, there were the security conditions, the size of country or region, the situations or history of armed conflict or widespread violence, the density and composition of the population and the living conditions. For example, in **France** the

CNDA held that an Afghan who could not return to his home province (Helmand) due to the widespread violence that prevailed there at the time could reasonably settle in Kabul, where he previously lived, and live there in similar conditions to those currently observed for all of the Afghan people not living in areas of widespread violence.<sup>75</sup> Language, age and the presence of family members in the IPA zone were also key aspects. For example, it was decided that a Malian, who fled northern Mali in 2012 due to the security conditions, could settle and lead a normal life in Bamako from the moment when his wife, son, sister and one of his brother had moved there.<sup>76</sup> In **Hungary**, the government decree explicitly stated that "the refugee authority shall specifically name the part of the country where its view is that protection is available".

### **Cooperation with the applicant in IPA assessment**

<sup>75</sup> CNDA 8 February 2011, M.A., n° 09020508 C+.

<sup>76</sup> CNDA 29 November 2013, M.A., n° 13019552 C+.

According to Article 4 of the Recast QD, both Member States and applicants for international protection have duties relating to the assessment of facts and circumstances when examining a claim.

In most cases, the responsibility to demonstrate the viability of a protection actor or the IPA was a shared duty. Differences also existed as to the point at which Member States assessed IPA, with some applying it **as part of the status determination** and thus linking it to the well-founded fear and others applying it **after status determination**. Evidence showed that 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 s/he 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). All of these Member States cooperate with the applicant when assessing the IPA, also giving him/her the opportunity to rebut the presumption of IPA. A slightly lower number of Member States assessed the option of an IPA after the status had been determined (BE, DE, FR), although in some cases the assessment had already taken place as part of the status determination (LV and SK).

For example in **Belgium**, questions on IPA would always be asked when the applicant mentioned that s/he had family members in the capital and that his/her personal problems were of local nature in a region far away from the capital. However, as the option of an IPA was only discussed after the status had been determined, this meant that the burden of proof was on the asylum authority.

In **France**, where the IPA was seldom applied by the French National Court of Asylum (and never by the asylum administration), the applicant was not included in the assessment of IPA. Usually, the issue of IPA was discussed for the first time during the hearing before CNDA. Sometimes, it was only during the deliberation that judges decided to oppose the IPA and in such a case, the applicant had no opportunity to provide arguments showing that this alternative was not possible in his personal case.

In the **United Kingdom** the procedure to determine whether a region of the country of origin could be considered as safe was highly specialised. Judges trust the COI in this area, which often meant that – in practice – the judge dismissed or did not take into account information from the appellant. The individuals' circumstances were only rarely taken into account.

Some Member States often used the IPA as an additional argument to reject a claim that was already not accepted for another reason (AT, FR, HR and MT).

### 3.7.3 Changes in Member States' practices since the Recast QD in 2013

Most Member States' laws have transposed the requirement that the applicant must be able to "safely and legally travel to and gain admittance to" that region (with the exception of AT, EE, ES, IE, IT, LV, SE and the UK).

The requirement that the applicant must "reasonably be expected to settle there" had been transposed and applied by the majority of Member States (with the exception of AT, EE, ES, FI, HU, IE, IT, LV, PL, SE and the UK).

**Austria** foresees protection "if, in regard to that part of the country of origin, there can be no well-substantiated fear in accordance with Art. 1 A (2) of the Geneva Convention on Refugees and the requirements for the granting of SP status (§ 8, para 1) are not met in regard to that part of the country of origin." The Geneva Convention however does not require the safe and legal travel or the possibility to settle there.

As mentioned above, **Italy**, **Spain** and **Sweden's** law do not provide for a provision transposing Article 8.

**Ireland** and the **United Kingdom**, neither of which are bound by the amended version of Article 8 of the Recast QD, enshrined in their laws that the IPA applied "if the applicant can reasonably be

expected to *stay* in a part of his or her country of origin”, without any reference to how s/he should travel to that part.

**Latvia's** law on the other hand requires that the applicant can travel to that part of the country, without expecting such travel to be legal or safe.

Several Member States replaced the term 'settle' with verbs that indicate a more temporary nature of stay, such as 'reside' (FI, LV), 'remain' (HU), 'stay' (IE, UK) or 'live' (PL).

In **Germany**, the change in the law from the use of the term 'settle' instead of 'stay' has resulted in a new decision practice, which is however still developing and training and guidance on this new concept is offered.

### 3.7.4 Examples of good application

The following practices can be considered as good application of the Directive:

- Assessing the IPA after the status determination, which ensures that the main burden of proof is on the authority in accordance with Article 4. For example, the template used in Ireland set out the different assessments to be conducted as part of the overall assessment of the claim; one of these was an assessment of well-founded fear and the second an IPA assessment (not linked to the well-founded fear assessment).
- Elaborate guidance and support is provided to case handlers for the assessment of the IPA taking into account UNHCR guidelines, EASO information as well as CJEU and ECtHR case law. The example of **Belgium** above shows how, with a set of focused questions, case handlers are requested to consider all aspects of the IPA.
- Specifying the area in a sufficiently detailed manner. The area should be a substantial part of the country (FR, HU).
- Providing guidance and training on the application of the changes of the Recast QD, such as the legal and safe travel and the non-temporary settlement (DE).

### 3.7.5 Possible application issues

The following practices can be considered as being incompliant, not properly implemented and/or not 'within the spirit' of the Directive.

- The assessment of IPA being applied as part of the status determination. While the Directive does not stipulate when the assessment should be undertaken, its application as part of status determination seems to put most burden of proof on the applicant, as they need to provide evidence that such an alternative does not exist or is not relevant to their individual situation.
- The lack of guidance on how to assess certain elements of Articles 8, in particular those which cannot be undertaken without having access to updated information and a good understanding of the local situation (e.g. to assess whether people can travel safely to an alternative location). For example, the assumption that an effective legal system leads to effective protection without further taking into account the specific individual circumstances.
- Replacing the term 'settle' with verbs that could indicate the more temporary nature of the stay, such as 'reside' (FI, LV), 'remain' (HU), 'stay' (IE, UK) or 'live' (PL).

### 3.7.6 Recommendations

Based on the above findings, the following recommendations can be put forward:

- The optional character of Article 8 should be amended into an obligatory clause ensuring that IPA is consistently assessed in all Member States, in cases where the concept is relevant. Such obligatory provision would allow for further harmonisation and is likely to contribute to a decrease of the vast differences in the outcomes of asylum applications across different Member



States, as described under Articles 4, 13 and 18 in this report. As almost all Member States already apply Article 8, this recommendation would not require major legislative or practical changes.

- The provision should clarify that the assessment of IPA should only take place *after* the status of the applicant has been assessed, ensuring that the determining authority carries the burden of proof and that the IPA is not linked to the well-founded fear assessment. Such clarification would again ensure further approximation of Member States' practices.
- EASO should elaborate further on existing guidance for case handlers on the interpretation of the IPA such as the EASO Practical Guide: Evidence Assessment. Such guidance should be based on EASO's key findings on protection in the country of origin and the quality tools on eligibility in the EASO Quality Matrix Report and further elaborate the EASO Practical Guide: Evidence Assessment Checklist. Furthermore, such guidance should take UNHCR Guidelines on Internal Flight or Relocation Alternative<sup>77</sup> into account. In particular, the guidance should, in addition to the existing EASO Practical Guide: Evidence Assessment Checklist,<sup>78</sup> instruct case handlers to consistently take the following into account:
  - If the persecutor is a non-State actor and the State has not been willing to offer protection, it must *a priori* be assumed that the State will not be willing to offer protection in another part of the country, unless it can be shown that it is able and willing to do so.
  - For the assessment of the location, the case handler must ensure that it is safely and legally accessible and that the applicant can gain admittance to a part of the country. The location must be as far as possible specified and be a substantial part of the territory. Emphasis should be put on both COI for the assessment of general conditions potentially applicable in the relevant country and region, and an individual assessment to assess the circumstances of each applicant.
  - The socioeconomic living conditions in the proposed area must be comparable, including access to the labour market, to housing, education and healthcare.
  - To assess accessibility of protection in parts of the country of origin, the personal circumstances of the applicant, in particular health, age, gender and social status must be carefully taken into account. In addition to living in safety without a risk of persecution or serious harm, it must be assessed if the claimant can lead a relatively normal life without facing undue hardship in the area.

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<sup>77</sup> GUIDELINES ON INTERNATIONAL PROTECTION: "Internal Flight or Relocation Alternative" within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, available: <http://www.unhcr.org/3f28d5cd4.html>.

<sup>78</sup> The current EASO Practical Guide: Evidence Assessment Checklist, state the following regarding the application of Article 8:

- The burden to prove that protection that there is a part of the country of origin where the applicant can safely and legally travel to, gain admittance to and can reasonably be expected to settle lies with the case officer;
- The case officer shall have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant. He/she shall ensure that precise and up-to-date information covering both the general situation in the country and the situation in the identified region of protection in that country is obtained from relevant sources, such as UNHCR and EASO.
- Where the state or agents of the state are the actors of persecution or serious harm, the case officer should presume that effective internal 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 interest of the unaccompanied minor, should form part of the investigation made by the case officer as to whether protection is effectively available.

### 3.7.7 Benchmarks for measuring the implementation of Article 8

Table 3.7 Benchmarks for measuring the implementation of Article 8

Whether or not IPA is assessed by the MS during status determination:	
As part of the status determination	AT, BG, CY, CZ, EL, FI, HR, HU, IE, LT, LU, MT, PL, PT, RO, SI, SE <sup>79</sup>
After the status had been determined	BE, DE, FR, LV, SK
Whether or not the MS takes into consideration:	
Effectiveness of protection	All MS, further elaborated in national guidelines in BE, IE, NL and SE
Whether or not the assessment by the MS takes into consideration the individual circumstances of the applicant, including:	
Being a minor, disabled, victim of torture, rape or other serious types of psychological, physical or sexual violence	All MS, except IE, UK
Whether or not the MS has made available guidance/support on how to assess IPA:	
Accessibility of the IPA region (in terms of travel, travel documents, etc.)	BE, EL, FI, FR, IE, NL, RO, SI, SE and UK
Specification of safe location and specific means to travel safely to that location	DE, EL, IE
The general living conditions to reach minimum standard	BE, EL, FI, FR, IE, NL, RO, SI, SE and UK
The size and other features of the IPA region	FR, HU

## 3.8 Acts of persecution – Article 9

### 3.8.1 Background on acts of persecution

Fear of persecution is a core element for refugee eligibility according to the definition in Articles 2(d) of Directive and 1(A)2 of the Geneva Convention.<sup>80</sup> Article 9 stipulates the forms and acts of persecution in order to offer interpretative guidance for this notion. More precisely, paragraph 1(a) defines that an act may be considered as an act of persecution if it is serious enough, that is, if its consequences are severe enough; subsequently, the results of an act, that may derive either from its nature or from its repetition, are considered severe enough if they lead to a violation of fundamental human rights, and in particular but not exclusively<sup>81</sup> of the non-derogable rights of the ECHR, namely of the right to life, the right not to be subjected to torture or to inhuman or degrading treatment, the right not to be reduced to slavery or servitude and the right not to be arbitrarily arrested or detained.<sup>82</sup>

<sup>79</sup> No information could be obtained for IT, ES, EE, NL and UK.

<sup>80</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <http://www.refworld.org/docid/3be01b964.html>, Article 1A(2). About the similar content of persecution in both instruments, see UN High Commissioner for Refugees (UNHCR), *UNHCR statement on religious persecution and the interpretation of Article 9(1) of the EU Qualification Directive*, 17 June 2011, C-71/11 & C-99/11, available at: <http://www.refworld.org/docid/4dfb7a082.html>, paras. 4.1.1.-4.1.6. and UN High Commissioner for Refugees (UNHCR), *UNHCR intervention before the Court of Justice of the European Union in the cases of Minister voor Immigratie en Asiel v. X, Y and Z*, 28 September 2012, C-199/12, C-200/12, C-201/12, available at: <http://www.refworld.org/docid/5065c0bd2.html>, para. 4.1.3.

<sup>81</sup> Regarding the non-exhaustive reference of Article 9 on the non-derogable rights of Article (15)(2)ECHR, see UN High Commissioner for Refugees (UNHCR), *UNHCR statement on religious persecution and the interpretation of Article 9(1) of the EU Qualification Directive*, 17 June 2011, C-71/11 & C-99/11, available at: <http://www.refworld.org/docid/4dfb7a082.html>, para. 4.1.5.

<sup>82</sup> Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5, available at: <http://www.refworld.org/docid/3ae6b3b04.html>, Article

However, in cases where the same or a similar effect, equally unbearable for the applicant, has derived from an accumulation of more acts and measures, less severe if they had been realised separately, these acts and measures may also constitute persecution, when considered together, as prescribed by paragraph 1(b).

The CJEU confirmed in its judgment in the case *Y and Z* (C-71/11 and C-99/11 of 5 September 2012) that when it comes to interference with a fundamental human right (freedom of religion in the context of the decision) all acts shall be assessed in order to determine whether, by their nature or repetition, they are sufficiently severe on account of their fundamental severity as well as the severity of their consequences. Such assessments would need to be based on the nature of the repression inflicted on the individual and its consequences for the person concerned to be regarded as constituting persecution. Subsequently, the Court stated that a violation of a human right (freedom of religion) might constitute persecution within the meaning of Article 9(1)(a) of the Directive where an applicant for asylum, as a result of exercising that freedom in his country of origin, runs a genuine risk of, *inter alia*, being prosecuted or subject to inhuman or degrading treatment or punishment by one of the actors referred to in Article 6 of the Directive. However, the CJEU had stated in another case, that Article 9(1) of the Directive, read together with Article 9(2)(c) thereof, must be interpreted as meaning that the criminalisation alone of certain acts (homosexual in the context of the decision) does not in itself constitute persecution. But, a term of imprisonment, which sanctioned these acts and which was actually enforced in the country of origin which adopted such legislation, should be regarded as being a punishment which was disproportionate or discriminatory and thus constituted an act of persecution.<sup>83</sup>

The second paragraph of Article 9 provides for certain examples of persecutory acts, such as (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 grounds for exclusion, such as crimes against humanity, war crimes or crimes against peace; and (f) acts of a gender-specific or child-specific nature.

Finally, the third paragraph emphasises the necessity of the causal nexus between the acts of persecution and the reasons behind them or the reasons behind the lack of protection against them,<sup>84</sup> that is, these acts or measures must have occurred for reasons related, although not exclusively,<sup>85</sup> to one or more of the following characteristics of the applicant or attributed to them: race, religion, nationality, political opinion, or particular social group. The Recast QD amended this provision by stating explicitly that the **reasons** for the acts of persecution may refer either to the acts themselves

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15(2) ECHR reads as follows: "No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 § 1 and 7 shall be made under this provision."

<sup>83</sup> *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>, para. 61.

<sup>84</sup> University of Michigan Law School, *International Refugee Law: The Michigan Guidelines on Nexus to a Convention Ground*, 25 March 2001, available at: <http://www.refworld.org/docid/3dca7b439.htm> I, "9. A causal link may be established whether or not there is evidence of particularized enmity, malignity or animus on the part of the person or group responsible for infliction or threat of a relevant harm, or on the part of a State which withholds its protection from persons at risk of relevant privately inflicted harm."

<sup>85</sup> University of Michigan Law School, *International Refugee Law: The Michigan Guidelines on Nexus to a Convention Ground*, 25 March 2001, available at: <http://www.refworld.org/docid/3dca7b439.html>, "13. In view of the unique objects and purposes of refugee status determination, and taking account of the practical challenges of refugee status determination, the Convention ground need not be shown to be the sole, or even the dominant, cause of the risk of being persecuted. It need only be a **contributing factor to the risk** of being persecuted. If, however, the Convention ground is remote to the point of irrelevance, refugee status need not be recognized." The same opinion is expressed by UN High Commissioner for Refugees (UNHCR): *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, 23 October 2012, HCR/GIP/12/01, available at: <http://www.refworld.org/docid/50348afc2.html>, para. 38.

or to **the absence of protection against these acts by actors of protection** as defined under Article 7.<sup>86</sup>

This amendment also had the support of UNHCR, as they had explained in their comments for the proposed amendment that refugee status should be granted not only where there was an act of persecution, but also where there was absence of or failure to provide protection.<sup>87</sup> As UNHCR had noted further, this provision of Article 9(3) would be of particular relevance to gender-based claims where serious discriminatory or other offensive acts were tolerated by the authorities, either because of unwillingness or due to inability to offer effective protection.<sup>88</sup>

Thus, in cases where there is a risk of being persecuted at the hands of a non-State actor (e.g. husband, partner or other non-State actor) for reasons which are related to one of the Convention grounds, the causal link is established, whether or not the absence of State protection is Convention related. Alternatively, where the risk of being persecuted at the hands of a non-State actor is unrelated to a Convention ground, but the inability or unwillingness of the State to offer protection is for reasons of a Convention ground, the causal link is also established.<sup>89</sup>

In the course of this study the following evaluation questions were assessed:

*How do the Member States assess the seriousness of an act as referred to in Article 9(1)?*

*a) Is there a definition of the threshold for 'sufficient seriousness' (paragraph a)?*

*b) Are there 'measures' that do not constitute violations of human rights that could qualify as acts of persecution as long as they affect an individual in a similar manner (paragraph b)?*

*c) How do the Member States evaluate that an individual is affected 'in a similar manner' by 'an accumulation of various measures' (paragraph b)?*

*Do the Member States consider all acts specified in Article 9(2) as acts of persecution? Do they recognise additional acts as acts of persecution?*

*How do the Member States establish the connection between the reasons for persecution and the acts of persecution?*

*Do the Member States assess the connection between the reasons for persecution and the absence of protection against acts of persecution?*

### 3.8.2 Findings for Article 9

#### *Summary of main findings*

The main findings in relation to Article 9 can be summarised as follows:

- Most Member States had not defined acts of persecution in more detail in their national law or in internal guidelines, however it seemed that they shared a similar understanding of the character of these acts. Some Member States had a more precise notion and methodology to analyse these acts than others;
- Most Member States had not defined the criteria to assess the seriousness of an act in more detail in their national law or in internal guidelines, and for that reason the majority of them

<sup>86</sup> Please see section 3.6 on Article 7 – Actors of protection.

<sup>87</sup> The same position was expressed by ECRE in the "Comments from the European Council on Refugees and Exiles on the European Commission Proposal to recast the Qualification Directive", pp.9-10.

<sup>88</sup> UN High Commissioner for Refugees (UNHCR), *UNHCR comments on the European Commission's proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted* (COM(2009)551, 21 October 2009), 29 July 2010, available at: <http://www.refworld.org/docid/4c503db52.html>, p. 7.

<sup>89</sup> UN High Commissioner for Refugees (UNHCR), *Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 7 May 2002, HCR/GIP/02/01, available at: <http://www.refworld.org/docid/3d36f1c64.html>, para. 21.

emphasised that each case was examined on its own merits. That said, it was not clear 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.

- Many 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. However, few Member States provided examples (cumulative and/or discriminatory measures such as extraordinary fines) of such measures. A number of Member States stated that measures must lead to serious human rights violations and/or render one's life unbearable in the country of origin.
- Member States applied Article 9(1)(b) less often, 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 the one in Article 9(1)(a).
- Certain Member States had a more precise notion and methodology to analyse acts and measures that might constitute persecution than others.
- Most Member States had transposed Article 9(2) and considered the list of acts of persecution as indicative and non-exhaustive.
- Most Member States assessed the link between the acts and the reasons for persecution through the applicant's claims during the interview and the COI, although some Member States repeated that the assessment was made on a case-by-case basis, without providing a methodology.
- All Member States assessed the link between the reasons for persecution and the absence of protection against acts of persecution.

No statistical information could be provided by Member States on the acts of persecution invoked per status granted nor on the number of applications rejected because the acts invoked did not amount to persecution, as set out in Article 9.

### **Sufficiently serious acts**

The majority of Member States<sup>90</sup> (AT, BG, CY, EE, EL, FI, FR, HR, IE, LT, LU, LV, MT, NL, PL, RO, SI, SK) stated that they did not hold a definition nor internal guidelines of what a 'sufficiently serious' act meant nor did they provide for a list of acts that constituted serious acts or demonstrated sufficient seriousness apart from the definitions in the Directive. **Belgium** on the other hand used internal binding guidelines for the assessment of the seriousness of an act but their interpretation did not go beyond the language of Article 9. **Sweden** used guidelines on the willingness and ability to protect, which included guidelines on the assessment of discriminatory acts.

Many Member States (BE, BG, CY, CZ, EL, FI, FR, HR, IE, IT, LU, LV, MT, PL, RO, SE) emphasised that the seriousness of an act was judged on a case-by-case basis, since each application was assessed individually.

For the assessment of the seriousness of an act, Member States indicated that they took into consideration the provisions of the Directive, i.e. the nature and the repetitiveness of an act, (BE, BG, CY, CZ, EL, FI, MT, SK, SE) and certain Member States added to this the UNHCR Handbook on Procedures and Criteria as well as other relevant UNHCR guidelines, and/or relevant case law both national and international (CJEU and ECtHR), (BE, EL, FR, HR, HU, LV, SE, SK). Especially, in the case of **Germany**, the CJEU jurisprudence<sup>91</sup> had significantly influenced national case law, and the latter then offered

<sup>90</sup> Information regarding all EU Member States bound by Directive 2011/95/EU or 2004/83/EC are reflected regarding Article 15, with the exception of ES, where no information could be collected for reasons explained in section 2 of this report.

<sup>91</sup> C-71/11 and C-99/11 of 5 September 2012.

guidance on whether specific measures were meeting the threshold or not. As it was noted by a lawyer, the most prominent decision on the seriousness of an act in the sense of Article 9(1)(a) was a judgment<sup>92</sup> by the Federal Administrative Court as it changed the German practice with regard to religious persecution quite significantly. The Federal Administrative Court also assessed the threshold of seriousness test by stating that: “The necessary severity may in particular be attained, if the foreigner is threatened with injury to life, limb, or liberty, criminal prosecution, or inhuman or degrading treatment or punishment because of participating in formal worship in public.”

In cases where there was a violation of one of the rights of Article 15(2) of ECHR not subject to derogation, (right to life, freedom from torture or inhuman or degrading treatment, freedom from slavery and from punishment without law), the act was considered sufficiently serious as prescribed by the Directive. (Certain Member States that stated this explicitly: CY, CZ, EL, PL.)

However, most Member States (AT, BE, BG, CY, CZ, DE, EL, FI, FR, IE, IT, LT, LV, MT, NL, PL, SE, UK) seemed to accept in practice that less serious acts, depending on their nature, intensity and repetition, could constitute acts of persecution as well.

This interpretation was also in line with the UNHCR argument that focused not only on the wording of Article 9(1)(a), where the term ‘in particular’ was used, but also explained that a restrictive interpretation of persecution in this Article would be hard to reconcile with the various types of acts of persecution listed in a non-exhaustive way in the second paragraph of Article 9 (*inter alia*, “prosecution or punishment, which is disproportionate or discriminatory” as well as “denial of judicial redress resulting in a disproportionate or discriminatory punishment”).

Moreover, the Advocate General noted in his opinion for the *Y and Z* case<sup>93</sup> that the reason that the legislator in **Article 9(1)(a) of the Directive only referred to the rights of Article 15(2) of ECHR was to achieve a sufficiently open and adaptable text to reflect an extremely varied and constantly changing range of types of persecution.**

**Austria** did not have a definition of the threshold of sufficiently serious acts, but case handlers distinguished in the assessment between discrimination and persecution and in case of cumulative discrimination, which was sufficiently serious, persecution could also be ascertained.

The **Czech Republic** had a definition of persecution in its law (Act 325/1999); it comprised of serious human rights violations, as well as measures causing psychic coercion or other similar actions, in case they were carried out, supported or tolerated by the actors of persecution. Each case was examined on its own merits. The case officer assessed the nature or repetition of the acts of persecution and whether they constituted a severe violation of basic human rights.

The methodology used by first-instance case handlers in **Greece** was first to identify the acts and measures of discriminatory or repressive character, then to examine whether these acts corresponded to human rights violations and/or whether their cumulative and systematic character affected the enjoyment of a right, and subsequently to assess how fundamental this right was in order for the treatment to be considered as persecution.

**France** did not hold a definition of what constituted a sufficiently serious act nor did it apply guidelines for first instance determining authority. Instead, whether an act constituted persecution was always assessed on an individual basis. Overall, rejection on the basis that an act did not amount to persecution were however relatively rare, at this level.

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<sup>92</sup> Judgment of the German FAC of 20 February 2013, No. 10 C 23.12, para 28 available under: <http://www.bverwg.de/entscheidungen/entscheidung.php?lang=en&ent=200213U10C23.12>.

<sup>93</sup> Opinion of Advocate General Sharpston delivered on 11 July 2013 on *Minister voor Immigratie en Asiel v X* (C-199/12) and *Y* (C-200/12) and *Z v Minister voor Immigratie en Asiel* (C-201/12).

Examples of **French case law** on persecution (judgements on appeals) were the following:

CNDA 21 May 2012 M. W. n° 08019247 C: short detentions suffered by a white supremacist citizen of Namibia were not disproportionate to the legitimate need of fighting expression of racist opinions or incitement to racial hatred and to protect public order. Hence, they did not constitute acts of persecution pursuant to Article 9.

CNDA 4 November 2013 M. F. n° 13007332 C: the seriousness of the sanctions that Iranian legislation foresaw in case of *de facto* apostasy entailed that such sanctions were to be considered as acts of persecution pursuant to Article 9. Quoting the CJEU judgment in the *Y and Z* case (C-71/11 and C-99/11, 5 September 2012), CNDA found that the fact of being obliged to conceal any form of visible manifestation of one's atheist convictions in order to avoid the aforementioned sanctions amounted to persecution.

CNDA GF 31 January 2014 Mme H. widow T. n° 12013217 R: in the case of an Albanian widow alleging that she had been harassed by her brothers-in-law to make her leave her house and abandon the custody of her children, the Court found that the consequences of the conflict with her family-in-law had not reached the level of seriousness necessary to qualify them as persecution pursuant to Article 9 Recast QD.

CNDA 24 March 2015 Mlle E. F. n° 10012810 C: in the case of a Nigerian woman from Edo State having fled from a sexual trafficking network that forced her into prostitution in **France**, CNDA found that she was exposed to social exclusion, retaliation measures from the prostitution network, and also sanctions imposed by the customary justice from Edo State for having broken the oath: all these elements, taken cumulatively, constituted persecution pursuant to Article 9.

disadvantages and interferences, were taken into account. In this regard violations of economic, social and cultural rights were to be considered, as well. **Sweden** noted that cumulative discriminatory measures and harassment could collectively be considered as serious enough to constitute persecution if these actions constituted a serious violation of basic human rights. The **United Kingdom** indicated that in cases of violation of human rights or of acts that involve serious discrimination, cumulative measures could push up a 'behaviour' from discrimination to persecution. So for example, when there was serious discrimination against a particular group over a long period of time, which affected them in a number of different ways, this treatment could amount to persecution if all those measures were considered cumulatively, whilst taken individually they would not constitute persecution.

Regarding the **interpretation of a 'similar manner'**, many Member States had not further elaborated their interpretation of the notion in law or in practice. In the case of **Belgium, Greece**, the

### Cumulative measures affecting in a similar manner

Some 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. It was not clear whether other Member States had clarified these issues in their national law or in guidelines.

Some Member States had a strict understanding of the provision. **Slovenia** indicated that only human rights violations – and no other measures – could be considered as acts of persecution and **Finland** noted that there was no practice in accepting other measures as acts of persecution. The other Member States did not exclude such a possibility, though certain Member States noted that this would be considered on an individual base.

Certain Member States put their emphasis on the **cumulative consequences** of such measures. This meant that if the measures were applied separately and only once, they would probably not amount to persecution, but in accumulation, they would affect an individual's life in a similar manner, as in para. 9(1)(a) (AT, BE, EL, FR, LV, PL, SE). For example, **Belgium** added that measures, not in themselves violations of human rights, had to be of discriminatory nature, and so systematic and far-reaching that combined with other adverse factors, they could lead to fundamental human rights violations and amount to persecution. **Germany** explained that the "accumulation of various measures" was assessed individually by conducting an overall evaluation of all relevant circumstances. For this assessment all infringements, repressive and discriminatory measures as well as other

**Netherlands** and **Sweden**, similar manner was understood as a manner that rendered one's life unbearable to the extent that fundamental human rights were violated.

This interpretation is in line with the one of the Court of Justice, in *Bundesrepublik v. Y and Z*, where it stated that certain acts could qualify for persecution if there was a 'severe violation' of a fundamental right, which had a significant effect on the person concerned. Hence, interferences with the exercise of this right could only be regarded as acts of persecution if their gravity was "**equivalent to that of an infringement of the basic human rights from which no derogation can be made by virtue of Article 15(2) of the ECHR**". Such acts were to be identified by "**their intrinsic severity as well as the severity of their consequences for the person concerned**".<sup>94</sup>

This influence is evident in the German jurisprudence, where the Federal Administrative Court, following the above decision, noted as well that all acts and measures should be assessed on the basis of their severity and of their effect on the individual. The Court further stated in the judgment<sup>95</sup> that Article 9(1)(a) had to be assessed prior to the assessment of Article 9(1)(b) and that it should be further examined whether the totality of the interferences to be taken into account under (b) led to a violation of the concerned individual's rights of similar severity to a severe violation of basic human rights within the meaning of Article 9(1)(a) of the Directive and added that: "Without a case-specific concretisation of the standard for a severe violation of basic human rights under Article 9 (1) (a) of the Directive, the evaluative assessment under letter (b) of whether the individual asylum-seeker is exposed to various measures in such a serious accumulation that the effect on him is comparable to the one under letter (a) will not succeed. If, in respect of the constituent element of 'affected in a similar manner', the Court omits to conduct a comparative consideration with the acts of persecution covered under Article 9 (1) (a) of the Directive, that omission is incompatible with Federal law."

In the **Czech Republic** an act could also be a severe violation of basic human rights because of an accumulation of various measures, such as long-term police bullying through menacing, repetitive house searches, repetitive short-term detentions, etc.

**Poland** explained that there was a possibility to **consider various acts as persecution**, which themselves were not persecution, but if accumulated, they could give such effect. For example, recently refugee status was granted to a citizen of Uzbekistan, a Jehovah's Witnesses, who risked being imposed a fine for participating in religious practices. While it was contested whether the imposition of a fine constituted persecution, in this case subsequent fines imposed on a foreigner would add up to the extent that he would lose all his belongings to repay those fines. So although the very imposition of a fine may not be regarded as a persecution, in this case it was.

In the case of **Poland**, both an NGO and a lawyer expressed the opinion that there was usually a broad discretion on the part of the Member State when assessing whether an act constituted persecution. An NGO in **Slovenia** noted that they were not aware of any case law where the Member State had used Article 9(1) to assess the seriousness of an act, as most cases focused on credibility and on procedures.

**Sweden** noted further that there was relevant case law on '**discrimination during a longer period**', and that there were internal guidelines for the assessment of the accumulation of various discriminatory measures during a longer period. A judicial position paper stated that such actions must lead to serious violation of basic human rights to be regarded as persecution, and could include serious restrictions on the right to earn a living or to practice religion or exclusion from the general education system.

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<sup>94</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>, para. 66.

<sup>95</sup> Judgment of the German FAC of 20 February 2013, No. 10 C 23.12, para. 34 and 37 available under: <http://www.bverwg.de/entscheidungen/entscheidung.php?lang=en&ent=200213U10C23.12>



### **Acts qualifying persecution**

Member States declared that they had literally transposed Article 9(2) in the national legislation and they considered all acts listed there as potential acts of persecution. Only **Sweden** had not transposed it and the **Czech Republic** had transposed only segments of it.

Furthermore, the list was not considered exhaustive but indicative<sup>96</sup> although Member States had not added further acts in their national law, with the exception of **Italy** that had added “judicial prosecution or criminal punishment which entailed serious human rights violations, as a consequence of the refusal to perform military service for reasons which are moral, religious, political in nature, or relate to ethnic or national identity”.

Overall, the acts listed in Article 9(2), although some of them were less often used than others, did not appear to cause problems to determining authorities, while the application of Article 9(1) seemed to pose more challenges.

### **Acts of persecution and reasons for persecution**

There appeared to be a clear and well-established practice across all Member States to assess the connection between the reasons and the acts for persecution, as this is required by the definition of refugee in Article 1A(2) of the Geneva Convention and Article 2(d) of Directive. The tools used for the assessment of this connection were also similar in Member States, such as the questions asked by the interviewers about the motives for these acts, the claims of the applicant, their profile and the information regarding the country of origin. Some Member States (IT, RO) explained that the examination of this connection was either included in a checklist of questions or in the template of the decision, so that the assessment might not be omitted.

Some Member States (BE, SE) stressed the importance of this provision by explaining through examples that victims of non-State actors could now be protected, either if they were victims of these acts for one of the reasons listed in Article 10 or if the State did not provide them with the necessary support for one of the same reasons.

### **3.8.3 Changes in Member States’ practices since the Recast QD in 2013**

Article 9 of the Recast QD provides the clarification of the causal nexus requirement (i.e. the requirement of a connection between the acts of persecution and the reasons for persecution under the 1951 Refugee Convention) to explicitly state that it also covers situations where there is a nexus between the grounds for persecution and **the absence of protection against persecution on the part of the State**.

The addition marks a change to the situation in 2010, when several Member States (BG, CZ, FR, EL, ES, LU, NL, PL, SK) did not provide for a provision that required a causal link between the reasons for persecution listed in Article 10(1) and the acts of persecution in their national legislation, but certain Member States relied on relevant practice.<sup>97</sup> However, courts in certain States had already ruled that this requirement could also be fulfilled where there was a connection between the acts of persecution and the absence of protection against such acts (AT, BE, BG, DE, EE, HU, LT, NL, SI, SE).<sup>98</sup> This provision was finally included in the Recast QD in Article 9(3).

Most Member States have already transposed Article 9(3), but all confirmed they consider in practice the link between the reasons for persecution and the absence of protection although, as mentioned

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<sup>96</sup> To alert on different interpretations, it had been emphasised by stakeholders before the adoption of this provision, that Article 9 (2) provided an illustrative list of possible examples of persecution and is not exhaustive. European Council on Refugees and Exiles, ECRE in the “Comments from the European Council on Refugees and Exiles on the European Commission Proposal to recast the Qualification Directive”, pp.11.

<sup>97</sup> COM(2010) 314 final, 16.6.2010, para. 5.2.1., page 8.

<sup>98</sup> COM(2010) 314 final, 16.6.2010, para. 5.2.1., page 8.

above, this provision was already part of their practice even before this amendment in certain Member States.

In the case of **Germany**, the Federal Administrative Court had already stated in 2008 and in 2013 that there was a need to assess the nexus foreseen in Article 9(3), an assessment of this connection was therefore taking place. In some earlier decisions it seemed that lower courts had required that the persecution as well as the denial of protection had to be related to the reason for persecution but the direct transposition of Article 9(3) made it clear that the nexus with the reason for persecution sufficed to exist with one of the two.

**Finland** noted that this provision was already part of its legislation, and **Sweden** that it has not transposed it yet because it was not considered necessary as the connection between the reasons for persecution and the absence of protection against such acts is based on the definition of the term refugee, which is interpreted in light of the Geneva Convention and UNHCR guidelines.

Member States did not hold additional guidelines regarding the interpretation and implementation of this provision (Article 9 (3)), apart from well-known sources, such as the UNHCR Handbook and other UNHCR guidelines. However, certain Member States (HR, SE) indicated the importance of this provision, which clarified for those States that had a different practice that asylum should be granted not only where there was an act of persecution, but also where there was an absence of or failure to provide protection. As **Croatia** put it, this point was of particular relevance to gender-based claims, where serious discriminatory or other offensive acts committed by an individual or the local population could also be considered as persecution, if such acts were knowingly tolerated by authorities, or if the authorities refused, or were unable, to offer effective protection. Thus, this new formulation referred not only to actors of persecution, but also to the failure or refusal to act on the part of so-called actors of protection.

Examples of cumulative measures mentioned by Member States were:

- Women in Afghanistan under the Taliban deprived of access to education and healthcare (AT).
- Severe sanctions for refusing military service (AT).
- Long-term police bullying through menacing, repetitive house searches, repetitive short-term detentions, etc. (CZ).
- Hazara communities in Ghazni Area (Afghanistan), who live without protection, surrounded by hostile Pashtun communities and face a sum of several discriminations as to the access to the land, water, health, freedom of circulation, criminal attacks (IT).
- Cumulative serious violations of the rights to freedom of opinion and expression, to peaceful assembly and association, to take part in the government of the country, to respect for family life, to own property, to work and to follow education, among others, could provide valid grounds for refugee claims (EL).
- Severe discrimination, creating psychological pressure on a person or harassment (constant invitation to interrogations) (SI).
- Different kinds of discriminatory acts, for example, serious restrictions to earning a livelihood, and accessing normally available educational facilities, can cumulate and reach the level when they could be regarded as persecution (LT).
- Violations of so-called economic, social and cultural rights (rights of residence, education, work, social security and health) might constitute persecution if they meet the threshold, e.g. the violations are sufficiently severe (DE).
- Serious restrictions on the right to earn a living, or to practice religion, or exclusion from the general education system. Cumulative discriminatory measures that were invoked by a stateless person, belonging to the group Maktoumeen (unregistered and stateless kurds in Syria), could constitute persecution (SE).

### 3.8.4 Examples of good application

The following could be considered as examples of good application:

- Guidelines on the criteria for acts that qualify as persecution and/or guidance to case handlers on the application of Article 9(1) through national jurisprudence, (such as BE, FR, DE, SE, UK).

- Applying a broad understanding of persecution by not limiting it to Article 9(1)(a) and to the non-derogable rights of Article 15 para. 2 of ECHR but by extending it to the criteria of Article 9(1)(b) to explore further acts that can amount to persecution (DE, SE).
- Investigation and consideration of the reasons for the absence of State protection to permit the inclusion of victims of non-State violence (e.g. domestic violence) (most Member States).

### 3.8.5 Possible application issues

- Applying the acts of persecution mentioned, *inter alia*, in Article 9(2) in an exhaustive instead of an indicative manner.
- Limiting in practice the qualifications of an act, in order to be regarded as an act of persecution within the meaning of Article 1(A) of the Geneva Convention, to those violating the non-derogable human rights, listed under Article 15(2) ECHR, and considering ‘insufficiently serious’ so as to amount to persecution all other violations of fundamental human rights.
- Limited technical knowledge/capacity on behalf of determining authorities to assess whether and why an act amounts (or not) to persecution may lead to the rejection of certain claims on credibility grounds instead (as it is often considered easier to reject a claim based on [lack of] credibility than on legal assessment of alleged acts).

### 3.8.6 Recommendations

Based on the above findings, the following recommendations can be put forward:

- In order to reduce Member States’ divergent approaches in the application of Article 9(1)(a) and 9(1)(b)<sup>99</sup> and in particular with regard to the terms ‘severe violation of basic human rights’, ‘sufficiently serious nature of an act’, ‘accumulation of various measures’, ‘(affect) in a similar manner’, the European Commission should clarify Article 9(1) by defining the above-mentioned terms on the basis of States’ practice, the national<sup>100</sup> and CJEU jurisprudence, UNHCR Handbook and Guidelines on adjudicating refugee claims<sup>101</sup> and legal theory on the notion of persecution.

<sup>99</sup> The same Member States practice on this issue is reported in EASO QM on Inclusion (2013). The current Study confirmed that there was no particular change in this direction regarding the application of Article 9(1).

<sup>100</sup> Such as: *Mirisawo v. Holder*, Attorney General, No. 08-1704, United States Court of Appeals for the Fourth Circuit, 17 March 2010, on economic measures that deliberately deprive individuals of basic necessities or deliberately impose severe economic disadvantage constitute persecution, (available at: <http://www.refworld.org/docid/4c73ebfe2.html>); *S. V.* Chief Executive, Department of Labour, [2007] NZCA 182, Decision of 8 May 2007, New Zealand Court of Appeal, where the Court stated that persecution included loss of life, liberty and disregard of human dignity, such as denial of access to employment, to the professions, and to education, or the imposition of restrictions on traditional freedoms, Independent Federal Asylum Senate, (IFAS/UBAS) [Austria], Decision of 21 March 2002, IFAS 220.268/0-X1/33/00, where the Austrian administrative appellate decision concluded that female genital mutilation constituted persecution, Judgment of the German FAC of 20 February 2013, No. 10 C 23.12, available under <https://www.bverwg.de/200213U10C23.12.0>

<sup>101</sup> UNHCR, ‘Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees’, HCR/IP/4/Rev.1, 1979, paras. 51–60, 65, UNHCR, Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees, 7 May 2002, HCR/GIP/02/01, Guidelines on International Protection No. 6: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees, HCR/GIP/04/06, 28 April 2004, Guidelines on International Protection No. 7: The Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons At Risk of Being Trafficked, HCR/GIP/06/07, 7 April 2006, Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, HCR/GIP/09/08, December 2009, Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, HCR/GIP/12/01, 23 October 2012, Guidelines on International Protection No. 10: Claims to Refugee Status related to Military Service within the context of Article 1A (2) of the 1951 Convention

- EASO could prepare and disseminate a guidance note on the application of this Article:
  - by elaborating more extensively on the terms and criteria for their application of Article 9(1)(a) and (b) in particular;
  - by providing a methodology for the assessment of the severity of the potential acts of persecution;
  - while also taking into consideration international and European case law and theory on acts of persecution and UNHCR guidelines, including on gender-related persecution.
- EASO<sup>102</sup> could further reinforce the training on this Article for case handlers and judges, and more particularly:
  - on the assessment of the severity/seriousness of cumulative measures or other human rights violations (beyond the ones in Article 15 para. 2 of ECHR) that may amount to persecution; and
  - on credibility assessment, including for gender-sensitive asylum claims, also elaborated in Article 4, as the majority of rejection decisions in certain Member States, at least, are based on the alleged lack of credibility of the applicant.
- Both the above EASO guidelines and training could:
  - contribute to avoiding limiting ‘persecution’ only to acts that violate the non-derogable rights of Article 15 para. 2 ECHR, to which the Recast QD makes specific reference;
  - promote a more harmonised understanding of persecution; and
  - minimise a divergent application of the relevant Article.
- Although no major discrepancies were detected with regard to Member States’ understanding of the necessary “connection between the reasons mentioned in Article 10 and the acts of persecution as qualified in paragraph 1 of this Article”, an addition to paragraph 3 could be useful in order to *clarify* that the connection may apply **either** with the acts of persecution **or** the absence of protection against such acts, *regardless of whether the actor of persecution is the State or a non-State agent*.<sup>103</sup> EASO should also ensure in practice a uniform understanding and application of this provision (Article 9(3)).

### 3.8.7 Benchmarks for measuring the implementation of Article 9

**Table 3.8 Benchmarks for measuring the implementation of Article 9**

<b>Whether or not MS have internal guidelines or an established practice for the assessment of the acts and measures that may amount to persecution of Article 9(1):</b>	
Written binding guidelines	BE, SE
Practice based on jurisprudence, training and/or oral guidelines (varied degree of binding effect)	AT, BG, CY, CZ, DE, EE, EL, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, RO, SL, SK, UK,

and/or the 1967 Protocol relating to the Status of Refugees, HCR/GIP/13/10, 3 December 2013,, UNHCR Note on Refugee Claims Based on Coercive Family Planning Laws or Policies, August 2005, Interpreting Article 1 of the 1951 Convention Relating to the Status of Refugees, 1 April 2001.

<sup>102</sup> In the EASO Practical Guide: Personal Interview, it is already mentioned that: “A detailed (as far as possible) account of events is necessary to assess the degree of seriousness of the past experiences of the applicant (see Article 9(1)(a) and 9(2) and Article 15 of the QD). An accumulation of various measures can also amount to persecution (see Article 9(1)(b) of the QD). The case officer should, therefore, be prepared to ask or hear about ‘minor’ facts/threats, the accumulation of which may amount to persecution or serious harm.” (p. 15), however, there is probably a need to further elaborate on this instruction.

<sup>103</sup> This clarification is made in several guidance documents, such as Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees, 7 May 2002, HCR/GIP/02/01, p. 6.

<b>Whether or not MS apply the list of acts in Article 9(2) :</b>	
As an exhaustive list	None
As an indicative list	All
Added more acts to the list	IT, HU
Did not transpose literally	CZ, SE
<b>Whether or not MS require that the causal nexus exists between the reasons for persecution and the acts of persecution or the absence of protection:</b>	
Cumulatively	HU
Alternatively	All (but CZ)
<b>To what extent negative (rejection) decisions are based on the assessment that the invoked acts do not amount to persecution:</b>	
No MS kept statistical information on this	

### 3.9 Reasons for persecution – Article 10

#### 3.9.1 Background on reasons for persecution

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.

In brief, Article 10(1) distinguishes the notions of race and nationality that are sometimes confused or overlapping, since nationality should not be confined to the citizenship or lack thereof, by including more physical characteristics to the former and more cultural characteristics to the latter. Religion may include theistic, non-theistic and atheistic beliefs or actions based on these beliefs, formal worship in private or in public, either alone or in community with others and political opinion, the holding of an opinion related to the actors of persecution (State or non-State) and/or their policies. Members of particular a social group are persons that (i) share a fundamental characteristic or a common background that should not – because of its fundamental character to the applicant's identity – or cannot be changed, and (ii) have a distinct identity because they are perceived as being different by the surrounding society. Special note is made to certain characteristics that particular social groups may be based upon such as sexual identity and gender.

Article (2) clarifies that all five characteristics that may constitute grounds for persecution may be either possessed by the applicant or attributed to them by the actors of persecution.

Although most of the elements are common in both Directives, a key difference between Directive 2011/95 and Directive 2004/83 lies in the emphasis given to the role of gender and gender identity in the establishment of a particular social group. Directive 2004/83 mentioned that gender-related aspects might be considered in the context of a particular social group, but it added “without by themselves alone creating a presumption for the applicability of this Article”, which meant that they could not by themselves create such a presumption. In the Recast QD this phrase is erased and it is emphasised instead that gender-related aspects will be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group.

In the course of this study the following evaluation questions were assessed:

<i>Can the assessment of the reasons be influenced by considerations such as the possibility for the applicant to behave ‘discreetly’ in the country of origin to avoid persecution?</i>
<i>Do the Member States use the criteria set in Article 10(1)(d) in order to define a ‘particular social group’?</i>

### 3.9.2 Findings for Article 10

#### *Summary of main findings*

The evaluation looked in particular into the practices of Member States to assess the membership of a particular social group, whether they used a ‘cumulative’ (as the wording of the Directive may suggest) rather than an ‘alternative’ approach and whether the above-mentioned change in the Directive influenced both their law and their practice. The evaluation also examined whether the CJEU jurisprudence<sup>104</sup> related to Article 10 amended accordingly Member States’ practices on the possibility for the applicant to behave discreetly in order to avoid persecution.

In relation to the above, the main findings in relation to Article 10 can be summarised as follows:

- In most Member States the eligibility assessment is not in principle influenced by considerations of the possibility for the applicant to behave discreetly in the country of origin in order to avoid persecution. A few Member States mentioned that such a consideration could have had influence in the past, but following the CJEU jurisprudence, they had changed their practice.
- Most Member States have adopted both approaches for the establishment of the 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.
- Several Member States declared to follow UNHCR guidelines and EASO training modules as sources for the interpretation of the criteria set out in Article 10. Certain Member States indicated they also apply additional internal guidelines to handle cases that may constitute particular social groups.
- Most Member States’ legislation – with some exceptions – introduced the amendment by the Recast QD in 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.

No statistical information could be provided by the Member States on the reasons invoked per status nor on the number of applications rejected because there was no link with any of the grounds set out in Article 10.

#### *Behaving discreetly to avoid persecution*

With two significant rulings<sup>105</sup> the CJEU clarified that “In assessing an application for refugee status on an individual basis, (those) authorities cannot reasonably expect the applicant to abstain from those (public) religious practices (that may attract persecution)”, that is, the applicant cannot be expected to abstain from the freedom to practice their faith in private circles but also to live that faith publicly<sup>106</sup> and that “[they] cannot reasonably expect [one], in order to avoid the risk of persecution, ... to conceal his homosexuality in his country of origin or to exercise reserve in the

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<sup>104</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>105</sup> *ibid*

<sup>106</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>, para. 80.

expression of his sexual orientation".<sup>107</sup> This jurisprudence is also in line with UNHCR's position according to which a person should not be denied refugee status based on a requirement that they do not express publicly, change or conceal their identity, opinions or characteristics in order to avoid persecution, as it has been expressed in numerous occasions.<sup>108</sup>

Public authorities in most Member States<sup>109</sup> (BE, BG, CY, DE, EE, EL, FI, FR, IE, IT, LV, LU, MT, NL, PL, RO, SE, SI, UK) 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. A few Member States made explicit reference to having adapted their practice to the CJEU rulings and others had elaborated more on their practice by emphasising the importance of an individualised assessment that might include different nuances in some cases as well.

In **Austria**, whether the assessment of the reasons could be influenced by the possibility for the applicant to behave discreetly in the country of origin to avoid persecution depended on the extent to which the reasons formed a *fundamental part of the identity* of the applicant. For example, it could not be expected of a homosexual to act 'discreetly', whereas a Christian who was only baptised but had otherwise no affiliation with Christianity whatsoever, might under certain circumstances be expected to conceal that s/he is Christian, if Christians were persecuted. The assessment would thus depend on the special circumstances of the individual case. The importance of such an element for the applicant's identity, and whether it constituted an important part of their personality and way of life or a genuine conviction was also stressed by other Member States (EL, SE).

The **Czech Republic** distinguished between fundamental and other rights, stating that, for example, in the case of religion they would not require applicants' discreet behaviour, and *similarly* they would not require **absolute concealment** of homosexuality. A judiciary authority in **France** elaborated on a different angle of the 'discreet behaviour' issue that has preoccupied the Court in the past. The first 'sexual orientation' social groups in their records (circa 1999/2000) were restricted to persons 'willing to express publicly their orientation'. Discreet behaviour in the past allowed considering that there were no fears of persecution in the future. On the contrary, only the 'non-discreet' persons were granted protection (which was also problematical for other reasons). The focus on this question has progressively evolved towards an essentialist approach and now the Council of State holds that the public expression of an asylum seekers' sexual orientation is irrelevant when assessing whether he has a well-founded fear of being persecuted because of his belonging to the social group of those

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<sup>107</sup>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>, para.76. As the Court clearly said "[R]equiring members of a social group sharing the same sexual orientation to conceal that orientation is incompatible with the recognition of a characteristic so fundamental to a person's identity that the persons concerned cannot be required to renounce it. Therefore, an applicant for asylum cannot be expected to conceal his homosexuality in his country of origin in order to avoid persecution." (paras.70-71)

<sup>108</sup>UNHCR, "Guidelines on International Protection No. 2: "Membership of a Particular Social Group" Within the Context of Article 1A (2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees", 7 May 2002, HCR/GIP/02/02, available at: <http://www.unhcr.org/refworld/docid/3d36f23f4.html>, paras. 6, 12; UNHCR, "Guidelines on International Protection No. 6: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees", 28 April 2004, HCR/GIP/04/06, para. 13; UNHCR, Secretary of State for the Home Department (Appellant) v. RT (Zimbabwe), SM (Zimbabwe) and AM (Zimbabwe) (Respondents) and the United Nations High Commissioner for Refugees (Intervener) - Case for the Intervener, 25 May 2012, 2011/0011, available at: <http://www.unhcr.org/refworld/docid/4fc369022.html>, para. 9., UN High Commissioner for Refugees (UNHCR), *UNHCR intervention before the Court of Justice of the European Union in the cases of Minister voor Immigratie en Asiel v. X, Y and Z*, 28 September 2012, C-199/12, C-200/12, C-201/12, available at: <http://www.refworld.org/docid/5065c0bd2.html>, para. 5.2.2., p.19., UN High Commissioner for Refugees (UNHCR), *UNHCR statement on religious persecution and the interpretation of Article 9(1) of the EU Qualification Directive*, 17 June 2011, C-71/11 & C-99/11, available at: <https://bit.ly/2DjsVKK>, para. 4.3.1., p.12.

<sup>109</sup> Information regarding all EU Member States bound by Directive 2011/95/EU or 2004/83/EC are reflected regarding Article 15, with the exception of ES, where no information could be collected for reasons explained in section 2 of this report.

sharing the same orientation. This important finding ensues from the principle that “the social group within the meaning of Article 1A2 GC as interpreted in the light of Article 10.1 d) QD is not established by the members of the group, no more by objective characteristics attributed to them, but because this group is perceived as being different by the surrounding society or institutions” (CE 27 July 2012 M.B. n° 349824 A).

**Italy** also emphasised the importance of the individualised assessment and discerned that applicants’ past behaviour with this ‘characteristic’ could be crucial, as it could raise concerns for their credibility; thus, in the case of a homosexual, a person would be entitled to protection, even if they had not openly expressed their sexual orientation in the past. But, in the case of a political opponent who had never expressed publicly or participated in a demonstration in the past, their credibility would be contested. Similarly, stakeholders in **Lithuania** stated that there might be cases where the discreet behaviour in the country of origin would be considered, but in any case this would have to be investigated further, and confirmed that in cases where a person had lived discreetly as a homosexual in the country of origin because this behaviour was punishable by law, the case handler would consider this risk.

In **Slovakia**, the possibility for the applicant to behave discreetly in the country of origin to avoid persecution must be considered individually, but in general it should not be the reason for rejecting the application. However, the protection scope also depended on whether for example practising certain religious activities in public was ‘required’ by the religion; if not, then the possibility of the applicant’s discreet behaviour might be assessed.

The **Netherlands** had further elaborated religion and sexual orientation in their implementation guidelines. According to these guidelines with regard to religion, for example, the assessment took account of whether the applicant had to hide his/her religion in his country of origin and that s/he was not expected to refrain from religious acts which for him/her personally were important to practice his/her religious identity to avoid persecution. The severity of the measures and sanctions that could be taken against the applicant were also taken into consideration. Even the fact that the applicant would have to adopt some degree of ‘restraint’ when practising the religion could be a reason of persecution. With regard to sexual orientation, the guidelines explained for example that the assessment should take account of whether the applicant had to hide his/her sexual orientation and whether the orientation was a punishable act in his/her country of origin. Nevertheless, some degree of restraint with regard to the behaviour could be required to avoid problems which in connection might be considered to constitute persecution. On the other hand, this restraint should not mean that the applicant could no longer meaningfully fulfil his/her sexual orientation. A lawyer in the **Netherlands** commented that these guidelines prevented case handlers from requiring from the applicant to completely disguise their sexual orientation.

Similarly to the **Netherlands, Germany, Sweden** and the **United Kingdom** have issued internal guidelines on these issues. Nevertheless, in the case of **Germany** it was stated that German courts were among the founders of the ‘discretion requirement’ and ever since the entry into force of Directive 2004/83, this debate has been virulent in German jurisprudence. For both most disputed grounds in this regard (social group/homosexuality and religion) German jurisprudence had required discreet behaviour to avoid persecution. Furthermore, both a lawyer and an **NGO** in **Germany** considered that there was a situation of uncertainty as some courts still did not fully comply with the CJEU case law and among some there was an ongoing discussion on what discreet meant. In this regard, the Higher Administrative Court of Mannheim ruled that it was necessary to distinguish between discretion because of a well-founded fear of being persecuted and discretion on personal reasons (no will/desire to live openly as homosexual).<sup>110</sup>

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<sup>110</sup> Decision of 7 March 2013, No. A 9 S 1873/12.



Some legal representatives or NGOs in other Member States (CY, EL, FR, HR, PL, UK) also expressed concerns that the jurisprudence was not fully followed, regardless of the grounds for persecution.<sup>111</sup> In some Member States (BE, EL, RO) the option of behaving discreetly was discussed and assessed, although it was not used as justification to reject the claim.

### ***Establishing particular social groups as grounds for persecution***

For the establishment of a particular social group as grounds for persecution, the Recast QD foresees two criteria – the **‘protected characteristics approach’**, which is based on an immutable characteristic or a characteristic so fundamental to human dignity that a person should not be compelled to forsake it, and the **‘social perception approach’**, which is based on a common characteristic which creates a recognisable group that sets it apart from society at large. The wording of Article 10(1)(d) of the Recast QD could be read as suggesting a cumulative rather than an alternative approach to determining a particular social group.

Public authorities in most Member States (BE, BG, CY, CZ, DE, EE, FI, FR, HR, IT, LT, MT, NL, PL, RO, SE, SK, SL, UK) applied the required criteria set in Article 10(1)(d) of the Directive in a cumulative way to assess whether a person belonged to a particular social group. Most of the time, the same Member States stated that these criteria were non-exhaustive, and there was a possibility of expanding the criteria or the requirements, although none had used any other, so far. On the contrary, a more limited number of Member States (EL, IE, IT, LT, LV) declared to apply the criteria of Article 10(1)(d) in an alternative way and that they considered these criteria as exhaustive.

Many Member States indicated they followed UNHCR guidelines as a source for the interpretation of these criteria; however, while according to the Recast QD two criteria may apply cumulatively,<sup>112</sup> UNHCR's position is that the two approaches ought to be reconciled and that it is not necessary for the two criteria to apply simultaneously. In cases where a claimant alleges a social group based on a characteristic, which is neither unalterable nor fundamental, further analysis should be undertaken to determine whether the group is nonetheless perceived as a cognisable group in that society.<sup>113</sup> This preference for an alternative application of the two criteria was also expressed by stakeholders before the adoption of the Recast QD, but the position for a cumulative application prevailed.<sup>114</sup>

Some Member States (BE, NL, SE) indicated that to establish whether or not an applicant belonged to a particular social group, in addition to COI, the EASO training curriculum and UNHCR Guidelines

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<sup>111</sup> A lawyer in United Kingdom was aware of several cases where the judge has ruled that **religion** can be practiced discreetly, although that was not the case for homosexuality, especially after *HJ (Iran) and HT (Cameroon) v. Secretary of State for the Home Department*, [2010] UKSC 31, United Kingdom: Supreme Court, 7 July 2010, available at: <http://www.refworld.org/docid/4c3456752.html>, paras. 76

<sup>112</sup> Based on the wording of that Article, the CJEU answered that the definition of a particular social group is satisfied where in particular the following two cumulative conditions are met: “First, members of that group 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. Second, that group has a distinct identity in the relevant country because it is perceived as being different by the surrounding society.” *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>, para. 33.

<sup>113</sup> UN High Commissioner for Refugees (UNHCR), *Guidelines on International Protection No. 2: “Membership of a Particular Social Group” Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 7 May 2002, HCR/GIP/02/02, available at: <http://www.refworld.org/docid/3d36f23f4.html>, para. 10-13.

<sup>114</sup> UN High Commissioner for Refugees (UNHCR), *UNHCR comments on the European Commission's proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted (COM(2009)551, 21 October 2009)*, 29 July 2010, available at: <http://www.refworld.org/docid/4c503db52.html>, para. 6, p. 7-8, Comments from the European Council on Refugees and Exiles (ECRE) on the European Commission Proposal to recast the Qualification Directive, <http://www.ecre.org/topics/areas-of-work/protection-in-europe/148.html>, para. 2.5., p. 11.

on membership of a particular social group and on sexual and gender identity were used.<sup>115</sup> In addition, they had also developed additional internal guidelines on cases that might constitute particular social groups, such as victims of FGM, forced marriages, rape and sexual violence, LGBT, minorities, minors, etc.

**Belgium** had internal guidelines for the assessment of international protection claims related to:

Female Genital Mutilation (FGM) both for the assessment of the applications during the asylum procedure (evidence assessment) and the procedure regarding the follow-up of the physical integrity of girls recognised as refugees on the basis of a fear of FGM:

- Forced marriages
- Sexual orientation and gender identity
- Rape/sexual violence
- Minors.

Sources: *the Belgian Aliens' Act, the Recast QD, the explanatory memoranda, guidance by UNHCR and UNHCR's comments on the Belgian Aliens' Act.*

**Sweden** had internal guidelines setting out key points to consider as well as a method to assess minority and LGBT cases as reasons for persecution. The determining authority appointed specialists to support case handlers, when handling LGBT reasons. In Swedish practice, the criteria were applied cumulatively, but emphasis was placed on the need for the group to have a distinct identity because it was perceived as being different by the surrounding society. By applying the two criteria, the Migration Court of Appeal had ruled in a prior judgment that doctors, musicians, judges or academics could not be considered to belong to a particular social group within the meaning of the Aliens Act, since they did neither share an innate characteristic or a common background that could not be changed, nor could they, as a group, be considered to share a distinct identity in the relevant country because they were perceived as being different by the surrounding society.

**Cyprus** applied the criteria cumulatively and non-exhaustively, focusing more on the 'distinct identity', i.e. the way in which the group was perceived, either by society or by the government, to possess an innate characteristic that made them different from what is considered to be the 'norm', which means that discrimination also comes into place. To date, **Cyprus** has recognised 'particular social groups' such as LGBT, single women with a child born out of wedlock in Iran and India, HIV applicants from Ghana, victims of FGM from Somalia, persons threatened by honour killings in Pakistan, orphan girls from Syria, *but also targeted professional groups* e.g. journalists, musicians, poets.

Differences in interpretation of what constituted a particular social group were identified between and even within some Member States. With regard to women, for example, **Austria** and **Poland** referred to the dissenting opinions on whether women constituted a particular social group in (certain) Muslim countries or whether additional features should apply (e.g. women had to be 'westernised'). The **Netherlands**, explicitly excluded women from constituting a particular social group in their internal guidelines, only on the basis that they were women.

**France's** practice, furthermore, had seen an interesting evolution in the last few years: before 2010 they had a specific notion which included well-founded fear of persecution among the characteristics of the group,<sup>116</sup> which led to the definition of groups whose sizes were limited either by the 'rarity' of the protected characteristic (e.g. transsexuals) or by a behavioural requirement (homosexuals willing to publicly express their orientation, women opposed to FGM or to forcible marriage, etc.). This position was later abandoned<sup>117</sup> in the light of Article 10(1)(d) of the Recast QD following which the

<sup>115</sup>UN High Commissioner for Refugees (UNHCR), *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, 23 October 2012, HCR/GIP/12/01, available at: <http://www.refworld.org/docid/50348afc2.html>, UN High Commissioner for Refugees (UNHCR), *Guidelines on International Protection No. 2: "Membership of a Particular Social Group" Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 7 May 2002, HCR/GIP/02/02, available at: <http://www.refworld.org/docid/3d36f23f4.html>.

<sup>116</sup> Conception deriving from Council of State benchmark decision CE 23 June 1997 Mme O. n° 171858 A

<sup>117</sup> Council of State, judgment CE 14 June 2010 OFPRA c. M. A n° 323669 A.

existence of the social group was ascertained exclusively with regard to the two criteria, with the assessment of well-founded fear being undertaken separately, i.e. no longer as a necessary element of the definition of a social group. This evolution led to the redefinition of previous social groups, shifting the focus away from the supposed behaviour of the applicant towards the protected characteristics. It was therefore no longer required, for example, that a young girl or woman had 'opposed' being sexually mutilated. However, the social perception test was still being considered a problematic element of the definition and conflicting views on certain subjects were observed in French case law (e.g. concerning cases of human trafficking or forced marriages).

According to the conditions prevailing in certain countries of origin, **France** had defined social groups based on:

- Sexual orientation (mainly homosexuality and seldom cases of transsexuals): CE 27 July 2012 M.B. n° 349824 A
- Forcible marriage: CRR SR 29 July 2005 Mlle T. n° 04046266 R
- FGM: CE Plenary 21 December 2012 Mlle D.F n° 332491 A
- Albinism: CRR 10 June 2005 M.T. n° 04041269 R
- Victims of human trafficking: CNDA 24 March 2015 Mlle E.F. n° 100012810 C+
- Slavery: CNDA 9 march 2011 M. S. 09023872 C.

While noting the positive development in case law in **France** on social groups, NGOs were critical of the fact that the French first-instance authority did not define a new social group but that this was only established by a second-instance authority or a court.

Among those Member States that applied the two criteria alternatively, **Greece** indicated that they tended to focus more on the first criterion but emphasised that particular social groups also very much depended on the socio-political context of the country of origin. For example, members of a family involved in a vendetta/blood feud (in Afghanistan/Pakistan), LGBT (in several states), single mothers without support (in certain African States, such as Ethiopia) or girls attending school (in certain provinces of Afghanistan) were considered

particular social groups. NGOs and lawyers confirmed the application of the alternative criteria but mentioned that in practice the establishment of new social groups was rare and not harmonised amongst relevant determining authorities (i.e. some case handlers accepted a particular social group but others did not).

Finally, legal representatives and NGOs cautioned that, especially in gender and sexual identity sensitive cases, the credibility assessment constituted a key obstacle (BE, EL, MT, PT, RO) and some criticised the quality of the decisions in certain Member States (MT, PT), which mainly disqualified and rejected claims on the basis of lack of credibility rather than providing legal reasoning, for example on the reasons for persecution.

### 3.9.3 Changes in Member States' practices since the Recast QD in 2013

Most Member States' legislation have introduced the amendment of the Recast QD in 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 (e.g. BE, BG, CY, DE, EL, FI, IT, MT, NL, RO, SK, SL). The statement that gender creates no presumption of membership of a group has been deleted in most cases where it existed in national legislation or had never been part of the national law in (BE, CY, DE, EL, FI, HR, IT, SK). However, in a few cases this phrase has remained in the law (RO) or in their guidelines (NL). Certain Member States (CZ, HU, LT, LV and SE) have not transposed the new Article 10(1)(d) and in a few cases (CZ, LV) the gender aspect is not explicitly mentioned in the law, although state practice takes it into consideration. In the case of **Germany**, the law goes beyond the definition and also provides for a clear recognition of gender-related persecution under the reason 'membership of a particular social group' by adding that "if a person is persecuted solely on account of their sex or sexual identity, this may also constitute persecution due to membership of a certain social group." This provision for gender-related persecution was already contained in the law prior to the Recast QD.

Regardless of whether they have transposed Article 10(1)(d), all Member States confirmed that gender-related claims are taken into consideration as part of the assessment of the application. However, as mentioned above, certain NGOs and legal representatives have expressed concerns as to the assessment of gender-related persecution in practice, given that there are many different forms of gender-based violence, many of which are difficult to prove, which leads to the application being rejected on the basis of a lack of credibility.

### 3.9.4 Examples of good application

The following could be considered as examples of good application:

- Member States that apply the alternative approach when assessing particular social groups can be considered as demonstrating good application of the Directive as it goes beyond the literal requirements and is in line with the spirit of the Directive and international refugee law.
- Member States that provide case handlers with detailed guidelines, training and the possibility to seek advice from experts on issues such as medical, cultural, religious, child related or gender issues and issues related to sexual orientation and gender identity.
- Applying a broad understanding of gender-related persecution and identity. For example, **Germany** recognises FGM, forced marriages and honour crimes as reasons for claiming persecution. Since 2012 **Belgium** and the **United Kingdom** recognise slavery; **Italy, Malta** and the **United Kingdom** recognise trafficking; and **Italy, Sweden** and the **United Kingdom** recognise forced abortion and forced sterilisation as gender-related forms of persecution.<sup>118</sup>

### 3.9.5 Possible application issues

The following practices can be considered as being incompliant, not properly implemented and/or not 'within the spirit' of the Directive.

- Although the literal understanding of Article 10(1)(d) of the Directive allows for the cumulative approach, which seems to have been adopted by most Member States, it is arguably not in accordance with the objective of this provision and the spirit of the Directive and international law. In practice, the protected characteristics approach or the social perception approach should be applied, rather than requiring both.<sup>119</sup>
- Member States not considering all gender-related aspects under Article 10, for example by not accepting that certain forms of harm can constitute persecution (e.g. FGM or explicitly excluding women) or that there is a gender-related nexus (e.g. trafficking) and by adopting a restrictive approach to which gender-related aspects may constitute a particular social group.
- Some Member States appear to have in place credibility assessment standards which are too restrictive, or to apply a too restrictive interpretation of the latter with regard to gender-related claims.

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<sup>118</sup> Hana Cheikh Ali, Christel Querton and Elodie Soulard for the European Parliament: Gender related asylum claims in Europe, A comparative analysis of law, policies and practice focusing on women in nine EU Member States (2012), p. 43.

<sup>119</sup> This also the position of UNHCR and ECRE and expressed by stakeholders before the adoption of Recast Directive, but the position for a cumulative application prevailed. ECRE Information Note on the Directive 2011/95/EU, p. 9; UN High Commissioner for Refugees (UNHCR), Guidelines on International Protection No. 2: "Membership of a Particular Social Group" Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees, 7 May 2002, HCR/GIP/02/02, available at: <http://www.refworld.org/docid/3d36f23f4.html>, para. 10-13.; UNHCR Observations in the cases of Minister voor Immigratie en Asiel v. X, Y and Z (C-199/12, C-200/12, C-201/12) regarding claims for refugee status based on sexual orientation and the interpretation of Articles 9 and 10 of the EU Qualification Directive, p. 9.

### 3.9.6 Recommendations

Based on the above findings, the following recommendations can be put forward:

- The European Commission may consider adding a clarification to Article 10, in line with CJEU jurisprudence,<sup>120</sup> stipulating that determining authorities cannot reasonably expect an applicant to behave discreetly or abstain from certain practices that may attract persecution for one of the reasons stated in the Article, in order to avoid the risk of persecution.
- Taking into consideration that certain Member States already apply the criteria of Article 10(1)(d) for the establishment of the particular social group alternatively, according to the UNHCR guidelines and most prominent scholars' interpretation on this issue,<sup>121</sup> the European Commission could consider amending the relevant Article as to foreseeing the protected characteristics approach and the social perception approach alternatively instead of cumulatively (replacing 'and' with 'or'). Such an amendment would make the application of the Article easier and more inclusive in terms of protection by not excluding someone who fulfils the first but not the second criterion, or vice versa.<sup>122</sup>
- EASO could consider the consistent adoption and implementation of gender guidelines and training for asylum case handlers and judges, by also taking into consideration UNHCR guidelines on sex and gender identity as well as on gender-related persecution.
- EASO could consider the development of guidelines on the establishment of particular social groups, as well as a list with those defined by Member States' authorities, so that these can also be taken into consideration by other Member States.

**Table 3.9 Benchmarks for measuring the implementation of Article 10**

**Whether MS apply the protected characteristics approach and social perception approach:**

<sup>120</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>121</sup> UN High Commissioner for Refugees (UNHCR), *UNHCR comments on the European Commission's proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted (COM(2009)551, 21 October 2009)*, 29 July 2010, available at: <http://www.refworld.org/docid/4c503db52.html>, para. 6, p. 7-8, UN High Commissioner for Refugees (UNHCR), *Guidelines on International Protection No. 2: "Membership of a Particular Social Group" Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 7 May 2002, HCR/GIP/02/02, available at: <http://www.refworld.org/docid/3d36f23f4.html>, para. 10-13.; UNHCR Observations in the cases of *Minister voor Immigratie en Asiel v. X, Y and Z (C-199/12, C-200/12, C-201/12)* regarding claims for refugee status based on sexual orientation and the interpretation of Articles 9 and 10 of the EU Qualification Directive, p. 9, Comments from the European Council on Refugees and Exiles (ECRE) on the European Commission Proposal to recast the Qualification Directive, <https://bit.ly/2Hwipnl>, para. 2.5., p. 11, ECRE Information Note on the Directive 2011/95/EU, p. 9; James C. Hathaway, *The Michigan Guidelines on Nexus to a Convention Ground*, 23 Mich. J. of Int'l Law 207, (2002). Every second year, the University of Michigan's Program in Refugee Law hosts a Colloquium on Challenges in International Refugee Law. Leading academic experts are invited to develop an intellectual framework for resolution of a significant problem facing international refugee law. As a result of the Colloquium convened in March 2001, The Michigan Guidelines on Nexus to a Convention Ground were issued. Several leading refugee scholars contributed to the development of these guidelines after reflecting on the relevant norms and a comprehensive survey of state practice in leading asylum countries.

<sup>122</sup> For the pros and cons of each approach, see also "Protected characteristics and social perceptions: an analysis of the meaning of particular social group", Alexander Aleinikoff, pp. 32-39 and a recommendation for an inclusive approach, where "identification of a group under the protected characteristics approach would be *sufficient*, but not *necessary*, for Convention purposes."

Alternatively	EL, IE, IT, LT, LV
Cumulatively	AT, BE, BG, CY, CZ, DE, EE, FI, FR, HR, HU, LU, MT, NL, PT, RO, SE, SI, SK, UK
<b>Whether or not MS may require from the applicant discreet behaviour to avoid persecution:</b>	
No	AT, BE, BG, CY, CZ, DE, EE, EL, FI, FR, HR, HU, IT, LT, LU, LV, MT, NL, PT, RO, SE, SI, SK, UK
Yes	DE (NGOs/lawyers stated that this was not always the case)
<b>Whether or not determining authorities in the Member State are competent to define a new particular social group (as opposed to only second instance authorities/courts, etc.):</b>	
Yes	AT, BE, BG, CY, CZ, DE, EE, EL, FI, FR, HR, HU, IT, LT, LU, LV, MT, NL, PT, RO, SE, SI, SK, UK
No	FR (NGOs stated that first instance determining authority in France did not have such a competence)
<b>Whether or not MS have gone beyond the UNHCR guidelines for particular social groups by foreseeing other criteria than the protected characteristics and the social perception (which do not constitute an additional requirement but an alternative basis for defining a particular social group):</b>	
Yes	None
No	AT, BE, BG, CY, CZ, DE, EE, EL, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PT, RO, SE, SI, SK, UK

### 3.10 Cessation – Articles 11 and 16

#### 3.10.1 Background on cessation

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.

When it comes to refugees, there are **six possible grounds** to activate the cessation provision. The person concerned ceases to be a refugee (Article 11) when he or she (a) has voluntarily availed himself or herself of the protection of the country of nationality, (b) has voluntarily re-acquired his or her nationality after having lost it, (c) has acquired a new nationality and enjoys the protection of the relevant country, (d) has voluntarily re-established himself or herself in the country that he or she left or outside which he or she remained due to the fear of persecution, (e) can no longer refuse to avail himself or herself of the protection of the country of nationality, or (f) being a stateless person, is able to return to the country of former residence because the circumstances that led to the recognition of the refugee status have ceased to exist.<sup>123</sup>

In the case of beneficiaries of subsidiary protection (Article 16), a person ceases to be eligible for subsidiary protection when the circumstances that led to the recognition of his or her status have ceased to exist or have changed to such a degree that protection is no longer required.<sup>124</sup>

<sup>123</sup> Article 11(1).

<sup>124</sup> Article 16(1).

In both cases, Member States have an obligation to assess whether the change in circumstances is of such **a significant and non-temporary nature** that the person's fear of persecution is no longer well-founded or that the person no longer faces a real risk of serious harm.<sup>125</sup> In practice, such changes should consolidate over time before a decision on cessation is made.<sup>126</sup>

In cases where the person is able to invoke **compelling reasons arising out of previous persecution or serious harm** for refusing to avail himself or herself of the country of nationality or, in the case of stateless persons, of the country of former residence, the change of circumstances cannot be regarded as a ground for cessation of the status. The latter provision was included in the Recast QD and was welcomed as a positive inclusion by stakeholders such as UNHCR and ECRE.<sup>127</sup>

The following evaluation questions were assessed:

*What is the scale of cessations, in terms of:*

- *The number of cessation procedures started, by status granted?*
- *The number of 'confirmed' cessations and those stopped for compelling reasons, by status granted?*
- *The number of cessations as a share of the total number of persons with a refugee or subsidiary protection status?*

*What triggers the application of the cessation provisions? Is the start of a review linked to UNHCR recommendations on cessation and UNHCR country of origin guidance?*

*What information is used to assess whether a third-country national is still eligible for international protection?*

*How do the Member States assess the change of circumstances? Do the Member States apply a 'grace period' to ensure that the changes are indeed non-temporary?*

*How do the Member States assess the 'compelling reasons'?*

### 3.10.2 Findings for Articles 11 and 16

#### **Summary of main findings**

The main findings in relation to Articles 11 and 16 can be summarised as follows:

- Only a few cessation cases were reported in the Member States consulted.
- In most Member States, the application of the cessation provisions could mainly be triggered by new elements regarding the individual concerned, or by evidence of a significant and non-temporary change in circumstances in the country of origin. Such information could be provided either by relevant authorities in the third countries concerned, by other Member States, identified in COI or UNHCR reports. A few Member States indicated that they did not proceed to a regular reassessment of the validity of international protection statuses. 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.
- While a range of objective information, such as COI or UNHCR reports, could be used in order to assess whether a third-country national or stateless person was still eligible for international

<sup>125</sup> Article 11(2) and 16(2).

<sup>126</sup> UNHCR Guidelines on International Protection No. 3: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Geneva Convention, <http://www.refworld.org/docid/3e50de6b4.html>

<sup>127</sup> UNHCR Comments on the European Commission's Proposal, *op.cit.*, p.8 and ECRE information note on Directive Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011, p.9.

protection, all Member States consulted also undertook an individual assessment of the situation and took into account information and evidence provided by the person concerned.

- None of the Member States consulted had internal issued guidelines on how to assess the change in circumstances. While none of them had defined a **'grace period'** (i.e. a fixed time period that would indicate the stability and significant nature of the change in circumstances), in their legislation, a great majority stated that they carefully assessed the sustainability of the change in circumstances before taking a cessation decision.
- In most Member States, the individual assessment of the potential cessation case allowed the third-country national to present 'compelling reasons' for not availing himself or herself of the protection of his or her country of origin. In most cases, this would be possible during a hearing or personal interview.

### Statistical information

The cessation provisions **seemed to be seldom applied** by Member States. Only seven Member States provided quantitative data on the number of cessation procedures (BE, BG, EE, EL, FI, HR and SI).<sup>128</sup> **Belgium** indicated that 48 cessation decisions had been taken over the 2010–2014 period. In October 2015, seven cessation cases had been identified. The grounds for these decisions – Article 11 or Article 16 – were not specified. In **Bulgaria**, six refugee statuses and 14 subsidiary protection statuses were ceased between 2012 and the first months of 2016. **Croatia** and **Estonia** stated that the provisions had never been applied, while **Slovenia** indicated that three cessation procedures had been started, all concerning subsidiary protection statuses. **Greece** did not identify any cessation decisions adopted since the creation of its Asylum Service within the Ministry of Migration in 2013. In **Finland**, the authorities indicated that 150 cessation procedures had been initiated in 2015, which led to the cessation of 91 refugee statuses and 21 subsidiary protection statuses.

Other Member States (AT, CZ, IT, LU, MT, PL) indicated that their use of the provisions was not frequent, with **Malta** estimating that they had "very few cessation cases" and only under Article 11 and **Poland** stating that they must have had "a few cases per year". Finally, **Lithuania** stated that they had never stopped a case for "compelling reasons".

### Triggers of cessation

A wide range of sources could be used by Member States to trigger the application of the cessation provisions. The two main triggers identified were the identification of **new elements regarding the individual's circumstances** and a **significant and non-temporary change of the circumstances** that led to the granting of the protection status in the country of origin.

Sixteen Member States indicated using new elements regarding the individual concerned as a trigger (BE, BG, CY, CZ, DE, FI, HU, IT, LV, MT, NL, PL, RO, SE, SI, UK). Examples of these elements included indications that the person had travelled back to or resettled in his/her country of origin (BE, DE, FI, IT, LV, MT, NL, PL, SE, UK), contacted the authorities of the country of origin (RO), or acquired a new nationality (RO, UK). In **Belgium**, the CGRA stated that the police could notify that the beneficiary had travelled regularly and legally to his country of origin. A **Polish** NGO and the **United Kingdom** authorities specified that a return to the country origin under particular circumstances such as a relative passing away was not considered a trigger. In **Sweden**, the Swedish Migration Agency (SMA) indicated that voluntary returns and the receipt of a national passport were the most frequent causes to apply the cessation provisions. In **Germany**, reviews were also conducted following requests for family reunification, as well as requests for naturalisation.

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<sup>128</sup> Information regarding all EU Member States bound by Directive 2011/95/EU or 2004/83/EC are reflected regarding Articles 11 and 16, with the exception of ES where no information could be collected for reasons explained in Section 2 of this report.



Evidence of a significant and non-temporary change in the circumstances in the country of origin was also invoked as a possible ground to envisage the application of the provisions (BE, BG, CY, CZ, DE, EL, FI, FR, IE, IT, LV, PL, RO, SE, SI, UK). In **France**, the OFPRA explained that they had reviewed protection statuses granted to Tunisian nationals who had been granted protection after the uprisings in 2011, once the situation in Tunisia improved and stabilised. However, most beneficiaries of protection had already returned voluntarily to Tunisia by the time the French authorities sought to contact them. In **Germany**, changes of circumstances in specific countries of origin triggered reviews of subsidiary protection statuses in the past (e.g. Yugoslavia in early 2000s or Iraq after the fall of Saddam Hussein) A few Member States indicated that they did not regularly check the validity of protection statuses (BG, IE, LV, MT, SE).

However, in other Member States, the **grounds for international protection appeared to be reassessed on a regular basis** (AT, DE, UK). In **Austria**, the validity of subsidiary protection was checked when a renewal of the residence permit was requested. In practice though, it was rare that the circumstances giving rise to the need for protection changed within a year so the status was generally maintained. In the **United Kingdom**, international protection statuses were reviewed when beneficiaries of international protection applied to renew their residence permit, which for refugees occurred every five years. Due to the current crisis, proposals to limit the length of the residence permit granted to refugees were examined in **Austria** and **Belgium**. Such a limitation could lead to the reassessment of the grounds for refugee status on a more regular basis, but for the time being there was no situation that would trigger such a reassessment *ex officio*.

#### Example of regular reviews of protection grounds in Germany

Since 2005, **Germany** had been reviewing protection statuses every three years, in connection with the renewal of the residence permits of the beneficiary (Article 73(2)(a) of the Asylum Law). However, the authorities indicated that changes in circumstances in such a short time were rare. Subsidiary protection statuses were not reviewed as part of this process. If the circumstances had not changed at the time of the review and granting protection was still justified, refugees received a permanent residence permit, while beneficiaries of subsidiary protection obtained a residence permit valid for seven years.

Checks were mandatory for refugees but not for beneficiaries of subsidiary protection. This can be explained by the fact that **Germany** grants a much higher number of refugee than subsidiary protection statuses.

In **Hungary**, refugee statuses were only re-examined when there was an indication that they might no longer be valid. Subsidiary protection statuses on the other hand were reviewed at least every five years following the recognition of the status. Likewise, in **Latvia**, there was an exception for beneficiaries of subsidiary protection whose residence permit was renewed every year if the circumstances that led to granting them protection had not changed. In the event they had changed, there was no individual assessment of their situation and the status ceased. In the **Netherlands**, beneficiaries of international protection were granted a residence permit for five years, which could be revoked if the reasons for granting no longer existed.<sup>129</sup> After five years, the beneficiary of international protection could be granted a permanent residence permit for asylum, which could not be revoked on cessation grounds.

In **Belgium**, the Minister of Interior could request to investigate the validity of a subsidiary protection status during the validity of the person's residence permit (five years). However, the CGRA indicated that it was an independent body and was not bound by such a request. It had to take a decision on the specific case within 60 working days.

#### Information used

Several Member States indicated that they relied on **COI** available at national level or shared with other Member States (AT, BE, CY, CZ, DE, EL, IE, IT, MT, NL, RO, SI, UK), 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, UK). In the **Czech Republic**, case handlers could liaise with

<sup>129</sup> See Section 3.20 on Article 24 – Residence permits

Czech embassies in the country of origin to assess the change in circumstances. In **Italy**, UNHCR indicated that a review could start based on information provided by liaison officers, the Ministry of Foreign Affairs or the Police Headquarters. In **Poland**, one of the NGOs consulted stated that such cases could occur based on considerations by the Office for Foreigners. New evidence could also be provided by national authorities or Border Guards. In **Germany**, UNHCR recommendations were not used very often as procedures usually started before their publication.

#### Example of assessment of the change in circumstances in the **Netherlands**

The assessment was done by viewing country reports composed and published by the Dutch Ministry of Foreign Affairs on the country of origin in question.

If necessary, the Ministry could be requested to investigate on an individual level to determine if the change of circumstances was of a significant and non-temporary nature in the individual case.

The case-level assessment consisted of judging all facts and circumstances regarding the possible grounds for cessation against the original grounds for granting an asylum permit. In case of cessation grounds, an assessment was done both:

- *Ex tunc* (addressing the reasons for not granting asylum status on grounds other than the original ground on which international protection was granted at the time of the original decision), and
- *Ex nunc* (addressing whether the person concerned qualified for international protection on new/other grounds at the time of the decision of revocation).

In addition, several Member States consulted confirmed that the **assessment was individual** and therefore took into account information or evidence provided by the beneficiary of international protection (BE, CY, DE, IE, IT, LT, LV, MT, NL, RO, SI, UK). In **Belgium** and **Cyprus**, the beneficiary of international protection could provide his or her justifications during a personal interview or in writing. In **Germany**, the beneficiary of international protection had the possibility to bring individual information into the procedure, usually in writing. In **Italy**, a hearing was organised with the beneficiary, unless this was impossible because the person had absconded. In **Lithuania**, the Asylum Affairs Division of the Ministry of Interior stated that the beneficiary needed to lodge a formal request and an interview would be organised for him or her to prove his or her eligibility.

In other Member States, the **general living conditions and integration** of the beneficiary of international protection were assessed in order to determine whether the status should be ceased (CY, CZ, DE, RO). In **Cyprus**, the duration of residence and elements such as the level of integration of the individual, or the fact that the individual had children attending national schools, were taken into account in the decision-making process. In the **Czech Republic**, the length

of the stay of the beneficiary of international protection was taken into account in the assessment, pursuant to a judgment by the Administrative Supreme Court that recalled the importance to assess the respect of the right to family life. In **Germany**, the assessment of the degree of integration was mandatory as part of the regular review of the grounds for protection after three years and took into account the person's personal interest, his or her status of integration, and was weighed against the public interest. The **Polish** authorities indicated that locating the beneficiary of international protection could be challenging and this could prevent the organisation of the hearing. Similarly, in **Romania**, the beneficiary's level of integration into Romanian society was also taken into account in the assessment. Member States that did not conduct an individual assessment of the application were not identified.

#### **Assessment of the change of circumstances**

None of the Member States consulted had developed **internal guidelines** defining how to assess the change of circumstances.

Several Member States confirmed they assessed the **significant** and **non-temporary** nature of the change in circumstances (AT, BE, CY, DE, EL, IT, LT, NL, SI, UK). While none of the Member States

confirmed to have defined a **grace period**, 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 the situation was stable, before starting a cessation procedure (AT, BE, BG, FI, IE, IT, LT, MT, SE, SI). Although **Greece** had not applied the Article in practice since the reform of their asylum system in 2013, the Asylum Service in the Ministry of Migration stated that they agreed with the principle of a grace period. In **Poland**, one of the NGOs consulted also stated that the durability of the change was assessed before triggering the cessation procedure. In **Portugal** however, NGOs mentioned cases where partial and selective COI had been used to justify cessation cases where the circumstances of the individual had not been taken into account.

#### Assessment of the substantial and non-temporary nature of the change by German courts

After the *Abdulla* case,<sup>1</sup> the Federal Asylum Court ruled that substantial and permanent changes had to be assessed against the standard that the factors that had led to persecution had been “eradicated for the foreseeable future” (Case No. 10 C 25.10 of 1 June 2011). The Court established a correlation between the severity of the persecution and the standard of proof expected: the more serious the persecution was, the more stable the change had to be.

Issues with residence permits linked to subsidiary protection statuses that were not renewed on cessation grounds were flagged before 2015 by NGOs in **Greece**, where the decisions were justified by the fact that the situation in the country/region of origin had changed. However, at the same time the determining authority (Asylum Service) continued to grant subsidiary protection statuses to applicants originating from the same region, and such discrepancies in practices affected the fairness of the procedure and were not in conformity with the Directive provisions and objectives. Nevertheless, the persons concerned could lodge an appeal against the decision to renew their status/residence permit, and the Appeals Board have accepted the appeals and renewed the residence permits.

In addition, the **Romanian** Asylum and Integration Directorate in the General Inspectorate for Immigration stated that there were no internal guidelines defining how to apply the cessation provisions, but that the *Abdulla* jurisprudence of the CJEU was applied. This meant that, when assessing potential changes in the circumstances, the authorities verified that the **actors of protection in the country of origin had taken reasonable steps** to prevent the persecution and that the person concerned had access to that protection.<sup>130</sup>

In the **Czech Republic**, the authorities explained that the burden of proof shifted to the determining authority when they decided to apply the cessation provisions. On the contrary, in **Poland**, lawyers stated that the burden of proof was on the applicant in the cessation procedure.

### 3.10.3 Changes in Member States’ practices since the Recast QD in 2013

#### Compelling reasons

A few Member States had specifically transposed the provision after the Recast QD (BG, CY, CZ, FI, IT, LT, PT). In other Member States (e.g. DE, FR, HU, UK), the existence of compelling reasons was already assessed before the inclusion of the provision in the Recast QD. In **Germany**, Case No. 1 C 21.04 of the Federal Asylum Court of 1 November 2005 ruled that there needed to be a causal link between the persecution and such compelling reasons. The application of the concept was thus limited to exceptional circumstances of particularly inhuman nature (e.g. violent detention, violence against family members).

In many of the Member States, the **individual assessment** of the case allowed the authorities to assess on a case-by-case basis whether there were compelling reasons arising out of previous persecution or serious harm for the person to refuse to avail himself or herself of the protection of

<sup>130</sup> CJEU, C-175/08, C-176/08, C-178/08 & C-179/08 *Salahadin Abdulla & Others v Bundesrepublik Deutschland*, 2 March 2010.

his or her country of origin (AT, BE, BG, FI, HU, IE, IT, LT, MT, RO, SE, SI). In **Hungary**, the assessment of compelling reasons was triggered by the individual's statement that s/he could not return to his/her country of origin, but the assessment itself was mainly based on COI. In **Ireland**, national authorities stated that it would be "persecutory in nature" to cease the protection status when the person's past treatment in his or her country of origin was traumatising. In **Romania**, the Asylum and Integration Directorate of the General Inspectorate for Immigration explained that the level of intensity and gravity of the persecution or serious harm suffered by the person in the country of origin was assessed, as well as the possible perception the population would have of the person concerned if he or she were to return.

In **Sweden**, the SMA had not encountered any cases where there were compelling reasons for the person to refuse to avail himself or herself of the protection of his or her country of origin. They had no internal guidelines or jurisprudence to define how this provision may be applied.

### 3.10.4 Examples of good application

The assessment of both general and individual information in order to determine whether the cessation grounds apply, as done by several Member States, ensures the respect of the *non-refoulement* principle. In this perspective, hearing the beneficiary's views on the situation is a good way to ensure the adoption of a decision tailored to the specific situation of the beneficiary and the identification of potential compelling reasons.

Taking into account the length of the stay and degree of integration when assessing whether the international protection status should be ceased is in line with the spirit of the Directive, which provides for the grounds to improve the integration conditions of beneficiaries of international protection. Ceasing the protection status of a beneficiary of international protection who has been present on the territory for years and has built his or her life there could have unintended additional consequences and result in additional harm for the individual.

### 3.10.5 Possible application issues

The following practices can be considered as being incompliant, not properly implemented and/or not 'within the spirit' of the Directive.

- Issues with residence permits linked to subsidiary protection statuses that were not renewed on cessation grounds were flagged in some Member States (e.g. EL before 2013) and were justified by the fact that the situation in the country/region of origin had changed. However, if at the same time the determining authority continued to grant subsidiary protection statuses to applicants originating from the same region, such discrepancies in practices may affect the fairness of the procedure and not be found to conform to the Directive provisions and objectives.
- Issues with individual circumstances not being assessed during the reassessment of the situation in the country of origin in view of a renewal of the residence permit/status (LV).

### 3.10.6 Recommendations

Based on the above findings, the following recommendations can be put forward:

- The European Commission should make sure that guidance and training, available for national authorities (particularly EASO's End of Protection Training Module<sup>131</sup>), stress the importance of favouring a good integration in the host society and should encourage Member States to take into consideration the person's integration in their society, family situation and the length of their stay in their application of cessation grounds. This would be in line with the UNHCR Guidelines on

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<sup>131</sup> The next phase of the Quality Matrix led by EASO is planned to examine the End of Protection (cessation and revocation).

Cessation,<sup>132</sup> according to which Member States should consider “appropriate arrangements” for persons “who cannot be expected to leave the country of asylum, due to a long stay in that country resulting in strong family, social and economic links.” Such circumstances could lead to granting the person with an alternative residence status.

- Given the nature of subsidiary protection, in the sense that the status is mainly related to the situation in the country of origin and less to the applicant’s individual situation, Member States could be encouraged to systematically review this protection status (for example when a renewal of the residence permit is requested by the beneficiary of subsidiary protection) to ensure that the need for protection is still justified. If the review shows that the situation justifying the international protection status has ceased, Member States should, prior or simultaneously with the cessation procedure, be encouraged to review whether another permit to stay can be granted (e.g. based on long-term residency, employment, family situation, humanitarian reasons, etc.). Policy decision on whether to undertake such systematic reviews should however take into account the availability of resources, notably when a significant volume of first-instance claims are awaiting decisions, which would potentially form a higher priority for allocation of resources than conducting cessation assessments.

### 3.10.7 Benchmarks for measuring the implementation of Articles 11 and 16

<b>What triggered the review of the validity of the international protection status:</b>	
Change in the individual’s circumstances (travel to the country of origin, acquisition of new citizenship...)	BE, BG, CY, CZ, DE, FI, HU, IT, LV, MT, NL, PL, RO, SE, SI, UK
Significant and non-temporary change of situation in the country of origin	BE, BG, CY, CZ, DE, EL, FI, FR, IE, IT, LV, PL, RO, SE, SI, UK
Regular review of the validity of the status	AT, DE, UK
<b>Whether or not there is a ‘grace period’ in order to check the stable nature of the change in circumstances:</b>	
Yes	None
No	AT, BE, BG, FI, IE, IT, LT, MT, SE, SI
<b>Whether or not TCN can present ‘compelling reasons’ for refusing to avail himself or herself of the protection of his or her country of origin:</b>	
Transposition and application since Recast QD	BG, CY, CZ, FI, IT, LT, PT
Concept already applied before Recast QD	DE, FR, HU, UK
Examined during the individual assessment of the claim	AT, BE, BG, FI, HU, IE, IT, LT, MT, RO, SE, SI
<b>Whether or not Member States take into account the degree of integration of the beneficiary of international protection before deciding on the cessation of the status:</b>	
Assessment of the general living conditions and integration before ceasing the international protection status	CY, CZ, DE, RO

## 3.11 Exclusion – Articles 12 and 17

### 3.11.1 Background on actors of protection

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.

<sup>132</sup> UNHCR, Guidelines on International Protection, *Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention Relating to the Status of Refugees (the “Ceased Circumstances” Clauses)*, p. 6

Article 12(1) repeats Articles 1D and 1E of the Geneva Convention and only applies to refugees.<sup>133</sup> A third-country national or stateless person is excluded from being a refugee if he or she is at present receiving protection from organisations or agencies of the United Nations other than UNHCR. In practice, this Article applies to registered refugees receiving assistance from the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), which operates in Jordan, Lebanon, Syria, the West Bank (including East Jerusalem) and Gaza. Around five million Palestinian refugees receive assistance from UNRWA.<sup>134</sup> However, when such protection or assistance has ceased for any reason, those persons are *ipso facto* entitled to refugee status as defined in the Recast QD.<sup>135</sup> In addition, if a third-country national or stateless person who 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, he or she is also excluded from being a refugee.<sup>136</sup>

According to the 2010 **Bolbol case** of the CJEU,<sup>137</sup> the wording of Article 1D of the Geneva Convention establishes that only the individuals who **have actually availed themselves of the assistance** provided by UNRWA fall under the scope of the exclusion provision under the Directive. The Court ruled that a narrow understanding of the provision should apply, and therefore that only those persons who have actually availed themselves of the assistance provided by UNRWA came within the clause excluding refugee status. However, UNHCR has a different interpretation of the provision. According to UNHCR, all Palestinians eligible for or receiving the protection or assistance of UNRWA should be eligible for the benefits of the 1951 Convention from the moment that protection or assistance ceases. Excluding eligible Palestinians from the scope of the exclusion amounts to restricting the access to refugee status.<sup>138</sup> In addition, according to the 2012 **El Kott judgment** by the CJEU,<sup>139</sup> Palestinian refugees who were forced to flee UNRWA camps, **for reasons beyond their control and will**, should be **automatically recognised as refugees** in EU Member States.

Additional grounds for exclusion are when there are serious reasons for considering that a third-country national or stateless person has committed a crime against peace, a war crime, or a crime against humanity, or that 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.<sup>140</sup> These grounds apply to both refugee status and subsidiary protection.

A person can also be excluded from being a refugee if there are serious reasons for considering that he or she has committed a serious non-political crime outside the country of refuge prior to his or her admission as a refugee. Particularly cruel actions, even when conducted with an allegedly political objective, may fall under the definition of serious non-political crime, according to the Directive.<sup>141</sup> In its *Bundesrepublik Deutschland v B and D*<sup>142</sup> ruling, the CJEU clarified the interpretation of Article 12(2)(b) as meaning that:

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<sup>133</sup> 1951 UN Convention on Relating to the Status of Refugees

<sup>134</sup> Note on UNHCR's Interpretation of Article 1D of the 1951 Convention relating to the Status of Refugees and Article 12(1)(a) of the EU Qualification Directive in the context of Palestinian refugees seeking international protection, May 2013.

<sup>135</sup> Article 12(1)(a).

<sup>136</sup> Article 12(1)(b).

<sup>137</sup> CJEU, C-31/09, *Nawras Bolbol v Bevándorlási és Állampolgársági Hivatal*, 17 June 2010.

<sup>138</sup> UNHCR Guidelines on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees.

<sup>139</sup> CJEU, C-364/11, *Mostafa Abed El Karem El Kott and Others v Bevándorlási és Állampolgársági Hivatal*, 19 December 2012.

<sup>140</sup> Articles 12(2)(a) and (c), and 17(1)(a) and (c).

<sup>141</sup> Article 12(2)(b).

<sup>142</sup> CJEU, C-57/09 and C-101/09, *Bundesrepublik Deutschland v B and D*, 9 September 2010,

- The fact that a person has been a member of an organisation which, because of its involvement in terrorist acts, is included in [an EU list of terrorist organisations] and that the person has actively supported the armed struggle waged by that organisation does not automatically constitute a serious reason for considering that that person has committed a “serious non-political crime” or “acts contrary to the purpose and principles of the United Nations”.
- The finding, in such a context, that there are serious reasons for considering that a person has committed such a crime or has been guilty of such acts is conditional on an assessment on a case-by-case basis of the specific facts in order to determine the person’s individual responsibility.

The Court added that exclusion from refugee status in application of Article 12(2)(b) or (c) was not conditional on the fact that the person currently represented a danger to the Member State or on an assessment of the case proportionality.

As regards persons eligible for subsidiary protection, they can be excluded if there are serious reasons for considering that they have committed a serious crime or they constitute a danger to the community or to the security of the Member State in which they are present.<sup>143</sup>

The grounds defined under Article 12(2) and 17(1) also apply to persons who incite or otherwise participate in the commission of the acts they define.<sup>144</sup>

Finally, the Directive leaves the possibility for Member States to exclude a third-country national or stateless person from being eligible for subsidiary protection if he or she, prior to his or her admission to the Member State concerned, has committed crimes that do not fall under the scope of the previous paragraphs, but would be punishable by imprisonment in the Member State concerned, and the person left his or her country of origin solely in order to avoid sanctions resulting from those crimes.<sup>145</sup>

The Recast QD did not bring any changes to Articles 12 and 17.

The following evaluation questions were assessed:

*What is the number of persons falling within the scope of Article 12(1)(a)? What is the number of exclusions by type of status and by grounds?*

*How do the Member States determine that a person falls within the scope of Article 12(1)(a)?*

*How do the Member States check the present character of the protection? Do they check whether the person has actually availed himself of that protection or assistance?*

*What are the consequences if the type protection defined under Article 12(1)(a) ceases to exist?*

*How do the Member States determine whether assistance has ceased?*

*What triggers the application of Article 12(1)(b)?*

*Do the Member States apply an exclusion clause with respect to an applicant who is recognised by the competent authorities of the country in which s/he has taken residence as having the rights and obligations, which are attached to the possession of the nationality of that country, or rights and obligations equivalent to those?*

*Do the Member States define the concepts related to the exclusion grounds?*

*How do the Member States verify the application of the grounds for exclusion?*

<sup>143</sup> Article 17(1)(b) and (d).

<sup>144</sup> Article 12(3) and 17(2).

<sup>145</sup> Article 17(3).

*Before applying this provision (Article 12(2)) do the Member States assess first whether there is a well-founded fear of persecution if the person returns to his/her country?*

### 3.11.2 Findings for Articles 12 and 17

#### *Summary of main findings*

The main findings in relation to Articles 12 and 17 can be summarised as follows:

- Articles 12(1)(a) and 12(1)(b) seemed to be **rarely applied** across Member States. The latter had not been transposed in several of the Member States consulted to date.
- Most of the Member States consulted proceeded to an **individual assessment** of the circumstances to determine whether Article 12(1)(a) should have applied. The **general circumstances in the country of origin and relating to UNRWA's role and capacity** in the region concerned were also looked at. In this process, international and national authorities could be consulted.
- The ***Bolbol*** jurisprudence was **applied in the majority of the 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.
- In application of the ***El Kott*** judgment, seven Member States stated that the cessation of the protection or assistance granted by UNRWA would **automatically have led to the recognition of the refugee status** of the person concerned. However, two Member States stated that this recognition would not be automatic and subject to an evaluation of the individual case.
- Four Member States claimed to have a **restrictive understanding and application of the text** due to the potentially serious consequences exclusion from international protection could have, and applied a **high standard of proof** to demonstrate that there were 'serious reasons to consider' that the grounds defined under Articles 12(2) and 17(1) applied.
- The concepts applicable under Articles 12(2) and 17(1) were **defined in internal guidelines** in some of the Member States consulted. These guidelines could be **complemented** with references to COI, applicants' statements, information provided by international and national authorities, as well as international organisations' guidelines, including the UNHCR Handbook on exclusion.
- Almost all of the Member States, except for ***Austria*** (for subsidiary protection), ***Germany*** and the ***Netherlands***, applied the **'inclusion before exclusion'** logic when assessing whether an individual should have been granted international protection. In order to ensure the **respect of the non-refoulement principle** when excluding third-country nationals from international protection, some Member States conducted a proportionality test assessing the risks incurred in the case of a return to the country of origin. Those Member States that assessed exclusion grounds before the inclusion procedure still proceeded to check that Article 3 ECHR would not be breached in cases where the applicant was to be returned to his or her country of origin.

#### *Statistical information*

Article 12(1)(a) seemed to be **rarely applied across Member States**. Only six Member States provided quantitative data on the number of cases falling under the scope of Article 12(1)(a) over recent years (EE, HR, LT, LV, PL, SI).<sup>146</sup> All but ***Latvia*** and ***Poland*** stated that the Article had never

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<sup>146</sup> Information regarding all EU Member States bound by Directive 2011/95/EU or 2004/83/EC are reflected regarding Articles 12 and 17, with the exception of ES where no information could be collected for reasons explained in Section 2 of this report.



been applied. **Latvia** recorded just one case while **Poland** identified two exclusion cases between 2012 and 2015 (the grounds were not specified).

Article 12(1)(b) was **not transposed in several of the Member States** (see relevant subsection below) and no quantitative data could be retrieved on its application.

No quantitative data or information was identified regarding the number of cases falling under the scope of Article 12(2) and Article 17.

### **Article 12(1)(a)**

#### **Scope of Article 12(1)(a)**

**Several Member States consulted 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.

#### **Example of assessment of Article 12(1)(a) in Belgium**

The **Belgian** CGRA relied on an in-depth check on the origins of the person concerned, based on detailed questioning as well as identity documents and other evidence available.

Evidence of registration with UNRWA was considered as sufficient proof if presented with identification documents. The CGRA gave opinions that assess the conditions for inclusion, both for refugee and beneficiary of subsidiary protection statuses, and the existence of a well-founded fear of persecution or a real risk of suffering serious harm in the country of origin.

The opinion would then assess whether a removal of the person from the territory was compatible in respect of Article 3 ECHR.

A **general examination** of the situation in the country of origin could complete the individual assessment (CY, EL, HU, RO, SI, SK).

Given the **serious character of the potential consequences** of an exclusion decision and the technical nature of the provision, **several authorities** could be involved in the assessment of whether Article 12(1)(a) should apply (BE, FR, LV). In **Belgium**, experts within each section specialised in a given geographical area in the CGRA took the decision, if necessary assisted by the Exclusion Coordinator and the Legal Department. In **France**, case handlers faced with an exclusion case had an obligation to involve the legal service of the OFPRA. In **Latvia**, contacts with UNHCR were established to seek advice on cases. In one Member State, it appeared that a single authority was involved in the assessment (IT).

#### **Present character of the protection**

The **Bolbol jurisprudence** was **applied in several of the 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, UK). In **Austria**, the present character of the protection was checked by the authority Austrian Federal Office for Immigration and Asylum (*Bundesamts für Fremdenwesen und Asyl* –BFA) by contacting UNRWA. They also checked whether the individual had actual access to the protection. If not, s/he would be granted refugee status. In the **Netherlands**, the authorities indicated that a temporary permit for asylum could only be granted if the individual could make it plausible that a return to the territory under UNRWA mandate was impossible as s/he had, within that territory, a well-founded fear of persecution as defined under Article 1A of the Geneva Convention and that s/he was unable to invoke protection from the UNRWA against the actors of persecution. In **Romania**, the assessment of the 'present' character of the protection or assistance was done on the basis of information on the last country of residence as well as the registration at the camp.

**Croatia** stated that there was no specific definition of the present character of the protection under Croatian national law.

#### **Cessation of the protection by UNRWA**

Eight 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, SE, UK). **Austria** specified that the reasons why the protection ceased (i.e. whether the applicant left voluntarily) did not make a difference. In **Sweden**, a new legal position paper was drafted by the SMA on this issue to guide protection officers. On the other hand, four Member States indicated that refugee status would not be automatically granted, notably if the individual voluntarily left the protection of UNRWA (BG, HR, IT, NL). In **Italy**, the assessment of the individual case would be conducted with the help of UNHCR, liaison officers and the Ministry of Interior.

In **Belgium**, even if the protection had not ceased, the CGRA would check the reasons why it was impossible for the individual concerned to return to the country of origin, either because of serious protection-related issues (*sur place* claim) or because of practical, legal and safety obstacles to the return. In cases where the impossibility for the applicant to return was demonstrated, the person would be granted refugee status automatically.

### Article 12(1)(b)

Article 12(1)(b) was **very rarely applied** in the consulted Member States. For this reason, several Member States indicated that they did not have any specific guidelines on how to apply this provision (BE, MT).

#### Example of assessment of Article 12(1)(b) in Finland

The term “equivalent rights and obligations which are attached to the nationality of the country” was not transposed into Finnish law as it was considered obvious that the original provision in the Geneva Convention did not mean that the person should have the nationality of the country. In **Finland**, the provision was understood as designating rights equivalent to those of a national.

When assessing whether Article 12(1)(b) would apply, the authorities verified that the individual actually received those rights and was not simply eligible for them.

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). The reason why the provision had not been transposed in **Sweden** was that refugees and beneficiaries of subsidiary protection had the same rights as nationals concerning housing, education, access to the labour market, social benefits, etc.

In other Member States, it seemed that interpretations of the scope of the Article varied. In some, it was considered as encompassing all third-country nationals having acquired its citizenship (AT, BG, IE, PL, PT), the citizenship of an EU Member State (PT) or a permanent resident status (PT, RO). The **Austrian** authorities only considered the possibility offered to refugees to take Austrian citizenship after six years on the territory (if the status was not revoked before). This possibility was not offered to beneficiaries of subsidiary protection. Such an interpretation limited the application of this provision to revocations of the status on the grounds of Article 12(1)(b). In **Ireland**, the Office of the Refugee Applications Commissioner (ORAC) examined each case individually by assessing “whether the applicant could reasonably be able to assert citizenship”. The final decision was made by the Irish Naturalisation & Immigration Service, Department of Justice & Equality, in the Ministerial Decisions Unit (MDU). During the interview, the **Polish** authorities indicated that the provision would probably be abrogated at the end of 2015, and would therefore no longer be used.

#### 3.11.2.1 Exclusion for not deserving international protection

Four of the Member States consulted had drafted **internal guidelines** on exclusion grounds and their application (BE, EL, IE, UK) based on commonly accepted international criminal law and international humanitarian law (IHL) definitions, as well as jurisprudence.

Four Member States claimed to have a **restrictive understanding and application of the text** due to the potentially serious consequences exclusion from international protection could have, and applied a **high standard of proof** to demonstrate that there were ‘serious reasons to consider’ that the grounds applied (BE, EL, IE, SE). However, some Member States had a more flexible approach. In **Germany**, an NGO indicated that the law was recently changed in order to include any conviction leading to at least one year of imprisonment for violence-related offences would result in the

automatic exclusion of the beneficiary of international protection. The **Polish** authorities seemed to have a more flexible understanding of this sentence, as they stated that the authorities did not need to be convinced that the grounds set in Articles 12(2) and 17(1) were met and a suspicion was enough.

Table 3.10 below provides an overview of the application of the grounds for exclusion defined under Articles 12(2) and 17(1)(a), (b) and (c)<sup>147</sup> of the Recast QD in the Member States for which this information was available. The analysis of this table shows that important divergences were observed, especially when it comes to concepts linked to subsidiary protection.

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<sup>147</sup> An analysis of Member States' conception of the concepts used under Article 17(1)(d) – the individual “constitutes a danger to the community or to the security of the Member State in which he or she is present” - is provided under Section 3.13 on Articles 14 and 19 – Revocation, ending of or refusal to renew the status.

**Table 3.10 Application of exclusion grounds under Articles 12(2) and 17(1) Recast QD by Member States**

	Articles 12(2)(a) and 17(1)(a) – Commission of a crime against peace, a war crime or a crime against humanity	Article 12(2)(b) – Commission of a serious non-political crime prior to the admission	Article 17(1)(b) – Serious crime	Articles 12(2)(c) and 17(1)(c) – Acts contrary to the purposes and principles of the UN	Mitigating factors
AT	Not specified.	Not specified.	No definition. - <i>Serious crime</i> : the Asylum Court decides on a case-by-case basis - <i>Factors considered</i> : <b>duration of imprisonment</b> , absence of <b>mitigating factors</b> , <b>first-time offences</b> and <b>exceptional cruelty</b> , - Ongoing debate with a pending case before the Constitutional Court. Most likely it is an offence for which a minimum custodial sentence of not less than three years is foreseen. - The requirements are stricter for refugees than for beneficiaries of subsidiary protection.	No definition. - Not necessary that the applicant has been (formally) prosecuted and found guilty by court or other authority. - A <b>leading position</b> within an organisation committing violent crimes can be an indication.	Mitigating factors as defined <b>under the UNHCR handbook</b> , such as age, duress, etc., are applied.
BE	- Commission of an act excludable (acts committed by soldiers in an armed conflict, crime against peace, crime against humanity as defined in International Criminal law and Humanitarian law).	- Non-political crime if the predominant feature of the crime or no clear link between the crime and the alleged political objective or disproportion of the act to the alleged political objective; - Political objectives should be consistent with human rights; - ‘Serious’ nature of the crime: involves crime against physical integrity, life and liberty but if deliberate killing or causing serious injuries, is considered too grave for political objectives	- Nature of the act - Extent and consequences - <i>Modus operandi</i> - Jurisprudence - Punishment - Motives of the perpetrator.	- Crimes capable of affecting international peace, security and peaceful relations between States - Serious and sustained violation of human rights. - Only extreme circumstances if perpetrators are directly involved in the implementation and a State violated the principles and the perpetrator is directly involved in the decision-making process. - Terrorist acts may be included - Aiding and abetting are defined very strictly (membership of an organisation not sufficient).	- Individual responsibility (personal contribution and <i>mens rea</i> ). - Defence to criminal responsibility (guilt, self-defence, duress, superior orders, minors, mistake in law or in fact).

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

	Articles 12(2)(a) and 17(1)(a) – Commission of a crime against peace, a war crime or a crime against humanity	Article 12(2)(b) – Commission of a serious non-political crime prior to the admission	Article 17(1)(b) – Serious crime	Articles 12(2)(c) and 17(1)(c) – Acts contrary to the purposes and principles of the UN	Mitigating factors
		unless during legitimate military operation.			
BG	International humanitarian law definition.	Punishable by at least 5 years of imprisonment.  Articles 12(2) and 17(1) are assessed in the same way.	- Punishable by at least 5 years of imprisonment.  Articles 12(2) and 17(1) are assessed in the same way.	No specific definition.	Not specified.
CY	NA	NA	NA	NA	NA
DE	NA	NA	NA	NA	NA
EE	NA	NA	NA	NA	NA
EL	Not specified	- No specific interpretation of what constitutes a serious crime. - Provision applies in both circumstances – if the crime was committed before or after leaving his country.	Felony or misdemeanour punishable with at least 3 years imprisonment. An exhaustive list of crimes is also included in the legislation.	No specific guidance. The person must be in a position of power and instrumental to his/her State's infringement of these principles.	- Assessment of personal responsibility with special assessment for accomplices to evaluate degree and liability (minors, mental disability, duress, defence). - <i>Mens rea</i> . - Whether the applicant has already served a penal sentence for the crime in question, whether s/he has been pardoned, if a significant period of time has elapsed since the crime was committed.
ES	NA	NA	NA	NA	NA
FI	NA	NA	NA	NA	NA
FR	Follow international humanitarian law. Definitions.  Clarified by case law.	Follow UNHCR guidelines.  Clarified by case law.	Follow international humanitarian law definitions.  Clarified by case law.	Follow international humanitarian law definitions.  Clarified by case law.	Clarified by case law.

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

	Articles 12(2)(a) and 17(1)(a) – Commission of a crime against peace, a war crime or a crime against humanity	Article 12(2)(b) – Commission of a serious non-political crime prior to the admission	Article 17(1)(b) – Serious crime	Articles 12(2)(c) and 17(1)(c) – Acts contrary to the purposes and principles of the UN	Mitigating factors
HR	No definition.	No definition.	No definition.	No definition.	No definition.
HU	Not specified.	- Intent - Motivation of the crime - Method of commission - Means used or intended to be used - Punishable by at least 5 years of imprisonment.	Not specified.	Not specified.	Not specified.
IE	Not specified.	Not specified.	Not specified.	- Crimes affecting international peace, security and peaceful relations between States. - Serious and sustained violations of human rights.	Not specified.
IT	NA	NA	NA	NA	NA
LU	Based on UNHCR guidelines Assessment on a case-by-case basis - Person in a position of power. - Prosecution or conviction not necessary.	Not specified.	Not specified.	Based on UNHCR guidelines. Assessment on a case-by-case basis.	- Sentence served - Pardon - A significant period of time has elapsed - Duress - Mental capacity - Age.
LV	NA	NA	NA	NA	NA
LT	NA	NA	NA	NA	NA
MT	Not specified.	Not specified.	Not specified.	No application of the ‘serious reasons for considering’.	Not specified.
NL	Not specified.	Murder, manslaughter, rape, war crimes, crimes against humanity, torture, genocide, slavery and	Murder, manslaughter, rape, war crimes, crimes against humanity, torture, genocide, slavery and slave trade can be regarded as serious crimes.	Not specified.	Not specified.

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

	Articles 12(2)(a) and 17(1)(a) – Commission of a crime against peace, a war crime or a crime against humanity	Article 12(2)(b) – Commission of a serious non-political crime prior to the admission	Article 17(1)(b) – Serious crime	Articles 12(2)(c) and 17(1)(c) – Acts contrary to the purposes and principles of the UN	Mitigating factors
		<p>slave trade can be regarded as serious crimes.</p> <p>Terrorist acts cannot be political.</p> <p><i>Elements taken into account:</i></p> <ul style="list-style-type: none"> <li>- Nature and consequences of the crime</li> <li>- Qualification of the crime under Dutch and international law, and to some extent in the country of origin.</li> </ul>			
PL	Not limited to perpetrators – aiding and abetting considered.	Not limited to perpetrators – aiding and abetting considered.	Not limited to perpetrators – aiding and abetting considered.	<p>Follow UNHCR guidelines.</p> <p>Not limited to perpetrators – aiding and abetting considered.</p>	<ul style="list-style-type: none"> <li>- Duress</li> <li>- Age</li> <li>- Mental capacity of the applicant</li> <li>- Served sentences, pardon or a significant time elapsing since the facts could be taken into account in the assessment.</li> </ul>
PT	NA	NA	NA	NA	NA
RO	NA	NA	NA	NA	NA
SI	NA	NA	NA	NA	NA
SK	NA	NA	NA	NA	NA
SE	Not specified.	- No reason to have any specific interpretation to what constitutes a serious crime aside from what is stated in internationally accepted interpretation guidelines.	Not specified.	Not specified.	<ul style="list-style-type: none"> <li>- Potential pressures</li> <li>- Actual role of the person</li> <li>- Position within the organisation</li> <li>- Knowledge of the activities.</li> </ul>

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

	Articles 12(2)(a) and 17(1)(a) – Commission of a crime against peace, a war crime or a crime against humanity	Article 12(2)(b) – Commission of a serious non-political crime prior to the admission	Article 17(1)(b) – Serious crime	Articles 12(2)(c) and 17(1)(c) – Acts contrary to the purposes and principles of the UN	Mitigating factors
		- A capital crime or very serious punishable act: Follows guidance of the UNHCR Handbook.			
UK	<p>Use of definitions in the ICC Statute.</p> <p><i>Crime against peace:</i> Includes planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances.</p> <p><i>War crimes:</i> Violation of international humanitarian law or the laws of armed conflict; violations of the laws and customs of war which entail individual criminal responsibility under international law whether on the basis of a treaty or under customary international law.</p> <p><i>Crimes against humanity:</i> Can be committed at any time. Crimes committed as part of a widespread and systematic attack directed against a civilian population, with knowledge of the attack.</p>	<p><i>Serious crime:</i> Crime for which a custodial sentence of 12 months or more upon conviction might be expected if that crime had been tried in the UK.</p> <p>Due to the difficulty in predicting the nature of the sentence, the nature of the crime and the actual harm inflicted, as well as whether most jurisdictions would consider it as a serious crime, are considered.</p> <p><i>Non-political:</i> Nature and purpose of the act (not for personal gain or reasons).</p> <p>Where the link between the alleged political motive and the crime is not clear, or when the act is disproportionate to the alleged political motive, non-political motives prevail</p> <p>Terrorist acts will often be ‘non-political’.</p>	See Article 12(2)(b).	<p>Include acts of committing, preparing, or instigating terrorism, and acts encouraging or inducing others to commit, prepare or instigate terrorism, whether or not the acts amount to an actual or inchoate offence.</p> <p>Persons who engage in certain acts of terrorism must also be considered for exclusion under Article 12(2)(b).</p>	



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

	Articles 12(2)(a) and 17(1)(a) – Commission of a crime against peace, a war crime or a crime against humanity	Article 12(2)(b) – Commission of a serious non-political crime prior to the admission	Article 17(1)(b) – Serious crime	Articles 12(2)(c) and 17(1)(c) – Acts contrary to the purposes and principles of the UN	Mitigating factors
	<i>Genocide</i> : part of crimes against humanity, committed with the intent to destroy, in whole or in part, a national, ethnic, racial, or religious group.				

The **UNHCR Handbook**<sup>148</sup> **seemed to be used as a reference** by the Member States consulted in order to define the concepts included in the Directive (AT, BE, EL, MT, PL, RO, SE). This handbook details what constitutes the acts defined under Article 12(2) and defines what mitigating factors can be used to reject individual responsibility. Such **definitions were not available regarding the grounds applicable to subsidiary protection**, and it appeared that definitions applied by different Member States might diverge. Indeed, for instance, while **Belgium** declared to check a variety of factors to examine whether the act in question fell under the scope of Article 17(1)(b), **Greece** appeared to have adopted a specific and precise definition of such acts.

The definitions of what actions fell under the scope of Articles 12(3) and 17(2) also seemed to vary across Member States. For instance, **Belgium** stated that the definition of aiding and abetting was defined very strictly, while **Poland** indicated that the scope of Articles 12 and 17 was not limited to perpetrators, and that aiding and abetting was considered during the assessment.

#### Case law clarifying exclusion grounds in *France*

- **War crime:** killings and tortures of civilians, war prisoners, the killing of hostages, or the destruction of cities or villages not justified by military necessity (CRR 18 May 2006 M. K. n° 548090).
- **Crime against humanity:** 1948 UN Convention on the Prevention and Punishment of the Crime of Genocide which punishes conspiracy to commit genocide to exclude an applicant from refugee status for his role in the preparation of the 1994 genocide in Rwanda from 1990 (CRR 15 February 2007 Mme K. n° 564776, confirmed by Council of State 16 October 2009 Mme K n° 311793B).
- **Acts contrary to the purposes and principles of the UN:** according to the relevant international instruments, namely the Charter of the UN and, in case of an application to acts of international terrorism, UN Security Council resolution 1373 of 28 September 2001. In this respect, the CNDA applies the criteria set out in CJEU case-law and considers organisations that have an influence on the international scene.
- **Serious non-political crime (refugee status) or serious crime (subsidiary protection):** The Constitutional Council stated that the seriousness of an offence that might exclude a person from the benefit of this right could be assessed only in the light of French criminal law (Conseil constitutionnel n°2003-485 DC 4 December 2003 on Law n°52-893 of 25 July 1952). Further defined by case law afterwards: gravity but also goals pursued and degree of legitimacy of violence, distinction between political/non-political. The use of terrorist methods cannot justify a political end (CRR 9 January 2003 M. A. n° 322645).

#### In addition to internal and UNHCR guidelines,

Member States used the applicant's statements (EL, FR, PL, RO, SE, SK), accounts from witnesses (SE), COI (EL, FR, PL, SK), or written evidence of previous criminal charges or judicial decisions (EL, FR, SK) to decide on the case. In **France**, statements by the applicant included those made outside the asylum procedure, such as public statements in speeches, interviews, or political propaganda. Several Member States indicated that they **consulted other authorities** in order to check all the facts and circumstances relevant to the case. These authorities included law enforcement authorities (HR, PL, RO), security and intelligence agencies (BG, HR, PL, RO), relevant ministries (HR, IT), the judiciary (IT), third countries (BG), Europol and Eurojust (IT) or Interpol (RO).

A number of Member States seemed to have included concepts such as **national security and public order** into their definition of the grounds for exclusion, which may be an indication of the blurred lines between the exclusion clause and Article 14(5) of the Directive (AT, FR, HU, NL).<sup>149</sup> In several rulings by the French CNDA, the mere presence of a person who, having committed a crime such as acts of violence, sexual aggression, drug trafficking or organised crime, was considered as constituting a threat to public order and excluded that person from the possibility of being granted international protection.

Several Member States stated that a high standard of proof was placed on the determining authority in cessation cases (FR, NL, SE). The **French** authorities

<sup>148</sup> UNHCR, Handbook and guidelines on procedures and criteria for determining refugee status, December 2011.

<sup>149</sup> See Section 3.13 on Articles 14 and 19 – Revocation, ending of or refusal to renew international protection statuses

indicated that the burden of proof lay with the administration in all cases, except in cases of mitigating factors such as duress or the fact that the applicant severed his/her ties with the State or organisation, for which the burden of proof was shared with the applicant. In **Sweden**, the SMA indicated that in practice the exclusion provisions were very difficult to apply for the determining authority. In some cases, national courts were said to place a higher burden of proof on the applicant.

### **Assessment of the well-founded fear in cases of return**

Most of the Member States applied the **'inclusion before exclusion'** logic when assessing whether an individual should have been granted international protection status (BE, BG, CY, EL, FI, FR, HR, HU, IT, LU, LV, MT, PL, RO). Following this principle, and in line with UNHCR recommendations, their competent authorities examined the grounds for exclusion as **part of their assessment of the application** for international protection, only **after having assessed whether or not the applicant qualified** for being granted international protection status. This is in line with the Directive's methodology, which first in Chapters II and V, names reasons for inclusion and only second those on cessation and exclusion. Moreover, the principle of 'inclusion before exclusion' follows the requirement of a 'single procedure', where all issues related to protection and removal are to be assessed at once.

Several Member States indicated that they paid particular attention to the protection of the applicant from **refoulement** and observing respect of Article 3 of the ECHR.<sup>150</sup> In order to apply it, some Member States applied a **proportionality test** (EL, SE) evaluating the potential consequences of a return to the country of origin. In the event a potential return could present risks for the applicant, some Member States granted him or her the right to remain on the territory, via a humanitarian status (EL) or a permit for a tolerated stay (AT, PL).<sup>151</sup> However, in the **Czech Republic**, national authorities indicated that the well-founded character of the fear of persecution was not assessed before applying an exclusion clause. In the **United Kingdom**, an applicant excluded from international protection could not be removed when there was a risk of a breach of Article 3 ECHR. In such cases, the applicant was granted a six-month residence permit.

A few Member States first applied exclusion grounds before proceeding to the assessment of the inclusion grounds if the latter were not fulfilled (AT, DE, NL). In the case of **Austria**, this procedure was only applied for subsidiary protection cases. In **Germany** and the **Netherlands**, a test was applied to check whether there were any risks of breaching Article 3 ECHR. In the **Netherlands**, the authorities stated that if Article 3 ECHR was an obstacle to the return of the individual, s/he would be expected to go to another country with which s/he had ties, for example because s/he had stayed there before or because of family ties. The Repatriation and Departure Service (RDS) gave priority to facilitating removals from the Netherlands in application of the exclusion clause and on national security cases. The authority indicated that in practice, most of the people concerned left the territory and in remaining cases, the individual would not be granted a residence permit (thus leaving them in a legal limbo).

#### **3.11.3 Examples of good application**

The application of the inclusion before exclusion principle, as well as a high standard of proof upon the determining authority, ensures the protection of the applicant against *refoulement* and the respect of Article 3 of the ECHR. In addition, some Member States run a proportionality test (EL, SE) evaluating the potential consequences of a return to the country of origin. In the event a potential return could present risks for the applicant, some Member States grant him or her the right to remain on the territory, via a humanitarian status (EL) or a permit for a tolerated stay (PL).

<sup>150</sup> See Section 3.17 on Article 21 – Protection from *refoulement*.

<sup>151</sup> See Section 3.20 on Article 24 – Residence permits

The interpretation of Article 12(1)(b) as concerning individuals who have effectively received access to the rights and obligations that are attached to the possession of the nationality of that country, or rights and obligations equivalent to those, seems to be in line with the objective of the Directive to provide protection and access to rights to those in need.

### 3.11.4 Possible application issues

The following practices can be considered as being non-compliant, not properly implemented and/or not 'within the spirit' of the Directive.

- The practice observed in some Member States of assessing exclusion grounds before the inclusion grounds may lead to exclusion decisions that may be disproportionate in comparison with the risk of persecution or serious harm incurred by the applicant in his/her country of origin, and it may ultimately lead to breaches of the *non-refoulement* principle. This risk can be mitigated by the introduction of a test to verify the risk of breaching Article 3 ECHR in cases of return (e.g. DE, NL). However, such a solution may not comply with the obligation of an individual assessment of an asylum claim.
- Applying a different procedure (inclusion before exclusion, or exclusion before inclusion) to assess exclusion grounds depending on the status implies that the nature of the claim (asylum or subsidiary protection) is probably determined before the procedure starts, which may not be in line with Article 2 of the Directive, according to which a **single procedure** should be applied and consideration of subsidiary protection is done once the grounds for asylum have been exhausted (see Austrian practice).
- The UNHCR Handbook details what constitutes the acts defined under Article 12(2) and defines what mitigating factors can be used to reject individual responsibility. Such definitions are not available regarding the grounds applicable to subsidiary protection, and it appears that definitions applied by different Member States may diverge, some (e.g. EL) adopting a more restrictive interpretation than others (e.g. BE). Such practice may affect the uniformity of standards in place across the EU.
- The inclusion of broad grounds for exclusion, such as any conviction leading to at least one year of imprisonment for violence-related offences by **Germany**, may not be in line with the standard set in the Directive for exclusion grounds.

### 3.11.5 Recommendations

Based on the above findings, the following recommendations can be put forward:

The Commission should consider:

- The upcoming EASO Practical Guide on Exclusion, which will be finalised by November 2016, as well as the upcoming judicial analysis on Exclusion, should include guidance on each ground for exclusion for both international protection statuses, taking into account the UNHCR Handbook, as well as relevant jurisprudence, in particular of the ECtHR and the CJEU. In particular, the interpretation of Article 12(2)(c) should take into account the upcoming CJEU ruling on case C-573/14, *Lounani*,<sup>152</sup> on the interpretation of this provision in the light of Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism. 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, which could be based on existing minimum standards and definitions on criminal offences set at EU level, would thus help to reduce divergences in the interpretation of exclusion grounds, which are important across Member States, for both refugees and beneficiaries of subsidiary protection. National case handlers should follow the EASO training module on Exclusion.

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<sup>152</sup> AG Sharpston's Opinion on Case C-573/14 is expected on the 31 May 2016.

- The provision “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.<sup>153</sup> Indeed, the Guidelines state that “when the act in question is disproportionate to the alleged political objective, non-political motives are predominant.”<sup>154</sup> In this context, it is established that acts of terrorism are likely to be disproportionate to any avowed political motives.
- The EASO Practical Guide on Exclusion should include guidance on the application of a proportionality test, following the guidance of the UNHCR Guidelines on Exclusion,<sup>155</sup> and of an assessment of the risks of being in violation of Article 3 ECtHR and other relevant international obligations, in order to assess the possible consequences of a return to the country of origin following the exclusion from international protection.

### 3.11.6 Benchmarks for measuring the implementation of Articles 12 and 17

<b>Article 12(1)(a): Whether or not the nature of the protection provided by UNRWA is assessed:</b>	
Check of the present character of the protection and of whether the applicant availed him/herself of the protection of UNRWA	AT, BE, CY, EL, HU, IT, NL, PL, RO, SI, SK, UK
Automatic recognition of the refugee status when UNRWA’s protection has ceased	AT, BE, EL, HU, LV, RO, SE, UK
No automatic recognition of the refugee status when UNRWA’s protection has ceased	BG, HR, IT, NL
<b>Whether or not Article 12(1)(B) is applied:</b>	
Not transposed	PL (upcoming abrogation), SE
Never applied in practice	CY, CZ, DE, EL, FR, LV, MT, NL, SI, SK
Applied to TCN having acquired the MS citizenship	AT, BG, IE, PL, PT
Applied to TCN having acquired another citizenship	PT
Applied to TCN having acquired a permanent residence status	PT, RO
<b>Whether or not the concepts applicable under Art. 12(2) and 17(1) are defined in the Member State:</b>	
Defined in guidelines or in law	BE, BG, DE, EL, FR, IE, LU, UK
Follows the UNHCR Handbook	AT, BE, EL, MT, PL, RO, SE
Defined in case law	DE, FR
Appreciation on a case-by-case basis	AT, HR
<b>Whether or not the determining authority examines inclusion grounds before exclusion grounds:</b>	
Inclusion before exclusion	BE, BG, CY, EL, FI, FR, HR, HU, IT, LU, LV, MT, PL, RO
Exclusion before inclusion	AT, DE, NL

<sup>153</sup> UNHCR, *Guidelines on International Protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, available at <http://www.unhcr.org/3f7d48514.pdf>.

<sup>155</sup> *Ibid.*, p. 7.

<sup>155</sup> *Ibid.*, p. 7.

## 3.12 Granting of protection status – Articles 13 and 18

### 3.12.1 Background on granting of protection status

Articles 13 and 18 provide for the obligation for Member States to grant the 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 Recast QD has not introduced any changes to the original Articles 13 and 18.

The following evaluation questions were assessed:

*What is the number of persons granted refugee status or subsidiary protection, by country of origin? If one Member State proportionally grants a much higher share of international protection statuses to nationals for a certain third country than other Member States, then this may point at a certain level of discretion.*

*What are the key drivers of the divergences in the ratio accepted/rejected third-country applicants from the same country of origin?*

### 3.12.2 Findings for Articles 13 and 18

#### **Summary of main findings**

The main findings in relation to Articles 13 and 18 can be summarised as follows:

- The analysis of statistical data showed that important divergences could be observed in the recognition rate of protection statuses from one Member State to another.
- Several factors were identified as possible explanations for diverging practices across Member States. First of all, the asylum procedure is mostly centred on the individual assessment of the applicant's statements, which by nature is always somehow subjective. Differences in the interpretation of certain Articles were named as a second reason, even within a given Member State. Finally, depending on the Member State, applicants in the same situation can be granted a different protection status, based on the Member State's assessment of the security situation in the country of origin.
- A number of the stakeholders consulted agreed that there was a certain margin of discretion left to case handlers when interpreting the provisions of the Directive and subsequently when granting international protection.

#### **Statistical information**

In 2014, most first-instance positive decisions in the EU were granted to persons holding Syrian citizenship (41% out of all positive decisions), Eritrean (9%) and Afghan (7%).

Table 3.11 below provides an overview of the top ten countries of origin with the highest numbers of positive decisions granted and the acceptance rate (positive decisions as a share of the total decisions) within the EU 28 in 2014. Within the top ten, the highest positive decision rates were for persons holding citizenship of Syria (95%) and Eritrea (89%).

Ninety per cent of all third-country nationals receiving a positive decision were granted either refugee (56%) or subsidiary protection (34%) status. In terms of absolute numbers, refugee status was most often granted to persons holding citizenship of Syria (40% of all refugee status granted), Eritrea (11%) and Afghanistan (6%). Subsidiary protection status was most often granted to persons holding Syrian citizenship (54%).

**Table 3.11 Top 10 countries of origin with the highest numbers of positive decisions, refugee and SP status granted within the EU 28 in 2014<sup>156</sup>**

Positive decisions			Refugee status			SP status		
Top CoO	No.	Acceptance rate per CoO	Top CoO	No.	% of total positive decisions per CoO	Top CoO	No.	% of total positive decisions per CoO
<b>Total TCN*</b>	<b>160,210</b>	<b>45%</b>	<b>Total TCN</b>	<b>89,725</b>	<b>56%</b>	<b>Total TCN</b>	<b>54,915</b>	<b>34%</b>
Syria	65,450	95%	Syria	35,700	55%	Syria	29,475	45%
Eritrea	14,155	89%	Eritrea	9,655	68%	Stateless	4,345	55%
Afghanistan	11,185	63%	Afghanistan	5,015	45%	Eritrea	4,275	30%
Stateless	7,840	88%	Iraq	4,995	69%	Afghanistan	4,220	38%
Iraq	7,280	70%	Iran	4,745	92%	Somalia	3,150	54%
Somalia	5,855	66%	Stateless	3,355	43%	Iraq	1,825	25%
Iran	5,155	60%	Unknown	2,405	76%	Pakistan	1,075	25%
Pakistan	4,245	27%	Russia	2,270	74%	Nigeria	825	29%
Unknown	3,165	65%	Somalia	2,160	37%	Unknown	610	19%
Russia	3,065	25%	Pakistan	1,975	47%	Albania	520	49%

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

\* TCN: third-country national

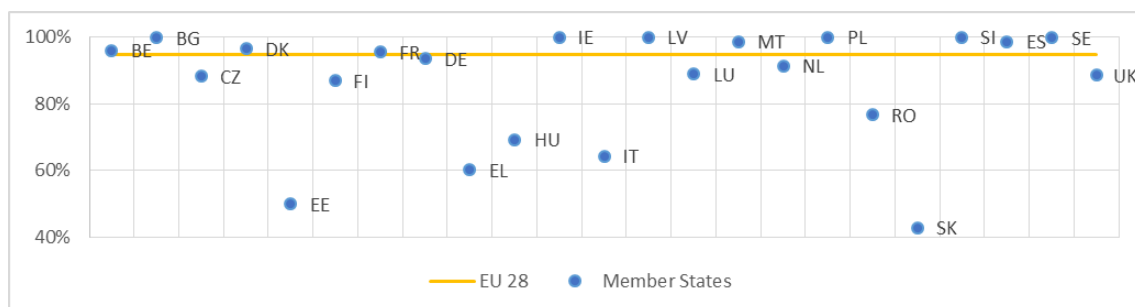
The recognition rate within the EU differed. The figures below present the variation in acceptance rates of five countries of origin with most positive decisions in the EU (Syria, Eritrea, Afghanistan, Iraq and Somalia) per Member State in 2014.

A majority of Member States granted protection to a very large share of applicants originating from Syria and Eritrea. However, Figure 3.2 and Figure 3.3 below show that this practice was not uniform across the EU. Indeed, for instance, in 2014, only around 40% of Syrian applicants were granted protection in **Slovakia**, and a little more than 20% of Eritrean applicants were granted protection in **France**.

These divergences were even more pronounced when it comes to the recognition of protection statuses for Afghan, Iraqi or Somali applicants. In 2014, close to 100% of all Afghan applicants in **Lithuania** or **Italy** were granted protection, while none of the Afghan applicants in **Croatia** or **Slovenia** were. Likewise, in the same year, **Malta**, **Poland** and **Slovakia** granted protection to 100% of the Iraqi applicants while the recognition rate for Iraqi applicants in **Spain** was 0%. Finally, **Cyprus**, **Poland**, **Slovakia** and **Slovenia** granted protection to all Somali applicants on their territory while the recognition rate in **Bulgaria**, **France** or **Greece** was just above 20%.

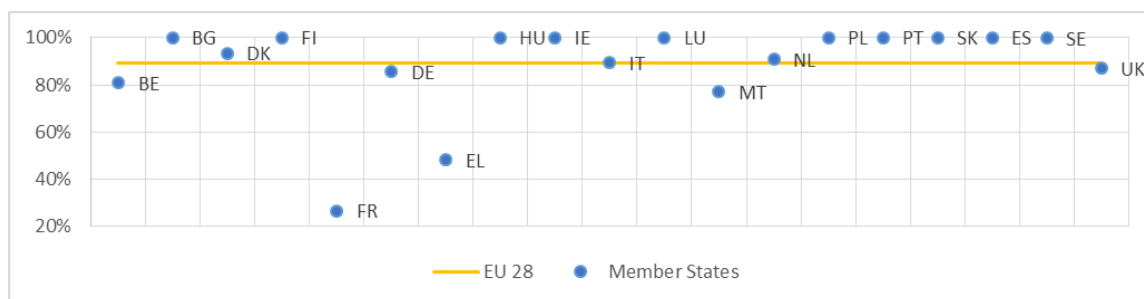
<sup>156</sup> For year 2015, 12 Member States still have not provided data to Eurostat, therefore the EU28 data are incomplete and are not considered at this stage for the analysis

**Figure 3.2 Recognition rate of persons with Syrian citizenship per Member State in 2014, %**



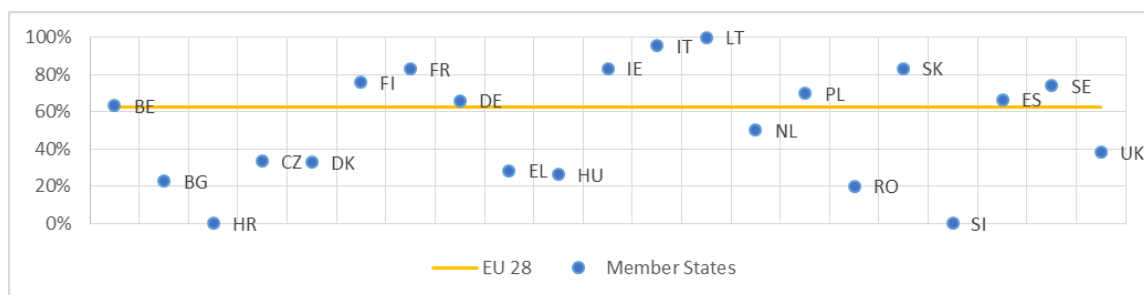
Source: Eurostat, migr\_asydcfsta, extracted on 25 February 2016

**Figure 3.3 Recognition rate of persons with Eritrean citizenship per Member State in 2014, %**



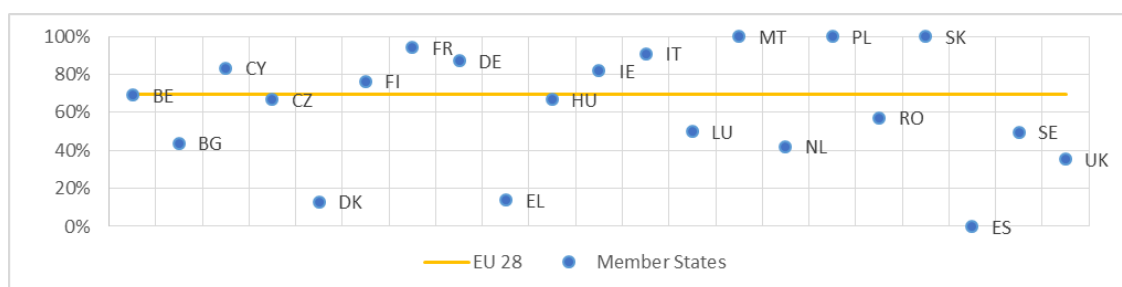
Source: Eurostat, migr\_asydcfsta, extracted on 25 February 2016

**Figure 3.4 Recognition rate of persons with Afghan citizenship per Member State in 2014, %**



Source: Eurostat, migr\_asydcfsta, extracted on 25 February 2016

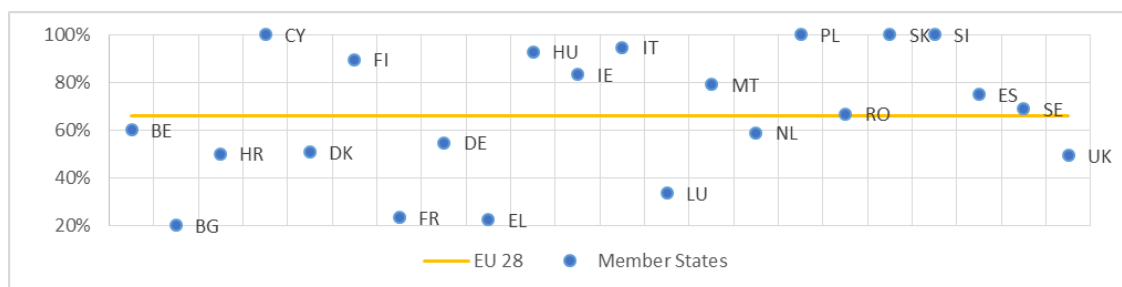
**Figure 3.5 Recognition rate of persons with Iraqi citizenship per Member State in 2014, %**



Source: Eurostat, migr\_asydcfsta, extracted on 25 February 2016



**Figure 3.6 Recognition rate of persons with Somali citizenship per Member State in 2014, %**



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

### Key drivers behind acceptance and rejection decisions

Fourteen Member States (BG, CY, CZ, EE, FI, FR, HR, IE, LT, LV, MT, NL, RO and SK) declared that the decision on international protection claims was made on the grounds of an individual assessment and followed available guidance, including guidelines issued by authorities such as UNHCR and relevant European jurisprudence. According to some Member States, the **assessment of the credibility** of the applicant during the examination of his or her well-founded fear of persecution or serious harm was **by essence subjective** and could lead to diverging interpretations for applicants originating from the same country of origin (BE, EL, HR, IT, MT and NL).

**Divergences in the interpretation of certain Articles** of the Directive could also lead to a different conclusion on an application from one Member State to another. Examples of elements of the Directive that were interpreted differently included the application and existence of IPA,<sup>157</sup> the assessment of the nature of the persecution, the existence of indiscriminate violence to grant subsidiary protection, or the understanding of what constituted a particular social group, notably as far as religious beliefs are concerned. Another example would be Article 14(5) according to which Member States may decide not to grant status to a refugee when there are reasonable grounds for regarding him or her as a danger to the security of the Member State, or when 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.<sup>158</sup>

For instance, in **Belgium**, the application of Article 15(c) could be more flexible than in other Member States as the condition of an ‘individual’ nature of the serious threat was not transposed into Belgian law. In addition, a Belgian NGO stated that Member States could pay particular attention to certain types of persecution, adding that for instance the Belgian authorities were particularly careful about cases of FGM, but that it was not necessarily the case in all Member States.

In **Sweden**, the SMA indicated that the **interpretation of what constituted an IPA could vary** depending on the Member State, due to the fact that it is an optional clause in the Directive. Several stakeholders also stated that even **within the same Member State**, different interpretations could be applied depending on the case handler in charge of handling the application (BE, PL, SE). In **Italy**, NGOs pointed out that clear discrepancies in the application of the Directive were observed amongst local determining authorities, despite the availability of centrally adopted guidelines on internal protection. In **Hungary** and **Romania**, the authorities indicated that a specialised unit monitored the practice across the country and tried to ensure a consistent approach at national level thus limiting the risk of diverging interpretations.

<sup>157</sup> Article 8 Internal Protection is an optional clause and the following MS have not transposed it into their national legislation: IT, ES and SE

<sup>158</sup> See section 3.13 on Articles 14 and 19, Revocation, ending of or refusal to renew international protection statuses.

**National Courts' jurisprudence**, although framed by the ECtHR and CJEU case law as well as the jurisprudence of national Supreme Courts, could differ depending on the court concerned (BE, DE, RO). In **Belgium**, NGOs stated that francophone courts appeared to have a more 'generous' approach than Dutch-speaking courts. In **Germany**, the numerous courts at *Länder* level had diverging interpretations of the provisions of the Directive and of COI. While their interpretations of COI relating to Syria were generally consistent, differences were observed as regards Eritrea and Russia for instance. However, such divergences appeared difficult to reduce due to the independence of the judicial authority.

The **type of status granted** for a national of a given third country could also vary depending on the Member State the application was lodged in. The divergences could in part be explained by the way each Member State assessed the security situation in a given third country. The factors behind the choice to grant a status over another in Member States, and the divergences between their practices, will be analysed in Case Study 1 in Annex 3 of this report.

Some Member States indicated that the determining authority had **a certain margin of discretion when assessing a claim** for international protection. The rationale behind such discretion could be a tendency to **grant protection to certain ethnic origins or religions** due to cultural and/or historical factors. Similarly, in other Member States, the chances for **applicants from countries considered as safe countries of origin** were considered very low (DE). In **Germany**, an NGO stated that recognition rates could be influenced by politics and explained that applicants from the Western Balkans had close to no chance of being recognised as beneficiaries of international protection. They added that the list of safe countries of origin could also be influenced by public opinion, illustrating this point by the current debates taking place in **Germany** regarding the inclusion of Tunisia and Morocco in the list of safe countries of origin. In **Poland**, lawyers and NGOs stated that applicants from certain countries of origin, such as Russia, needed to provide documentary evidence on top of their statements in order to have a chance of receiving protection.

A **high level of discretion for national authorities** was observed by some of the stakeholders consulted (MT, PL, SI, UK). It added that the religion of the applicant was an influencing factor in the outcome of the decision. In **Poland**, the authorities stated that every application from Georgia was rejected. A Polish NGO also indicated that belonging to a majority in the country of origin, such as Muslims in Kazakhstan, could negatively impact the decision.

### 3.12.3 Examples of good application

Measures aiming to ensure a uniform and consistent application of the Directive within Member States would help address the divergences identified above. They include the adoption of detailed guidelines and training, as described under other sections of this report, to ensure the uniform application of the Directive, including for the judiciary. The existence of a monitoring unit in some Member States to ensure a uniform application of the provisions of the Directive could also contribute to a higher level of consistency.

### 3.12.4 Possible application issues

The following practices can be considered as being incompliant, not properly implemented and/or not 'within the spirit' of the Directive.

- The automatic granting of a particular status to a person from a given country of origin without an individual assessment of their situation.

### 3.12.5 Recommendations

Based on the above findings, the following recommendations can be put forward:

- Member States should be encouraged to make use of:

- EASO’s relevant Practical Guides on Tools and Tips for Online COI Research, on Evidence Assessment and on the Personal Interview, on the Implementation of Article 15(c) QD,<sup>159</sup> on Researching the Situation of Lesbian, Gay, and Bisexual persons (LGB) in Countries of Origin<sup>160</sup> as well as the upcoming Practical Guide on Exclusion and UNHCR’s Handbook.
- Relevant EASO training modules on Inclusion, Drafting and Decision-Making, Interview Techniques, Evidence Assessment, Interviewing Vulnerable Persons, Interviewing Children, Country of Origin Information, and Exclusion.
- EASO’s Judicial Trainer’s Guidance Note on Article 15(c).<sup>161</sup>

The use of uniform guidance would contribute to greater convergence on decisions to grant international protection for people in comparable circumstances, and on decisions to grant subsidiary protection or asylum to people from a given country of origin.

- Judicial Trainer’s Guidance Notes and Judicial Analyses on the model of those adopted on Article 15(c) and the upcoming Judicial Analyses on the Introduction to the CEAS and on Exclusion, should be adopted within the EASO curriculum for members of courts and tribunals, regarding the interpretation of other Articles where divergent interpretations are observed, such as Article 8. The development of such tools would foster the dialogue between judicial authorities and help ensure convergence between interpretations of the provisions of the Directive by national judicial authorities.
- The European Commission should also encourage the organisation of training and dialogue between local determining authorities and national judges in order to ensure the consistent interpretation and application of the Directive across their territory, with support from EASO.
- The adoption of a common list of safe countries of origin<sup>162</sup> would bring more consistency to decisions regarding persons from the third countries listed and recognised as safe by all Member States.
- Optional provisions (Articles 4(5), 5(3), 8, 12(2)(b) and 21(3)) should be made mandatory so as to remove the possibility of Member States transposing the Directive differently and to limit diverging practices as a result.

### 3.12.6 Benchmarks for measuring the implementation of Articles 13 and 18

No benchmarks possible.

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

### 3.13.1 Background on revoking, ending or refusal to renew refugee status

Articles 14 and 19 define the respective conditions under which the refugee or subsidiary protection statuses can be revoked, ended or not renewed.

The first ground for revocation, ending of or refusal to renew the status is the fact that protection is no longer required or justified, due to the application of the grounds for the **cessation of the refugee or subsidiary protection status** in accordance with Articles 11 or 16 of the Directive.<sup>163</sup> Member States also have an obligation to revoke, end or refuse to renew the international protection

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<sup>159</sup> <https://europa.eu/!Yx33Xg>

<sup>160</sup> <https://europa.eu/!Uk49vb>

<sup>161</sup> <https://europa.eu/!jC84Hr>

<sup>162</sup> Proposal COM(2015)240 final.

<sup>163</sup> Articles 14(1) and 19(1).

status when it is established that the person concerned should never have been granted international protection, either because **s/he should have been excluded from being a refugee or a beneficiary of subsidiary protection** in accordance with Articles 12 or 17(1) and (2), or s/he has **misrepresented or omitted facts during his or her application** for international protection, including by using false documents.<sup>164</sup>

In addition, the Directive provides for **two optional grounds for the revocation, ending or refusal to renew** an international protection status. In the case of refugees, Member States have the possibility to revoke, end or refuse to renew the status in cases where “there are reasonable grounds for regarding [the refugee] as **a danger to the security of the Member State**” or where the refugee was “**convicted by a final judgment of a particularly serious crime**” and “**constitutes a danger to the community**” of the Member State.<sup>165</sup> Article 14(5) provides that Member States may also choose **not to grant the refugee status** to a person falling under the scope of these criteria. *De facto*, the latter provision therefore defines additional exclusion grounds to those defined under the Geneva Convention and Article 12 of the Recast QD.<sup>166</sup> Article 19 does not add any additional grounds for exclusion of a person from subsidiary protection.

Recital 4 of the Recast QD provides that “the **Geneva Convention is the cornerstone of the international legal regime** for the protection of refugees.” However, by establishing that an individual can be deprived from refugee status on the grounds that s/he represents a danger to the security or to the community of a Member State,<sup>167</sup> the Directive **expands the grounds defined under Article 1F of the Geneva Convention**.<sup>168</sup> Indeed, these grounds were initially defined by the Convention as the **only possible exception to the principle of non-refoulement** under its Article 33(2). This provision is criticised by UNHCR and ECRE on the grounds that it **blurs the difference between exclusion clauses and the exception to the non-refoulement principle**, which serve different purposes in the Convention.<sup>169</sup> According to Recital 21 of the Directive, the recognition of refugee status is a declaratory act. Consequently, an individual’s refugee quality is not dependent on its recognition by a State. In this context, Article 1F of the Convention lists the exhaustive list of acts that are so serious that their perpetrator is undeserving of international protection. This provision also ensures that international protection cannot be used by serious criminals to avoid facing justice. On the other hand, the purpose of Article 33 defining the exceptions to the *non-refoulement* principle is to protect the host State. While the refugee’s status is still valid, the danger s/he may pose to the security or community of that State may justify his or her removal from the territory.<sup>170</sup> Refugees falling under the scope of Articles 14(4) and 14(5) are still entitled to **a number of rights guaranteed by the 1951 Geneva Convention**, namely the right to non-discrimination, the freedom of religion, the right to have access to courts, the right to public education,

<sup>164</sup> Articles 14(3) and 19(3).

<sup>165</sup> Article 14(4).

<sup>166</sup> See Section 3.11 on Articles 12 and 17 – Exclusion

<sup>167</sup> Article 14(4),

<sup>168</sup> According to Article 1F of the 1951 Geneva Convention, the provisions of the Convention “shall not apply to any person with respect to whom there are serious reasons for considering that:

- (a) He 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 has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
- (c) He has been guilty of acts contrary to the purposes and principles of the United Nations.”

This definition corresponds to the exclusion grounds listed under Article 12(2) of the Recast QD.

<sup>169</sup> See UNHCR Comments on the European Commission’s proposal for a Directive on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted, 2009, p. 13; and ECRE Information Note on the Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011, p. 18.

<sup>170</sup> See Section 3.17 on Article 21 – Protection from *refoulement*.

the non-imposition of penalties on account of the refugee's illegal presence on the territory and the prohibition of unnecessary restrictions on the refugee's freedom of movement, guarantees against expulsion from the territory, and the protection against *refoulement*.<sup>171</sup>

When it comes to beneficiaries of subsidiary protection, Member States could opt to revoke, end or refuse to renew their protection status when **he or she should have been excluded from it in accordance with Article 17(3)**, which allows the exclusion of a person from being eligible for subsidiary protection because s/he, prior to his/her admission to the Member State concerned, has committed one or more crimes which would be punishable by imprisonment, had they been committed in the Member State concerned, and s/he left his or her country of origin solely in order to avoid sanctions resulting from those crimes.

The **burden of proof lies on the Member State** to demonstrate the cessation of the refugee or subsidiary protection status, the exclusion grounds applicable to subsidiary protection, or the misrepresentation or omission of facts during an application for subsidiary protection.<sup>172</sup> The Recast QD did not introduce any change in Articles 14 and 19.

The following evaluation questions were assessed:

*What is the number of refugee and subsidiary protection statuses revoked, ended and/or refused for renewal, by grounds (i.e. cessation, exclusion, misrepresentation or omission of facts, danger to security, conviction by final judgment)?*

*In practice, is the person subject to the revocation, ending or refusal to renew allowed/expected to contradict the evidence of the competent authority?*

*To what extent do the competent authorities have any margin of discretion with regard to maintaining the status or ending, revoking, refusing the renewal of it, if one or more grounds are demonstrated to have been met?*

*What is the procedure/mechanism to review whether the status should be revoked, ended or refused?*

*How do the Member States ensure that the Refugee Convention is overall respected and the specific rights of Article 14(6) granted when applying Article 14?*

*What are the procedures and mechanisms in place to make decisions on the basis of Articles 14(4) and 14(5) (see also above)?*

### 3.13.2 Findings for Articles 14 and 19

#### *Summary of main findings*

The main findings in relation to Articles 14 and 19 can be summarised as follows:

- Although there was **not much quantitative information available** on Member States' practice of Articles 14 and 19, it seemed that Member States **rarely revoke, end or refuse to renew international protection statuses in practice**, especially on the grounds that the person was regarded as a danger to the security of the Member State or because, having been convicted by a final judgment of a particularly serious crime, s/he constituted a danger to the community of the Member State.
- A majority of the Member States indicated that a person subject to a revocation, ending or non-renewal procedure had the **possibility to contradict the evidence of the competent authorities**. In some Member States, this could be done **in writing** while others organised a **personal interview**.

<sup>171</sup> Article 14(6).

<sup>172</sup> Article 14(2) and 19(4).

- **Eight of the Member States considered they had no margin of discretion** when implementing Articles 14 and 19. Their main argument was that the use of these provisions was **strictly framed** in the law and needed to be **thoroughly motivated**. In some Member States (e.g. IE), the involvement of several authorities limited the possibility of discretionary decisions. On the other hand, **the other half of the Member States consulted stated that the individual assessment** of any asylum status was bound to be somewhat **subjective**. In addition, some of the Member States (e.g. BE, FR) transposed the **optional provisions** (Articles 14(4), 14(5) and 19(2)) of the two Articles identically, which left open the possibility for national authorities to use them or not.
- Most Member States had **set up specific procedures** to assess whether an international protection status should be revoked, ended or not renewed, which **included guarantees for the person concerned** such as the right to be heard, access to legal and linguistic assistance, and the right to an effective remedy. Law enforcement authorities could be involved in the procedure in cases where Articles 14(4) and 14(5) might apply.
- Amongst Member States that provided information on their assessment of the existence of a serious danger for their security or their community, it appeared that a few used a list of criteria or a threshold. Generally, **practices described by Member States 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 constituted 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.
- All Member States ensured that individuals falling under the scope of a revocation procedure according to Article 14(4) of the Directive or applicants to whom the refugee status was not granted in application of Article 14(5) **had access to the rights** defined under Articles 3, 4, 16, 22, 31, 32 and 33 of the Geneva Convention. The principle of *non-refoulement* was assessed particularly carefully.

### Statistical information

**Few Member States provided quantitative data** regarding their practice of Articles 14 and 19 of the Directive. **Estonia, Hungary, the Slovak Republic and Slovenia** stated that they had not revoked, ended or refused to grant a status in application of Articles 14 and 19. National authorities also estimated that there had been “very few cases” in the **Czech Republic** and in **Greece**.

Specifically, **Malta** and **Slovenia** stated they had never applied Articles 14(4) and 14(5) of the Directive. Article 14(5) was only transposed in July 2015 in **Belgium**, so it was likely that there had been very few – if any – cases implementing this provision, although no data was communicated by the Belgian authorities. The same applied for **France** which only transposed Article 14(4) into its national law in July 2015.

The Irish authorities indicated that, although **revocations were rare**, the main reason invoked was generally the **identification of false or misleading information** by the beneficiary of international protection during his or her application, which would have led to a negative decision, had the authorities known about it at the time of the application. Regarding beneficiaries of subsidiary protection, it seemed that the renewal of the residence permit after it expired could give rise to the reassessment of the validity of the status, which could potentially lead to the application of Article 19.<sup>173</sup>

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<sup>173</sup> See section 3.10 on Articles 11 and 16 – Cessation.

### Margin of discretion

Nine of the Member States consulted stated that there was **no margin of discretion possible for the authorities** when assessing the need for the revocation, ending or refusal to renew an international protection status (AT, CZ, EL, HR, IE, LT, NL, RO and SE).<sup>174</sup> In the case of **Greece**, this was only an assumption as there had not been any revocation cases to date. However, the procedure was only initiated when substantial evidence or information was communicated to the authorities and it foresaw that the decision to re-examine a case was **strictly motivated**. In **Ireland**, the margin of discretion was limited by the fact that **several authorities** were involved in the decision-making process: the revocation submission was prepared and completed by the Ministerial Decisions Unit (MDU) and the final decision was taken by the Minister of Justice. The **Swedish** authorities stated that there must be **well-grounded reasons** for the revocation provisions to be applied, and that the standard of proof was very high, which explained why there were so few cases.

On the other hand, seven Member States considered that **a certain margin of discretion existed** (BE, IT, LU, PL, SI, SK and UK). A report published by the LIBE Committee of the European Parliament indicated that in some Member States, overly broad grounds were applied, which resulted in the revocation of the status of many refugees.<sup>175</sup>

According to the authorities in **Belgium**, the assessment of the need to revoke, end or refuse to renew a status was based on a case-by-case assessment, which took into account objective and subjective information provided by the person concerned as well as relevant ministries or intelligence services. As a consequence, **a certain degree of discretion was to be expected**. In addition, the revocation, ending or refusal to renew a status was **optional when the case fell under the scope of Articles 14(4) and (5) and Article 17(3)**. As a result, it was up to the CGRA to decide on whether or not to maintain the status.

Italian State authorities stated that the margin for discretion was limited as all the situations were defined by law, but that the final say on the case pertained to the National Commission for the Right of Asylum.

In **Slovenia**, the Ministry of Interior indicated that there was generally no discretion in the decision-making process, but that the **existence of 'compelling reasons'** for the person to refuse to avail himself or herself of the protection of his or her country of origin could be assessed and lead to maintaining the status.

In **Slovakia**, the alleged degree of discretion was explained by the discrepancies between the provisions of the Geneva Convention and the Recast QD, which could lead to diverging interpretations.

### Procedure

The reassessment of an international protection status could be **started ex officio** by the competent authority (HR, LV) or **upon notification of new information by other authorities** such as the police (IE), international sources (IE) or national security agencies (BG, RO).

A majority of the Member States indicated that a person subject to the revocation, ending or refusal to renew his or her status **had the possibility to contradict the evidence** presented by the competent authority (AT, BE, BG, CZ, DE, EL, FI, FR, HR, HU, IE, IT, LU, LV, NL, PL, RO, SE, SK and UK).

Several Member States (BE, DE, EL, HR, IT, RO and UK) indicated that the **applicant was informed of the procedure in writing** and **a personal interview** was organised during which the person

<sup>174</sup> Information regarding all EU Member States bound by Directive 2011/95/EU or 2004/83/EC are reflected regarding Articles 14 and 19, with the exception of ES where no information could be collected for reasons explained in Section 2 of this report.

<sup>175</sup> European Parliament, LIBE Committee, *Setting up a Common European Asylum System: Report on the application of existing instruments and proposals for the new system*, August 2010, p. 39.

concerned could explain the reasons why his or her international protection status should be maintained. The **Greek** authorities also indicated that the notification should take place at least 15 working days before the examination of the case by the competent authority.

In **Italy**, lawyers indicated that the interview was not mandatory but could be organised upon request from the determining authority or from the beneficiary of international protection.

During the interview, **a number of procedural guarantees were provided**. Information was not available for all Member States. The guarantees included:

- Information about rights and obligations (RO);
- Access to legal assistance (AT, HR, IT, RO);
- Assistance to linguistic assistance (IT, RO).

In **Germany**, the person concerned was entitled to a hearing before the decision, and was generally requested to submit a written statement. In the **Netherlands**, the procedure started with the organisation of a hearing during which the intended decision was communicated to the beneficiary of international protection. However, NGOs mentioned that the interview was not compulsory in the event the revocation occurred following the cessation of the circumstances in the country of origin that gave rise to the need for protection.

In those Member States that organised a personal interview, the decision on whether to revoke, end or refuse to renew the status was taken after it took place. In **Ireland**, the decision-making process was shared between the MDU, which instructed the case and made recommendations, and the Minister of Justice, who took the final decision. In **Romania**, the decision needed to be taken within 30 days after the interview.

In some of the Member States consulted, the applicant could submit **written statements** (BE, DE, EL, UK), as well as **evidence of any kind** (FI, IE, RO, SK) to back up his or her claim. In **Ireland**, public authorities indicated that the applicant had up to 15 days from the notification to reply and submit any documentary evidence that would prove the need to maintain his or her status.

**Poland** pointed out that locating the beneficiary of international protection in order to inform him/her of the decision to revoke, end or not renew the status was sometimes challenging. As a consequence, there were instances where the person concerned could not be informed of the procedure and therefore did not get a chance to contradict it. In such cases the third-country national usually found out about the end of his/her status when he or she contacted the authorities to renew his or her residence card.

Several Member States specified that the **decision could be appealed** before specialised or ordinary courts (e.g. CZ, DE, EL, FR, HR, IT, LU, LV, MT, PL, RO and UK). In **Germany**, the person targeted by a revocation decision could challenge it before the relevant Administrative Court, and further appeal the ruling before a higher Court if the case was of fundamental importance. In **Greece**, the appeal had to be lodged within 30 days from the day the decision was communicated to the applicant. In **Latvia**, the authorities stated that the appeal had a suspensive effect. In **Malta**, it appeared that the applicant could only provide additional evidence to defend their status during the appeal.

#### **Application of Articles 14(4) and 14(5)**

Articles 14(4) and 14(5) are optional clauses in the Directive. Article 14(4) was transposed by several Member States (for example AT, BE, BG, DE, EL, FR, HU, LV, PT, SE, SI), although in **Belgium** and **France** their facultative character was preserved in the transposing law. The Article was not transposed by **Finland**, **Poland** and **the Slovak Republic**. Article 14(5) was not transposed in at least four Member States (EL, FI, PL and SK). In most Member States the procedures and mechanisms in place to decide on the revocation, ending or refusal to renew an international protection status on the basis of Articles 14(4) and 14(5) were the same as for the other grounds under Article 14. However, in **Belgium**, NGOs expressed concerns about the political dimension of this Article and its



potential use to increase the number of revoked statuses. A number of concerns were also raised by the OFPRA in **France**. Article 14(4) had just been transposed into French law and the OFPRA was not sure whether the same procedure and guarantees, including the right to be heard, would be offered to beneficiaries of international protection whose status would be revoked, ended or not renewed on public security grounds.

**Malta** declared that they had not established any specific procedures or mechanisms in relation to these Articles due to UNHCR's critical position on the matter.

When it comes to the application of Article 14(5), questions were raised about the nature of this provision and whether it constituted an additional exclusion ground. A Belgian NGO wondered whether the inclusion before exclusion principle would still be applied by national authorities excluding someone from international protection on the grounds of Article 14(5). If it were not, it would be inconsistent with the current Belgian practice on exclusion cases in application of Articles 12 and 17 of the Recast QD.<sup>176</sup>

In general, confusion was observed amongst Member States about the scope of these provisions and their relationship with Articles 11, 12, 16, 17 and 21 of the Directive. This sentiment was echoed by ECRE, who denounced the apparent confusion emanating from the Directive itself and even more so from Member States' practices.<sup>177</sup>

### **Application of the criteria of Article 14(4)(a) and (b)**

Amongst Member States that have provided information on their assessment of the criteria defined under Article 14(4)(a) and (b), it appeared that a few use a list of criteria or a threshold, as indicated in Table 3.12 below. Generally, **practices described by Member States 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 constituted 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 **Cyprus**, NGOs indicated cases where protection statuses had been revoked on the grounds that a crime had been committed; however they considered that the nature of the crime was not serious enough to justify the revocation. In **Greece**, judges had worked on a few revocation decisions on public security grounds that had been quashed by the Court. They also stated that several decisions not to renew the status after a cessation procedure, on the grounds that the circumstances in the country of origin had changed, had been appealed and quashed by the Court as well. It thus seemed that the grounds set in Article 14 of the Directive could be applied excessively by the Greek authorities. NGOs confirmed that this tendency was observed before 2015 but had now become less frequent.

Member States' conceptions of the conditions for a third-country national to constitute a '**danger to national security**' were variable. Some Member States had defined the concept in their national law (HR, PT, RO and SI). In other Member States, the concept was not defined in national law and was thus assessed individually (BG, CY, CZ, DE, EE, EL, FR, HU, LV, MT, NL and SE). The **German** authorities stated that it was mostly applied in cases related to terrorist activities. In **Greece**, it seemed that the grounds defined under Article 14(4)(a) were not applied as it was considered that only people who had committed a particularly serious crime, as defined under Article 14(4)(b), could qualify as presenting a danger to the security. The Hungarian authorities indicated that the Counter-Terrorism Centre was in charge of assessing the existence of a danger. It was unclear whether this meant that only terrorist acts could be considered as a danger to national security.

<sup>176</sup> See section 3.11 on Articles 12 and 17 – Exclusion.

<sup>177</sup> ECRE Information Note, *op. cit.*, p. 11

Some Member States have enshrined the concept of '**particularly serious crime**' in their national law (BG, CZ, DE, HU, LV, NL, PT, SI, UK). When penalty thresholds were defined in the law, they varied greatly amongst Member States, going from sentences from three to 10 years of imprisonment. Member States' assessments of the applicability of Article 14(4)(b) were also not uniform, as some considered that the condition of a conviction by a final judgment for a particularly serious crime was enough for the individual to be considered as presenting a danger for the community of the Member State, while others indicated that they assessed the current nature of the danger. Most of the time the concept was not defined in the transposing law for the Recast QD but as a concept applied in general criminal law. In other Member States, the particularly serious nature of the crime was assessed on a case-by-case basis (BE, CY, EL, MT, SE).

**Table 3.12 Assessment of the criteria under Article 14(4) of the Recast QD by Member State**

Member State	Method of assessment	Assessment of danger to the security of the MS - 14(4)(a)	Assessment of the danger to the community of a MS due to a conviction by a final judgment for a particularly serious crime – 14(4)(b)
AT	<ul style="list-style-type: none"> <li>Assessment of whether the final judgment indeed establishes that the person constitutes a danger to the community in the future</li> <li>Not automatically assumed.</li> </ul>	N/A	N/A
BE	<ul style="list-style-type: none"> <li>All relevant factors (including criminal records, criminal courts rulings, etc.) are taken into account when deciding whether or not a foreigner constitutes a threat to national security or is a danger to society</li> <li>Assessment on a case-by-case basis</li> <li>If there is a presumption that the person might constitute a danger to the community, it should be rebuttable to allow for the assessment of the current nature of the danger.</li> </ul>	N/A	<ul style="list-style-type: none"> <li>14(4) does not require that the criminal conviction took place in the host country. As a result, criminal convictions issued in another country or by an international criminal court may be taken into account, providing the individual benefited from a due process of law during the criminal proceeding.</li> <li>Danger to the community: Consider the condition of a previous conviction essential as the judge is best placed to assess what constitutes a particularly serious crime.</li> </ul>
BG	<ul style="list-style-type: none"> <li>A written opinion is requested from the National Security Agency on a case-by-case basis. The Agency uses case law to make a decision.</li> </ul>	<ul style="list-style-type: none"> <li>Danger for national security: discredit of the State, offence to the prestige and dignity of the state, violation of the constitutional /democratic order; and/or conducting illegal intelligence activities.</li> </ul>	<ul style="list-style-type: none"> <li>Convictions by national courts and other national courts are considered. Two definitions:                             <ul style="list-style-type: none"> <li>Serious crime: any crime punished by a deprivation of liberty of at least 5 years.</li> <li>The crime perpetrated, in view of its harmful consequences and any other aggravating circumstances, reveals an extremely high degree of social danger from the act and its perpetrator.</li> </ul> </li> <li>Danger to the community: Crimes related to terrorism, drugs/arms dealing, organised crime; trafficking in human beings; racial/religious or political hate; crimes against humanity; crimes against vulnerable groups; and war crimes.</li> </ul>
CY	N/A	N/A	<ul style="list-style-type: none"> <li>S/he has been convicted by a final judgment of a particularly serious crime.</li> <li>Convictions by other national courts or the international criminal court would be considered.</li> </ul>
CZ	<ul style="list-style-type: none"> <li>Difficult to rebut the presumption. Those who committed particularly serious crimes are very often considered as a danger to the community.</li> </ul>	N/A	<ul style="list-style-type: none"> <li>Crimes that are punishable by imprisonment of at least 10 years under Czech law.</li> <li>Convictions by national courts and other courts are considered.</li> </ul>

Member State	Method of assessment	Assessment of danger to the security of the MS - 14(4)(a)	Assessment of the danger to the community of a MS due to a conviction by a final judgment for a particularly serious crime – 14(4)(b)
DE	<ul style="list-style-type: none"> <li>■ Danger to the community: Individual assessment of the case including an assessment of the risk of repetition.</li> </ul>	<ul style="list-style-type: none"> <li>■ The concept encompasses both the internal and external security of the State, as defined by national case law:<sup>178</sup> <ul style="list-style-type: none"> <li>– External security: acts directed against the very existence of the host State and its territorial integrity (sabotage, espionage);</li> <li>– Internal security: stability and the functioning of the State and its institutions, as well as ensuring the monopoly of force, which includes the protection against violence or the threat of violence in relation to the performance of official functions and violent attacks and threats of violence by foreign terrorist organisations on the territory of the federal state.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>■ Criminal offence leading to a prison sentence of at least 3 years.</li> <li>■ Convictions by courts of other EU Member States are also considered.</li> </ul>
EE	N/A	No definition.	<ul style="list-style-type: none"> <li>■ Convictions by other courts also considered.</li> </ul>
EL	<ul style="list-style-type: none"> <li>■ The seriousness of the risk is assessed thoroughly, on a case-by-case basis, in order to take into account the details of each case and in particular the type of crime for which the person was convicted, the degree of their responsibility and participation, the special circumstances of the crime, its intensity and frequency, its consequences for society, etc. with due respect to human rights.</li> </ul>	<ul style="list-style-type: none"> <li>■ No definition</li> <li>■ Crimes related to drug trafficking, money laundering, international financial crimes, crimes by means of high technology, crimes against the currency, crimes of resistance, abduction of a minor, crimes against sexual freedom and economic exploitation of sexual life, theft, fraud, embezzlement, extortion, usury, the law on brokerage, forgery, defamation/libel, smuggling, crimes related to arms or antiquities, smuggling of persons in the interior of the country to facilitate the transfer or the promotion or the provision of accommodation.</li> </ul>	<ul style="list-style-type: none"> <li>■ Concept of serious crime not clarified in practice with broad interpretations sometimes observed.</li> </ul>
ES	N/A	N/A	N/A
FI	N/A	N/A	N/A

<sup>178</sup> Decision of the Federal Administrative Court of 30 March 1999.

Member State	Method of assessment	Assessment of danger to the security of the MS - 14(4)(a)	Assessment of the danger to the community of a MS due to a conviction by a final judgment for a particularly serious crime – 14(4)(b)
FR	N/A	<ul style="list-style-type: none"> <li>No definition</li> </ul>	<ul style="list-style-type: none"> <li>Penalty threshold of 10 years of imprisonment or more. But cumulative character of the criteria still unclear.</li> <li><i>Constitute a danger</i> not defined.</li> </ul>
HR	N/A	<ul style="list-style-type: none"> <li>The concept is defined under criminal law as acts representing a danger against life and property, destroying public devices, or the use of radioactive substances.</li> </ul>	<ul style="list-style-type: none"> <li>Crimes punishable by imprisonment of at least 5 years.</li> </ul>
HU	<ul style="list-style-type: none"> <li>The Counter-Terrorism Centre decides on the application of the concept of danger to the security.</li> </ul>	<ul style="list-style-type: none"> <li>No definition</li> </ul>	<ul style="list-style-type: none"> <li>Crimes that are punishable by imprisonment of five years or more under Hungarian law.</li> <li>Decisions by international courts are taken into account. As for national courts, they would have to be assessed on a case-by-case basis to make sure that they offer similar standards as HU.</li> </ul>
IE	N/A	N/A	N/A
IT	N/A	N/A	N/A
LT	<ul style="list-style-type: none"> <li>Grounds checked in cooperation with law enforcement authorities and intelligence services where necessary.</li> </ul>	N/A	N/A
LU	N/A	N/A	N/A
LV	<ul style="list-style-type: none"> <li>An individual assessment of the case is performed on the basis of information provided by institutions dealing with security issues.</li> </ul>	N/A	<ul style="list-style-type: none"> <li>Intentional offence that is punishable by imprisonment of at least 8 years.</li> <li>According to the law, only cases where an individual has been sentenced by a national court are considered.</li> </ul>
MT	N/A	N/A	N/A
NL	<ul style="list-style-type: none"> <li>The seriousness of the crime is based on the ruling by the judge and individual circumstances are taken into account.</li> <li>National guidelines specified that the application of the provision could be based on a report by the General Intelligence and Security Service of the <b>Netherlands</b> or by</li> </ul>	<ul style="list-style-type: none"> <li>Crimes related to drugs, violence, sexual crimes, human trafficking and illegal smuggling/holding weapons are considered serious and are considered to put the state in danger. There is no definition of security of the state but a list of categories of crimes considered serious.</li> </ul>	<ul style="list-style-type: none"> <li>The definition is twofold:                             <ul style="list-style-type: none"> <li>The person has been convicted in a final decision to imprisonment or a custodial measure;</li> </ul> </li> </ul>

Member State	Method of assessment	Assessment of danger to the security of the MS - 14(4)(a)	Assessment of the danger to the community of a MS due to a conviction by a final judgment for a particularly serious crime – 14(4)(b)
	<p>any other foreign Ministry or intelligence service. A conviction is therefore not necessary for this ground to apply.</p> <ul style="list-style-type: none"> <li>■ Danger to the community: Assessment done on a case-by-case basis. The authority takes into account the nature of the offence and the imposed sanction.</li> <li>■ The third-country national can bring forward facts and circumstances to show that s/he does not constitute a danger to the community. For instance, s/he could argue that the conviction was pronounced a long time ago.</li> </ul>		<ul style="list-style-type: none"> <li>– The non-suspended part of the imprisonment or measure is in total at least 24 months.</li> <li>■ Assumption that there is a danger for the community for cases of: <ul style="list-style-type: none"> <li>– Crimes related to drugs, sexual offences or violence;</li> <li>– Arson;</li> <li>– Human trafficking;</li> <li>– Illegal trade in arms, ammunitions and explosives;</li> <li>– Illegal trade in human organs and tissues.</li> </ul> </li> </ul>
PL	N/A	N/A	N/A
PT	N/A	<ul style="list-style-type: none"> <li>■ Instances where the person committed a crime against national security or the integrity of the territory, or against the State.</li> </ul>	<ul style="list-style-type: none"> <li>■ The definition concerns crimes with a sentence of over 3 years of imprisonment.</li> <li>■ Usually decisions by national courts are taken into account, but decisions by international courts should also be taken into account.</li> </ul>
RO	N/A	<ul style="list-style-type: none"> <li>■ The concepts are specified under Article 3 of the 1991 Law on National Security.</li> </ul>	<ul style="list-style-type: none"> <li>■ Cases of serious crime (punishable with a sentence higher than 5 years).</li> </ul>
SE	<ul style="list-style-type: none"> <li>■ All presumptions can be rebutted by the individual.</li> </ul>	<ul style="list-style-type: none"> <li>■ No definition in the law.</li> </ul>	<ul style="list-style-type: none"> <li>■ Convictions by other national courts or the international criminal court would be considered.</li> </ul>
SI	N/A	<ul style="list-style-type: none"> <li>■ The concept encompassed situations that posed a threat to the security of territorial integrity, sovereignty, the implementation of international obligations and undermining of the constitutional order.</li> </ul>	<ul style="list-style-type: none"> <li>■ Particularly serious crimes are crimes against humanity and international law. This definition might be redundant with the grounds for exclusion, which can lead to the revocation of the status.</li> <li>■ Other court convictions would be considered as long as the national legal system offers the same guarantees as in SI.</li> </ul>
SK	<ul style="list-style-type: none"> <li>■ The courts decide in court proceedings, administrative authorities (police departments) decide in the administrative procedure, in both cases always on the basis of the gathered evidences. Both institutions consider all the circumstances, individualities, the severity of the case, the impact on society, etc.</li> </ul>	<ul style="list-style-type: none"> <li>■ The refugee can reasonably be regarded as a danger to the security of the Slovak Republic</li> </ul>	<ul style="list-style-type: none"> <li>■ The refugee has been convicted of a particularly serious crime and constitutes a danger to society.</li> </ul>

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

Member State	Method of assessment	Assessment of danger to the security of the MS - 14(4)(a)	Assessment of the danger to the community of a MS due to a conviction by a final judgment for a particularly serious crime – 14(4)(b)
	<ul style="list-style-type: none"> <li>■ The police and security services are involved in the assessment of the security risk posed by the third-country national.</li> </ul>		
UK	N/A	N/A	N/A

### Application of Article 14(6)

A majority of Member States declared that the rights defined under Articles 3, 4, 16, 22, 31, 32 and 33 of the Geneva Convention **were granted** to individuals falling under the scope of Articles 14(4) and 14(5). In **France**, the provision was not transposed but the authorities did not specify what the practice was (France was a party to the Geneva Convention so may have granted the rights listed above in practice). Three Member States (DE, EL and SE) indicated that after the status was revoked, ended or not renewed, the person concerned lost his or her rights previously granted under the international protection status, including the right to benefits, except for the rights listed in Article 14(6) of the Directive.

Particular attention was paid to the principle of *non-refoulement* defined in Article 33 of the Geneva Convention in several Member States (CZ, DE, EL, HU, FR, NL and SE).<sup>179</sup> For instance, in cases where such a risk might have existed, alternative forms of protection such as a tolerated status (CZ, DE), a humanitarian status (EL), a temporary residence permit (SE) guaranteeing access to basic rights were granted, *in lieu* of the refugee or subsidiary protection status. In **Austria**, once a refugee status was revoked, ended or not renewed, the authority assessed whether subsidiary protection could be granted, although it added that this was rarely the case. Usually, humanitarian visa or other grounds for *non-refoulement* would be granted instead. This practice appeared to be in line with the objective of the Directive to provide protection to all those in need. In **Germany**, the authorities examined possible grounds for prohibiting the expulsion of the person concerned, including the person's possibility to have access to medical care in case of serious illness, and his or her possibility to reach an adequate subsistence level upon his or her return to the country of origin. In the **Netherlands**, the authority had to prove that there were no grounds that could justify the stay of the third-country national on the territory, including his or her right to family life according to Article 8 ECHR.

#### Examples of application of Article 14(6) by Belgium

In cases where the CGRA revokes a third-country national's refugee status, it must issue a separate opinion in which it examines the compliance of a possible removal with the 1951 Geneva Convention.

This opinion is binding upon the Immigration Office (*in charge of removals from the territory*).

Although Article 14(6) had not been transposed into national law, it was implemented as a legal principle that applies to any third-country national present in the territory. The respect of the *non-refoulement* principle was enshrined in the Constitution.

### 3.13.3 Examples of good application

As the revocation, ending of or refusal to renew an international protection status can be a consequence of the application of the cessation or exclusion grounds, **all good practices identified under the relevant sections of this report** are also considered as examples of good application of Articles 14 and 19 of the Directive.<sup>180</sup> Similarly, examples of **good application of Article 21** are relevant to the application of Article 14(6) of the Directive.

In the assessment of the existence of a particular danger to the community of a Member State following an individual's conviction by a final judgment for a particularly serious crime, the individual assessment of the **current nature of the danger** ensures that the decision to revoke someone's status is proportionate. Elements to assess include the date of the conviction, whether the individual served his/her sentence, etc. It is also important that Member States examine **by which court the conviction was pronounced**, in order to make sure that the individual was tried under fair conditions and according to EU standards.

<sup>179</sup> See section 3.17 on Article 21 – Protection from *refoulement*.

<sup>180</sup> See section 3.10 on Articles 11 and 16 – Cessation and section 3.11 on Articles 12 and 17.



### 3.13.4 Possible application issues

The following practices can be considered as being incompliant, not properly implemented and/or not ‘within the spirit’ of the Directive.

- Any practices depriving an individual from a chance to contest the decision to revoke, end or not renew his or her protection status may not be in line with the spirit of the Directive as they may affect the individual assessment of the situation.
- Not having an individual interview in cases where the status is revoked, ended or not renewed on cessation grounds. This practice may not be in line with the spirit of the Directive as it does not allow for the examination of the person’s individual circumstances and of potential ‘compelling reasons’ that would justify his/her refusal to avail himself or herself of the protection of his/her country of origin.

### 3.13.5 Recommendations

Based on the above findings, the following recommendations can be identified:

- The interpretation and application of Article 14(4) should be clarified in specific guidelines, 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 should be clarified. Such clarification would help limiting the diverging interpretations observed across the Member States.
- At present, there are no guidelines published by EASO on the revocation of international protection statuses (nor by UNHCR as this provision is not in the Geneva Convention).<sup>181</sup> National authorities should be encouraged to attend the training module on End of Protection organised by EASO. This recommendation should also apply to Article 21 on Protection from *Refoulement*, given the need to ensure protection from *refoulement* for some people found not to be eligible for international protection.
- The European Commission should consider moving the content of Article 14(5) to Article 12, thereby assimilating it to an exclusion clause and clarifying the links of Article 14 with the exclusion procedure. The Exclusion training module, as well as the upcoming Practical Guide on Exclusion, should address the interpretation and application of Article 14(5).

### 3.13.6 Benchmarks for measuring the implementation of the Articles 14 and 19

Whether or not there are guarantees for the BIP during the procedures to assess whether the international protection status should be revoked, ended or not renewed:	
The applicant can contradict the evidence	AT, BE, BG, CZ, DE, EL, FI, FR, HR, HU, IE, IT, LU, LV, NL, PL, RO, SE, SK, UK
The applicant can submit written statements and additional evidence	BE, DE, EL, FI, IE, RO, SK, UK
The applicant has the right to appeal the decision to revoke his/her status	CZ, DE, EL, FR, HR, IT, LU, LV, MT, PL, RO, UK
Whether or not the Member State has a margin of discretion when implementing Articles 14 and 19:	
No margin of discretion	AT, CZ, EL, HR, IE, LT, NL, RO, SE
Certain margin of discretion	BE, IT, LU, PL, SI, SK, UK
No information available	BG, CY, DE, EE, ES, FI, FR, HU, LV, MT, PT
Whether or not Member States clarified the grounds in Articles 14(4):	

<sup>181</sup> The next phase of the Quality Matrix led by EASO is planned to examine the End of Protection (cessation and revocation).

Article 14(4)(a) defined in law	HR, PT, RO, SI
Article 14(4)(a) assessed on a case-by-case basis	BG, CY, CZ, DE, EE, EL, FR, HU, LV, MT, NL, SE
Article 14(4)(b) defined in law	BG, CZ, DE, HU, LV, NL, PT, SI, UK
Article 14(4)(b) assessed on a case-by-case basis	BE, CY, EL, MT, SE
<b>Whether or not Member States guarantee the rights defined in Article 14(6):</b>	
Yes	All responding MS but FR <sup>182</sup>
Granting of an alternative status in order to avoid <i>refoulement</i> (See section 3.17)	AT, CZ, DE, EL, IT, LV, PL, SE

### 3.14 Serious Harm – Article 15

#### 3.14.1 Background on serious harm

Article 15, read in conjunction with Article 2(f), defines the criteria of eligibility for subsidiary protection. Article 2(f) defines ‘persons eligible for subsidiary protection’ as third-country nationals or stateless persons who do not qualify as refugees, but in respect of whom substantial grounds have been shown for believing that, if returned to their country of origin – or in the case of stateless persons, to the country of their former habitual residence – they would face a real risk of suffering serious harm, and are therefore unable or unwilling to avail themselves of the protection of that country.

Article 15 defines as serious harm: (a) death penalty or execution; (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or (c) serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

The content of Article 15(a) and 15(b) is addressed by case law of the ECtHR, as these rights are also protected by Articles 2 and 3 of the ECHR. Additionally, the CJEU compared the provisions of Article 15(a) and 15(b) of the Directive with the respective Articles of the ECHR and noted that those rights form part of the general principles of EU law, observance of which is ensured by the CJEU, and taken into consideration the case law of the ECtHR.<sup>183</sup>

Although the meaning and the content of protection of both Article 15(b) of the Directive and Article 3 of ECHR are identical, a differentiation in the interpretation and the protection scope of Article 15(b) has been marked by the CJEU. According to ECtHR jurisprudence, lack of appropriate healthcare for very seriously ill persons in the country of origin may in exceptional circumstances amount to

<sup>182</sup> No information was provided for AT, BG, CY, IE and LT. France indicated that the provision had not been transposed but did not specify what the practice was (France is a party to the Geneva Convention).

<sup>183</sup> CJEU, Meki Elgafaji and Noor Elgafaji v. Staatssecretaris van Justitie, C-465/07, Judgment of 17 February 2009. 51 CJEU, para. 28. The ECtHR had already cited Article 2 of the Convention as basis for decisions concerning non-refoulement of applicants to states where they would risk suffering a flagrant denial of a fair trial in the receiving State, the outcome of which was likely to be the death penalty (ECtHR, Bader and Kanbor v. Sweden, No. 13284/04, Judgment of 8 November 2005, para. 42) or face a real risk of being liable to capital punishment in the receiving country (ECtHR, Kaboulov v. Ukraine, No. 41015/04, Judgment of 19 November 2009, para. 99).

Accordingly, the jurisprudence of the Strasbourg Court has shed light to the content of torture and inhumane and degrading treatment. However, the Court held in one of its judgements regarding the assessment of the minimum level of severity that consideration must be given to the fact that the Convention is a “living instrument which must be interpreted in the light of present-day conditions” and therefore the definition or the standards of what constitute inhuman or degrading treatment may gradually change (ECtHR, Selmouni v. France, No. 25803/94, Judgment (GC) of 28 July 1999, para. 101). Additionally, regarding the required severity of ill-treatment, the Court held that this must attain a minimum level for it to fall within the scope of Article 3 ECHR, and that the assessment of this minimum is, in the nature of things, relative, as it depends on all the circumstances of the case, such as duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (ECtHR, Ireland v. the United Kingdom, No. 5310/71, Judgment (Plenary) of 18 January 1978, para.162; Raninen v. Finland, No. 20972/92, Judgment of 16 December 1997, para. 55; ECtHR, Hilal v. the United Kingdom, No. 45276/99, Judgment of 6 March 2001, para. 60).

inhumane or degrading treatment.<sup>184</sup> The CJEU<sup>185</sup> on the other hand considered that such cases could not be protected under Article 15(b), as such interpretation was not supported by Directive 2004/83,<sup>186</sup> including Recital 26 of the Preamble, which notes that risks to which the population of a country or a section of the population is generally exposed do not normally in themselves create an individual threat which would qualify as serious harm, that requires the serious harm to result from a form of conduct on the part of a third party, rather than merely being the result of general shortcomings in the health system of the country of origin.

Article 15(c) introduces a new provision in the field of refugee protection in Europe.<sup>187</sup> It describes the risk of serious harm because of indiscriminate violence in an armed conflict, requiring for its application: i) a serious and individual threat, ii) to a civilian's life or person, iii) by reason of indiscriminate violence, or iv) in situations of international or internal armed conflict.

The CJEU has already interpreted some of the terms. For example, the meaning of **internal armed conflict** was clarified by the CJEU in the *Diakité* case, where the Court confirmed that the definition is met, a) if a State's armed forces confront one or more armed groups or b) if two or more armed groups confront each other. It is not necessary for that conflict to be categorised as 'armed conflict not of an international character' under IHL; nor is it necessary to carry out, in addition to an assessment 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**.<sup>188</sup>

However, the existence of an armed conflict is a necessary but not a sufficient condition for Article 15(c) to be invoked. In *Elgafaji*, the CJEU confirmed that a "threat ... to a civilian's life or person" is required rather than specific acts of violence. Furthermore, if the level of **indiscriminate violence** is sufficiently high, such a threat can be inherent in a general situation of 'international or internal armed conflict' and the violence which gives rise to that threat must be 'indiscriminate', therefore it may extend to people irrespective of their personal circumstances.<sup>189</sup> In relation to a general risk to civilians, Article 15(c) can thus only be invoked if its assessment confirms that the armed conflict is characterised by indiscriminate violence at such a high level that civilians *as such* face a real risk of serious harm. The CJEU has highlighted the 'exceptional situation' needed for Article 15(c) to apply to civilians, although it stressed that the term 'indiscriminate' implies that the violence "may extend to people irrespective of their personal circumstances".<sup>190</sup> For this to be the case "the degree of indiscriminate violence characterising the armed conflict taking place ... [must reach] such a high level that substantial grounds are shown for believing that a civilian, returned to the relevant country or, as the case may be, to the relevant region, would, solely on account of his presence on the territory

<sup>184</sup> ECtHR, *D. v. the United Kingdom*, No. 30240/96, Judgment of 2 May 1997.

<sup>185</sup> CJEU, *Mohamed M'Bodj v Conseil des ministres*, C-542/13, Reference from Cour constitutionnelle (Belgium) of 17 October 2013, paras. 35-36.

<sup>186</sup> To note that Recital 26 of 2004/83 Directive is equivalent to Recital 35 of Directive 2011/95. Article 6 has remained unchanged in the Recast QD.

<sup>187</sup> Although certain States and the ECtHR have used Article 3 of ECHR to offer protection in situations similar to 15 (c), that is to civilians in situations of generalised and indiscriminate violence because of an armed conflict. For example, in *Sufi and Elmi v. United Kingdom* the Court assessed the situation of general violence in Mogadishu and ruled that it was sufficiently intense to enable the Court to conclude that any returnee would be at a real risk of ill-treatment contrary to Article 3 of ECHR, solely on account of his or her presence in the country, unless it could be demonstrated that he or she was sufficiently well-connected to powerful actors in the city to enable him or her to obtain protection (ECtHR, *Sufi and Elmi v. United Kingdom*, Nos. 8319/07 and 11449/07, 28 June 2011, paras. 241-250, 293)

<sup>188</sup> *Aboubacar Diakité v. Commissaire général aux réfugiés et aux apatrides*, C-285/12, Reference from Conseil d'État (Belgium) of 7 June 2012, Opinion of Advocate General Mengozzi delivered on 18 July 2013, para. 35.

<sup>189</sup> CJEU, *Meki Elgafaji and Noor Elgafaji v. Staatssecretaris van Justitie*, C-465/07, Judgment of 17 February 2009. 51 CJEU, para. 34.

<sup>190</sup> CJEU, *Meki Elgafaji and Noor Elgafaji v. Staatssecretaris van Justitie*, C-465/07, Judgment of 17 February 2009. 51 CJEU, para. 34.

of that country or region, face a real risk of being subject to the serious threat referred in Article 15(c) of the Directive.<sup>191</sup>

Examples of such acts of indiscriminate violence might include: massive targeted bombings, aerial bombardments, guerrilla attacks, collateral damage in direct or random attacks in city districts, siege, scorched earth, snipers, death squads, attacks in public places, lootings, use of improvised explosive devices, etc.<sup>192</sup> The effects of indiscriminate violence can be indirect as well as direct. Indirect effects of the acts of violence such as a complete breakdown of law and order arising out of the conflict should to a certain extent also be considered.<sup>193</sup> The UNHCR emphasises also in this respect that a breakdown of law and order as a consequence of indiscriminate violence or an armed conflict needs to be taken into account. In particular, the source from which the indiscriminate violence emanates is immaterial.<sup>194</sup>

From the CJEU's analysis in *Elgafaji*, it is clear that the existence of a serious and individual threat to the life of person is not subject to the condition that an applicant presents evidence of specific targeting by reason of factors particular to his personal circumstances. This means that the necessary degree of serious and individual threat may be achieved either by reasons of 'specific risk' factors to do with a person's particular characteristics or circumstances or by the 'general risk' factors arising out of an exceptional situation of a very high level of violence.<sup>195</sup>

Finally, the threat must endanger the 'life or person' of a civilian, in a sense that it puts at risk some of their most fundamental human rights.

As part of the study, the following evaluation questions were assessed:

*How do the Member States assess serious and individual threat?*

*How do the Member States assess indiscriminate violence in situations of international or internal armed conflict?*

*What elements are taken into account to assess the level of violence?*

*How do the Member States interpret the link between serious and individual threat with situational indiscriminate violence?*

*Do the Member States ensure that the 'individual' nature of the threat does not lead to an additional threshold and higher burden of proof?*

*Do the Member States have a narrow or broad understanding of international or internal armed conflict?*

### 3.14.2 Main findings for Article 15

The main findings in relation to Article 15 can be summarised as follows:

<sup>191</sup> CJEU, *Meki Elgafaji and Noor Elgafaji v. Staatssecretaris van Justitie*, C-465/07, Judgment of 17 February 2009. 51 CJEU, para. 37.

<sup>192</sup> European Union: European Asylum Support Office (EASO), Article 15(C) Qualification Directive (2011/95/EU). A Judicial Analysis. December 2014, available at: <https://europa.eu/IPV83Qw>, p. 19. UNHCR shares a similar understanding for the term 'indiscriminate' to encompass 'acts of violence not targeted at a specific object or individual, as well as acts of violence which are targeted at a specific object or individual but the effects of which may harm others', see in UN High Commissioner for Refugees (UNHCR), *Safe at Last? Law and Practice in Selected EU Member States with Respect to Asylum-Seekers Fleeing Indiscriminate Violence*, 27 July 2011, available at: <http://www.refworld.org/docid/4e2ee0022.html>, p. 103.

<sup>193</sup> European Union: European Asylum Support Office (EASO), Article 15(C) Qualification Directive (2011/95/EU). A Judicial Analysis. December 2014, available at: <https://europa.eu/IPV83Qw>, p. 17.

<sup>194</sup> UN High Commissioner for Refugees (UNHCR), *Safe at Last? Law and Practice in Selected EU Member States with Respect to Asylum-Seekers Fleeing Indiscriminate Violence*, 27 July 2011, available at: <http://www.refworld.org/docid/4e2ee0022.html>, p. 103.

<sup>195</sup> European Union: European Asylum Support Office (EASO), Article 15(C) Qualification Directive (2011/95/EU). A Judicial Analysis. December 2014, available at: <https://europa.eu/IPV83Qw>, p. 25.

- Most Member States assessed the risk of the death penalty or execution individually, in the sense that they did not only take into account whether the death penalty was permitted by law, but also whether it was practised and how probable it was for the applicant to be subjected to this punishment. 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* appeared to vary across Member States.
- In order to assess both the risk of torture and that of inhuman and degrading treatment most Member States took into account the applicant's claims, the COI and the relevant jurisprudence of the ECtHR based on Article 3 of the ECHR. Only a few had developed guidelines, specific criteria or further elaborated on the concepts, in order to assess the minimum level of seriousness. The case law of the ECtHR provided guidance for an assessment on an individual basis.
- With regard to the application of Article 15(c), while most Member States had transposed the term 'individual' in their national legislation, **Austria**, **Belgium** and **Germany** had not. However, those that had transposed it, 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<sup>196</sup> in order to find a balance between the two. A reduced focus on the individualised threat could, however, mean that only a very high level of indiscriminate violence qualified for the application of the Article and that the special circumstances of certain individual cases might not be properly considered, when a lower level of violence occurred.
- The method and the criteria used to assess the level of violence varied across Member States: while some of them applied specific criteria and indicators, and considered both the direct the indirect effects of the violence, when assessing its indiscriminate character, others did not use specific methods or criteria.
- Some Member States applied Article 15(b) when an armed conflict was so severe that every person risked their life just by their presence in the area, and when they considered it unnecessary to examine the grounds to apply Article 15(c).
- Most Member States seemed to take into consideration the jurisprudence of the CJEU (*Diakité* case)<sup>197</sup> with regard to the understanding of the armed conflict; a few Member States apply more restrictive definitions, by using the criteria set by international humanitarian law.

#### **Article 15(a) – Assessment of the risk of the death penalty or execution**

Stakeholders of almost all Member States (AT, BE, BG, DE, EE, EL, FR, HR, IT, LT, LV, MT, PL, RO, SE, SI, SK, UK)<sup>198</sup> confirmed they assessed the risk of the death penalty individually and many of them (AT, BE, DE, EE, EL, FR, SE, SK, UK) stressed that the mere existence of the death penalty in the law was not a sufficient reason to grant protection.

In addition to examining the legal framework in the country of origin, Member States also analysed the practical application of the death penalty, to assess the possibility for the applicant to suffer such treatment. If, for example, in a certain country there had not been any executions in the past 50 years, the risk would not be considered as real (EL, SK).

Some Member States (BE, EL, FR, MT, RO, SE, UK), on the basis of COI, took into consideration the general circumstances regarding the death penalty or execution in the country of origin, whether these were prescribed by law and whether and how often they were applied in practice, to evaluate

<sup>196</sup> CJEU, *Meki Elgafaji and Noor Elgafaji v. Staatssecretaris van Justitie*, C-465/07, Judgment of 17 February 2009. 51 CJEU

<sup>197</sup> CJEU, *Case C-285/12, Aboubacar Diakite v. Commissaire general aux refugies et aux apatrides*, 30 January 2014.

<sup>198</sup> Information regarding all EU Member States bound by Directive 2011/95/EU or 2004/83/EC are reflected regarding Article 15, with the exception of ES, where no information could be collected for reasons explained in section 2 of this report.

the likelihood of the death penalty being imposed on the individual. **Greece** and **France** noted that they also evaluated the risk for extrajudicial killings and **Malta** the risk of disproportionate punishment.

**Germany** was another example where the risk was assessed individually, but like **Austria**, there were very few cases pursuant to Article 15(a). The individual assessment also contained an evaluation whether the risk of the death penalty or execution was ‘sufficiently probable’ in the individual case and sometimes, especially in cases of extradition, guarantees by the receiving state that the individual would not be subjected to execution/the death penalty could influence the decision to grant (or not) someone protection.

**Sweden** pointed out that this requirement also derived from the CJEU in the *X, Y, Z* case,<sup>199</sup> where the Court ruled that the mere existence of legislation criminalising some (homosexual) acts could not be regarded as an act affecting the applicant in a manner so serious as to necessitate a finding that it constituted persecution; and that in order for the applicant to be recognised as a refugee, the competent authorities should undertake an examination of all the relevant facts concerning the country of origin, including its laws and regulations and the manner in which they were applied.

**France** followed a similar approach although until the 29 July 2015 Asylum Reform law, the hypothesis of the extrajudicial execution had not been implemented into French law and the risk of death outside a legal framework was considered as constituting an inhuman treatment within the meaning of Article 15(b) of the Directive. Competent judicial authorities had rarely examined the application of Article 15(a) of the Directive and noted that there was no case law on how the risk of the death penalty or execution should be assessed, although training materials were available on subsidiary protection, updated at least twice a year. In **Greece**, legal representatives criticised the different interpretations and application in practice of the ‘real risk’ test performed by case handlers (e.g. how probable a risk should be, so as to be considered real and how they assess it). An NGO in **Poland** stated that in some cases the determining authority gave more weight to the official interpretation of the legal provision than to what happened in practice: for example, it was considered that in Russia there was a moratorium on the death penalty without taking account of the executions committed in Chechnya. In the **Czech Republic**, as in most Member States, each case was examined on its own merits, taking into consideration its specific circumstances, while stakeholders in **Ireland** on the other hand noted that, little guidance existed on how to assess the risk. In their opinion, it was unclear whether **Ireland** assessed the risk of death penalty or execution, individually or generally, and they expressed doubts about the clarity of the application of the ‘real risk test’ in practice. **Romania** had issued guidance notes in 2008 regarding the relation between (i) the real risk of serious harm due to the death penalty or execution and the exclusion clauses, (ii) the real risk of serious harm due to the death penalty or execution and the principle ‘*Ne bis in idem*’, and (iii) the death penalty or execution imposed by a non-State actor regarded as a serious harm (similar with the non-State actor of persecution).

**Cyprus** was amongst one of the very few Member States which assessed the risk of the death penalty generally and not individually, although it was criticised by some stakeholders that in practice it hardly ever granted protection on this ground.

Finally, it appeared that not all Member States were clear about with whom the burden of proof lies. While in **Malta**, public authorities indicated that applicants did not have to demonstrate that they were individually threatened and it was the responsibility of the Member State to assess whether there was a risk of execution or disproportionate punishment, in case of a return to the country of origin, in **Croatia** the applicant had to prove that there was an individual risk of the death penalty.

### **Article 15(b) – Criteria and methodology for the assessment of torture, inhuman or degrading treatment or punishment**

<sup>199</sup> *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>, paras. 55 and 58.

In order to assess both the risk of torture and that of inhuman and degrading treatment, Member States indicated that they took into account the **applicant's claims**, the **COI** and the relevant **case law of the ECtHR on Article 3** of the respective Convention. In addition, some Member States (DE, EL, HR, SE) were also noted to take into consideration the definition of torture as prescribed by the Convention Against Torture and/or the case law of UN bodies, such as the Committee against Torture.<sup>200</sup>

However, there was variation regarding the extent to which COI was updated, how it was collected and how much resource was dedicated to this task.

As regards the use of medical experts to assess and certify torture, in **Greece, Latvia and Malta** this was rare and the claim was mainly assessed on the basis of internal (consistent and cohesive claims) and external credibility. In **Sweden** a medical examination of victims of torture was often performed unless the person did not bear any scars, in which case COI was considered very important, in particular in assessing torture in conflict situations.

In **Belgium** the applicant had to provide sufficiently concrete elements to demonstrate that he or she was personally exposed to a risk of inhuman or degrading treatment in case of return. In line with Article 3 ECHR, such treatment had to constitute an assault on someone's physical integrity or freedom. A mere claim or simple fear of inhumane treatment in itself was not enough to constitute a violation of Article 3 ECHR. Only in exceptional cases, where an applicant belonged to a group which was systematically exposed to ill treatment, the applicant was not required to prove that his or her situation was different from that of others. Nevertheless, this provision was rarely applied in practice (e.g. difficult socioeconomic conditions could lead to the application of Article 15(b) in the case of Palestinians living in colonies).

Similarly, in **France** cases related to Article 15(b) were limited and there were very few decisions containing an elaboration of how the risk of torture, and inhuman or degrading treatment had been assessed (and would be assessed in the future). The attribution of an Article 15(b) subsidiary protection status resulted primarily from the consideration that established facts and ensuing risks were of a serious nature and fell outside the scope of Article 1(A) 2 of the Geneva Convention. However, **France** had developed training material on subsidiary protection, which elaborated notions of torture, inhuman and degrading treatment or punishment, and a study on the concept of disproportional sentences was undertaken in 2013. In addition, two new tools were created in 2014, which were updated twice a year: training material on European law, CJEU case law and ECtHR case law in the field of asylum and a document compiling and presenting relevant ECHR case law on the situation in the countries of origin of asylum seekers.

In **Germany**, the Federal Administrative Court incorporated the 'real risk' jurisprudence of the ECtHR and the CJEU, and the risk had to be real with a view to a potential return, although the duration of the risk did only play a minor role in practice. An individual assessment of the circumstances of the case, based on the principle of investigation, took place in order to assess the standard of probability, as a considerable probability was required; the facts arguing for the existence of this risk had a greater weight, and therefore prevailed over the facts arguing against its existence. The material question was whether, in view of these circumstances, a fear of serious harm could be induced in a reasonable, prudent individual in the situation of the person concerned.

<sup>200</sup> UN General Assembly, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: resolution / adopted by the General Assembly*, 10 December 1984, A/RES/39/46, available at: <http://www.refworld.org/docid/3b00f2224.html>, Article 1, "1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

In **France**, the Council of State gave some indications on the assessment of Article 15(b) risks:

- The risk of ill treatment must be ascertained; a mere possibility did not meet the required level (CE 16 May 2012 OFPRA c/ G. n° 331856 C).
- The factual circumstances which the subsidiary protection beneficiary was exposed to in case of return should constitute torture or inhumane or degrading treatment. Hence, the general reception conditions of the Roma population waiting for a resettlement in Kosovo did not suffice, by themselves, for such a qualification (CE 14 May 2014 PFPR c/ K. & R. n° 362399 & 3 62402 C).
- The risk of ill treatment should be related to personal elements: the deterioration of the security prevailing in Sudan, as such, did not meet this personal requirement (CE 28 December 2012 OFPRA c/ M. n° 342116 C), nor did the fact of having left irregularly Sri Lanka and lodged an asylum claim in **France** (CE 7 May 2012 OFPRA c/ E. n° 332063 C).
- The assessment of Article 15(b) risks could only take place when it was ascertained that the claimant was not eligible to refugee status (CE 10 December 2008 OFPRA c/ P. n° 278227 B).
- When assessing the risks for a child to undergo female genital mutilation in her country of origin, considerations deriving from her lawful residence in the country of refuge were irrelevant. It was therefore an error of law to refuse Article 15(b) subsidiary protection on the sole motive that the child was not in danger of being sent back to her country because of the residence permit held by one of her parents (CE 30 December 2014, C. n° 367428 B).

harm.<sup>202</sup>

The **United Kingdom** referred to its internal guidelines (guidance) for the assessment of torture and inhuman or degrading treatment, and noted that their evaluation is additionally based on Article 3 ECHR, which sets out the threshold for the minimum level of seriousness of a treatment, which did not necessarily need to continuously exist for a certain period of time, but based on all available evidence the determining authority would assess the likelihood of it occurring in the future.

### **Article 15(c) – Criteria and methodology for the assessment of serious and individual threat by reason of indiscriminate violence in an armed conflict**

With regard to the assessment of serious and individual threat, Member States' approaches varied. **Austria**, **Belgium** and **Germany** had not transposed the term 'individual' in their national law. **Austria** had guidelines on what constituted serious threat, while **Belgium** and **Sweden** had no specific interpretation of the concept of 'serious threat' and considered it to have a similar meaning

With regard to the **minimum level of seriousness** in order for a treatment to qualify as inhuman or degrading, Member States followed the ECtHR jurisprudence but some also gave examples based on their case law (see above **France** or **Greece** that referred to FGM, whipping or very poor medical conditions for severely ill individuals, etc.). **Most Member States stated that they had not elaborated a list of acts that constituted torture, or inhuman or degrading treatment, nor a definition or guidelines to establish the minimum level of seriousness**, with the exception of **Austria** and the **United Kingdom** that had issued internal guidelines for this assessment and took into consideration the case law of the ECtHR. **Romania** had issued guidelines for case handlers in 2008, according to which torture and inhuman or degrading treatment or punishment should be interpreted in the light of the case law of the ECtHR and perpetrators of these acts could be both State agents and non-State agents, a principle which also derived from the jurisprudence of the Strasbourg Court.<sup>201</sup>

**Sweden** specified that they used a cumulative approach, according to which several acts or treatment that did not constitute inhuman or degrading treatment when considered separately, could amount to inhuman and degrading treatment, if considered cumulatively, which is similar to the cumulative approach to persecution, according to Article 9(1)(b) of the Directive. This approach had also been adopted by the ECtHR when assessing the severity of a treatment, by taking into consideration the special distinguishing features of the applicant, as well as the cumulative consequences of the

<sup>201</sup> ECtHR, H.L.R. v. France, No. 24573/94, Judgment (GC) of 29 April 1997, para.40. See also, for example, ECtHR, Ahmed v. Austria, No. 25964/94, Judgment of 17 December 1996, para. 44, in which the source of the ill-treatment was a rival clan in the civil war in Somalia.

<sup>202</sup> ECtHR, Salah Sheekh v. the Netherlands, No. 1948/04, Judgment of 11 January 2007, paras. 138-147.



as Article 15(b), given that when applied in practice the two provisions were similar. The **Czech Republic** indicated that they used EASO materials (judicial analysis) on Article 15(c).

Most Member States based their assessment on the applicant's personal statements and on COI. Some (CY, IE, IT, LT, LU) did not refer to further guidance or criteria, while others (BG, EL, FI, FR, HR, MT, NL, PL, RO, SE, SI, UK) mentioned the criteria set by the CJEU in the *Elgafaji* case,<sup>203</sup> and mainly the principle of the sliding scale, according to which "the more indiscriminate the violence, the less it was necessary for the applicant to establish a more individualised threat". Related to this, the French Council of State had clarified that the factors specific to personal circumstances of an applicant that could justify the granting of subsidiary protection in a context of a lower level of indiscriminate violence, according to the *Elgafaji* case law, could not be based on a reason for persecution encompassed in Article 1(A)(2) of the Geneva Convention.<sup>204</sup>

In **Germany** a serious and individual risk due to indiscriminate violence was considered, in cases where, (1) the situation of indiscriminate violence reached a level that caused a serious threat to a civilian's life merely on account of the presence of a civilian there, or (2) there were individual circumstances of the applicant that increased his/her personal risk.

In the **Netherlands**, the Secretary of State had the competence to indicate regions and countries as falling under Article 15(c). When countries were on this list, the element of serious and individual threat was examined in less depth and only with the purpose of determining whether the applicant should be granted refugee status or subsidiary protection.

Regarding the **assessment of the level of violence** as well as **its indiscriminate character**, all Member States claimed to take into consideration COI. While some (CY, HR, IE, IT, PL) among them did not identify any criteria to perform this assessment, others applied various criteria. **Bulgaria** mentioned the scope of the armed conflict, the intensity of the violence, the ethnic origin and the religious belonging of the people in the country of origin, while **Lithuania** examined only the geographical coverage of the violence. Although the criteria of ethnic origin and religion are crucial to understand a conflict and whether the applicant might qualify for refugee status, it is not obvious why they were relevant for the assessment of violence in the context of a determination of subsidiary protection status. **Germany** mentioned that there was no specific set of indicators to assess the level of indiscriminate violence in a country or region. It concerned a holistic assessment taking into account the number of inhabitants in the respective region/country and the number of acts of indiscriminate violence (fatal casualties and injuries). This assessment was based on established jurisprudence of the Federal Administrative Court and the CJEU (with regard to the definition of an internal armed conflict and to the application of the so-called sliding scale), and stressed that following the CJEU's definition of an internal armed conflict was only relevant for the assessment of whether the level of violence in the conflict situation reached such a high level that it created a serious and individual threat for an applicant.

In other Member States (EE, EL, FI, FR, LV, MT, UK) most of the criteria related more to the direct effects of violence, such as the:

- Extent and intensity of violence;
- Frequency of violent acts;
- Number of civilian casualties;
- Duration of the conflict;
- Prognosis of its development;
- Part of the population and territory affected;
- Number of parties to the conflict;
- Scale of the international involvement;
- Influence on civilians' daily life; and

<sup>203</sup> CJEU, Meki Elgafaji and Noor Elgafaji v. Staatssecretaris van Justitie, C-465/07, Judgment of 17 February 2009. 51 CJEU, para. 27-28.

<sup>204</sup> CE 15 May 2009, K. n°. 292564 B

- Ability of the government to overview the situation.

The **Czech Republic, Greece** and **Romania** considered UNHCR and EASO guidelines as important tools for assessing indiscriminate violence, and three Member States (EL, IE, UK) stressed that they had adopted specific guidelines for Afghanistan, which provided an analysis of the regions affected by indiscriminate violence. The level of violence was considered so high in these regions that if an applicant originated from one of them, s/he would be granted subsidiary protection. It was considered that, merely by being there, one would have run a real risk of serious harm, as prescribed by Article 15(c).

**Belgium** clarified that they assessed separately the indiscriminate character of the violence and its level.

**For the first** they took into account, *inter alia*:

The method of warfare being used (targeted killing, guerrilla fighting, suicide attacks in crowded places, death squads, scorched earth, etc.);

The targets the parties are aiming at (civilians with a certain profile, armed forces, police, NGOs, etc.);

The measures taken by the combatants to avoid civilian casualties;

**For the second (a non-exhaustive list):**

The number of civilian casualties;

The number of incidents/armed confrontations;

The parties to the conflict (level of organisation; control of a part of the State's territory, etc.);

The impact on daily life (people fleeing the region/country of origin, which regions induce IDP's and which regions of the country of origin attract IDP's; are people prevented leaving an area; do people still have access or medical help, food, water, etc.);

The possibility for the State to protect civilians (for example against looters, etc.).

**Belgium, Latvia, Romania** and **Slovenia**<sup>205</sup> referred to certain **indirect effects** of violence, such as the influence of the conflict on civilians' daily lives (**Latvia**) or more precisely the inability of the civilian population to access basic goods and services, such as medical assistance, food, drinking water and other basic infrastructure (as expressed by the others). The Council of State in **France** stated that the indiscriminate violence affecting civilians did not necessarily need to be directly caused by the combatants participating in the conflict, and held that forced displacements, violations of international humanitarian law and occupation of territory are elements to measure the intensity of widespread violence.<sup>206</sup> Furthermore, the assessment of the indiscriminate violence did not require analysing the general situation nationwide but only the region concerned and the areas to be travelled to.<sup>207</sup> However, an NGO in **France** noted that judges used to assess the risk of being a victim region by region and the definition of conflict very broadly. Back then, the presence of an armed group was enough to apply Article 15(c) but since the definition changed with the legislative reform in **France** in July 2015, which inserted the concept of 'indiscriminate violence' into the legislation, this

amendment could limit the interpretation and the protection scope initially considered by the courts.

**Sweden** also considered available information such as COI, recommendations and guidelines; internal guidelines in a legal position paper clarified which aspects should be assessed for the assessment of indiscriminate violence. But according to the jurisprudence of the SMA, when an armed conflict is so severe that everyone present in the area risks their life just by being there, the threshold of Article 15(b) of the Recast QD was met and in these cases it was not necessary to examine the grounds to apply Article 15(c).<sup>208</sup>

<sup>205</sup> Slovenia referred to the number of victims in a conflict, the number of civilian casualties, the share of displaced population, the inability of state to provide even the most basic services – infrastructure, medical assistance, delivery of food and drinking water.

<sup>206</sup> CE 3 July 2009, OFPRA v. B., n° 320295 B.

<sup>207</sup> CNDA 28 March 2013, M. A., n° 12017575 C.

<sup>208</sup> For this practice, Member States (Belgium, Sweden) followed the jurisprudence of the ECtHR. In *Sufi and Elmi v. United Kingdom* the Court had assessed in this case the situation of general violence in Mogadishu and ruled that it was sufficiently intense to enable the Court to conclude that any returnee would be at a real risk of ill-treatment contrary to Article 3 of ECHR, solely on account of his or her presence in the country, unless it could be demonstrated that he or she was sufficiently well connected to powerful actors in the city to enable him or her to

The **United Kingdom** had specific guidance<sup>209</sup> on assessing Article 15(c), although they did not grant many people the subsidiary protection status under this provision. As they explained, the key country to which this provision would apply was Syria, however, according to their guidelines, if someone returned to Syria as a failed asylum seeker, they would likely be at risk because the regime would consider them part of the opposition, and thus they would finally qualify for refugee status. According to the above-mentioned guidance, the **United Kingdom** applied the following test (set out by the Court of Appeal (*Iraq v SSHD*): “Is there in [X Country] or a material part of it such a high level of indiscriminate violence that substantial grounds exist for believing that an applicant would, solely by being present there, face a real risk which threatens his life or person?” The elements that are further taken into consideration included:<sup>210</sup>

- The randomness of the violence – i.e. the extent to which civilians, without anything to render them a particular target, are at real risk of random injury or death which indiscriminate violence brings (e.g. indiscriminate shelling, bombs, suicide bombing, snipers, etc.).
- The non-existence of law and order – i.e. whether there are risks presented by violent crime as a result of the breakdown of law and order arising out of the conflict.
- Specific contextual circumstances which can further endanger the civilian – i.e. whether the individual may need hospital care in a situation in which hospitals are coming under fire, or the individual has to travel through military or insurgent checkpoints where the risk of violence is enhanced.

With regard to Member States’ interpretation of the link between serious and individual threat with situational indiscriminate violence, most Member States invoked the application of the criteria set by the Court of Justice in the *Elgafaji* case.<sup>211</sup> Indeed, they applied the **sliding scale principle**, which, according to the Court, required that the more the applicant had been able to show that s/he was

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obtain protection. ECtHR, *Sufi and Elmi v. United Kingdom*, Nos. 8319/07 and 11449/07, 28 June 2011, paras. 241-250, 293.

<sup>209</sup> UK policy instruction on Humanitarian Protection, available here (see p. 7): [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/257431/huma-prot.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257431/huma-prot.pdf)

<sup>210</sup> Ibid, “It does not matter whether the risk of serious harm arises from actions of the state, or the parties to the conflict or from an insurgency, so long as the threshold of violence in the test is met. The situation will be one where the level of violence is such that, without anything to render them a particular target, civilians are at real risk of random injury or death which indiscriminate violence brings. It covers real risks presented, for example, by indiscriminate shelling or bombing of civilian areas, suicide bombers, car bombs in market places or snipers firing at people in the street, or risks presented by violent crime as a result of the breakdown of law and order arising out of the conflict.

*Decision-makers should also consider other factors alongside the level of violence which could increase risk to the individual in the particular country situation; for example, whether the individual may need hospital care in a situation in which hospitals are coming under fire, or the individual has to travel through military or insurgent checkpoints where the risk of violence is enhanced. Decision-makers must take account of the risk that may in particular impact upon children or on those responsible for their welfare.”*

<sup>211</sup> More specifically, the Court in this case accepted that according to Article 15(c) there had to be normally a personal risk and a specific threat due to circumstances linked to the personal situation, but held that the term ‘indiscriminate’ implied that the violence extended to people irrespective of their identity or personal circumstances. The Court elaborated further that when the degree of indiscriminate violence characterising the armed conflict, reached such a high level that substantial grounds were shown for believing that a civilian, returned to the relevant country or region, 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 referred in Article 15(c) of the Directive, subsidiary protection should be granted.<sup>211</sup> Regarding the necessity to prove an individualised threat, the Court held further that the existence of a serious threat to the life or person of an applicant for subsidiary protection is not subject to the condition that the applicant adduce evidence that he is specifically targeted by reason of factors particular to his personal circumstances. CJEU, Case C-465/07, *Meki and Noor Elgafaji v. Staatssecretaris van Justitie*, 17 February 2009, paras. 30 and 39.

specifically affected by factors particular to his personal circumstances, the lower the level of indiscriminate violence was required for him/her to be eligible for subsidiary protection.<sup>212</sup>

In **Latvia**, according to national case law, there was no need to prove the individual threat in situations of indiscriminate violence. In **Poland**, the applicant only had to prove that they came from that region.

However, certain Member States (IE, IT, LT) seemed to have a less defined approach; **Ireland** for example stated that it was a difficult task and that the sliding scale test was not clear enough, whereas others only referred to a case-by-case examination of the elements of the case though without specifying further criteria.

According to certain NGOs and legal representatives (EL, NL, PT, PL) Member States' practice on the application of Article 15(c) was limited due to their restrictive understanding of the provision when the evaluation concerned the individual circumstances of the applicant. Issues were flagged regarding Member States' application of individual circumstances in contexts where the level of violence was moderate. For example, legal representatives in **Greece** indicated that the individual character of the threat was rarely taken into account, and that areas of a country of origin were generally viewed as 'safe' or 'unsafe'. As a result, while this system guaranteed the protection of individuals in cases of high levels of violence, there were instances where the level of violence was not high enough to consider that any individual by mere presence there would run a risk of serious harm.

Furthermore, all Member States, by stating that they were complying with the principles set in *Elgafaji* and the sliding scale test, denied that the individual nature of the threat could lead to an additional threshold and higher burden of proof. For example, in **France**, in most cases in which Article 15(c) applied, only the applicant's individual circumstances that allowed determination of his/her region of origin were assessed in cases where the level of indiscriminate violence was deemed high. Moreover, when the degree of indiscriminate violence was lower, the individual elements taken into account by the French National Court of Asylum in order to apply Article 15(c) were of a very general nature (age, vulnerability, lack of family links) and therefore few asylum seekers were denied subsidiary protection because of not having justified factors particular to their personal circumstances.

The **United Kingdom** stressed that indiscriminate violence by its nature was not necessarily targeting an individual and that it did not put an additional burden of proof on the applicant, beyond the 'reasonable likelihood'. But this meant that the level of violence needed to reach a certain (high) level in order to meet that test, which would normally be defined by case law.

However, legal representatives and NGOs in **Cyprus** considered that the evaluation undertaken by the authorities was often biased and that the burden of proof was higher for the applicants as they had to prove that they were individually targeted. Legal representatives or NGOs in **Germany, Estonia, Malta** and **Poland** also flagged cases where the authorities had not ensured that the threshold was not higher and claimed that in certain cases the burden of proof had been set at a higher level as well.

Finally, most Member States applied the ruling of the Court of Justice in the *Diakité case*,<sup>213</sup> according to which the **"internal armed conflict"** should be understood as having the usual meaning it has in everyday language, which is a situation in which **(a) a State's armed forces confront one or more armed groups, or (b) in which two or more armed groups confront each other**.<sup>214</sup> Certain States explained that until *Diakité* CJEU case law, the assessment as to whether an internal armed conflict existed had been carried out on the basis of the criteria established by IHL. Situations

<sup>212</sup> CJEU, Case C-465/07, Meki and Noor Elgafaji v. Staatssecretaris van Justitie, 17 February 2009, paras. 30 and 39.

<sup>213</sup> CJEU, Case C-285/12, Aboubacar Diakite v. Commissaire general aux refugies et aux apatrides, 30 January 2014.

<sup>214</sup> *Ibid.*, paras. 27-28.

of internal disturbances and tensions were not considered as internal armed conflicts<sup>215</sup> and the understanding of the term at that time presupposed a certain degree of organisation of the armed groups involved.<sup>216</sup>

An NGO in **Belgium** noted that although **Belgium** had a broad understanding of the term ‘armed conflict’, it usually took some time before starting to apply it about a given region (e.g. one year in Syria, several months in Ukraine) and in the meantime, authorities froze the examination of these cases.

However, **Lithuania** and **Slovakia** still applied the criteria of IHL in order to identify an internal and international armed conflict, and **Poland** primarily followed the Statute of International Criminal Tribunal. Both constitute more demanding definitions of armed conflict than the one provided by the Court of Justice. The **United Kingdom** did not refer to the *Diakité case* in their guidance, as it was published before the issuance of the judgment, and probably did not refer to it either in their practice; the notion of armed conflict was not analysed in the guidance but for that of ‘indiscriminate violence arising from armed conflict’, as what was given more weight was the level of indiscriminate violence.

Finally, a common criticism by legal representatives and NGOs in certain Member States (CY, EL, HR, PL and PT) was that the understanding of the terms of the Article 15 and the jurisprudence of the CJEU on the matter were understood superficially and not harmonised. In addition, the legal reasoning and the interpretation of the crucial terms by case handlers was relatively poor or inconsistent and sometimes there was a sense of randomness in the evaluation.

### 3.14.3 Examples of good application

Examples of good application of Article 4 on the assessment of facts and circumstances are also relevant to this provision. Other examples identified include:

- The more elaborate the guidance and support provided to case handlers for the assessment of serious harm in 15(a) and 15(b), and in particular in 15(c), where a higher number of decisions lies, the more effective and consistent the assessment probably is.
- Training materials on these issues for determining authorities (case handlers and judges), which takes into consideration CJEU and ECtHR case law, is also good practice to ensure that case handlers have a consistent interpretation of Article 15, in line with European case law.
- Real possibility for examination by medical experts of alleged victims of torture.
- Consideration of indirect effects of the violence in the assessment of its level and of its indiscriminate character.
- Consideration of human rights violations when assessing the seriousness of a threat, not limited to the non-derogable rights of Article 15(2) ECHR (or of the right to life of physical integrity and the freedom from torture or inhumane or degrading treatment).
- Consideration of individual circumstances in the application of Article 15(c), which may cause a higher risk for an individual, when the level of violence is not high sufficient to qualify for an application of the provision to any individual residing in this area.

### 3.14.4 Possible application issues

The following practices can be considered as being incompliant, not properly implemented and/or not ‘within the spirit’ of the Directive.

- Insufficient guidance and training for the assessment of Article 15 concepts such as real risk, inhuman or degrading treatment, serious threat, individual threat and indiscriminate violence,

<sup>215</sup> Example from the French jurisprudence about the situation in Punjab in 2013, CNDA 12 July 2013, A. n°13004440.

<sup>216</sup> Example from the French jurisprudence about the situation in Mosul and Nineveh Governorate in 2011, CNDA 11 March 2010, C. n° 613430

international or internal armed conflict may lead to a large margin of discretion for case handlers and to an inconsistent application of Article 15 within and across Member States.

- Disregard of personal circumstances in the application of Article 15(c), which may cause a higher risk for the individual, in those cases where the level of violence is not high enough to qualify for an application of the provision to any individual residing in this area.
- Use of unclear methodology and fluctuating thresholds when assessing the *real risk* of serious threat.
- Poor choice in the selection of criteria for the assessment of the level of violence and of its indiscriminate character, and disregard of the indirect effects of the violence in the violation of human rights.
- Limited capacity and guidance in the selection and use of COI for the evaluation of the armed conflict and of the level of (indiscriminate) violence.
- Limited understanding of CJEU case law on Article 15(c) and inconsistent application of its protection scope.
- Application of narrower definitions of armed conflict than the one provided by CJEU in the *Diakité* case.

### 3.14.5 Recommendations

Based on the above findings, the following recommendations can be put forward:

- Although EASO’s judicial analysis of Article 15(c)<sup>217</sup> provides for very elaborate guidance for determining authorities, in order to promote and facilitate a similar understanding and application of Article 15(c) across Member States and minimise the discrepancies in recognition rates when it comes to subsidiary protection, the European Commission may consider further clarifying the following aspects of the provision:
  - Serious threat to a civilian’s life or person: i.e. by indicating in a non-exclusive list the possible forms of harm which could be included beyond the ones mentioned in Articles 15(a) and 15(b), such as serious human rights violations (i.e. right to education for minors), including but not limited to serious injuries, serious mental traumas, serious threats to bodily integrity, etc.
  - Indiscriminate violence: i.e. by setting out a non-exhaustive list of *indicators* to be taken into consideration in order to assess both the level of the violence and its *indiscriminate character*, and by taking into account the *direct* (such as the number of civilian casualties, the number of security incidents, as well as the existence of serious violations of IHL which constitute threats to life or physical integrity, the number of displaced persons, etc.) *but also the indirect impact of the conflict* (such as the impact of the conflict on the human rights situation and the extent to which the conflict impedes the ability of the State to protect human rights, including the impact of violence and insecurity on the humanitarian situation as manifested by food insecurity, poverty and the destruction of livelihoods, systematic constraints on access to education or basic healthcare as a result of insecurity, on participation in public life, etc., the levels of organised crime/corruption and impunity and the breakdown of law and order, etc.).<sup>218</sup>

<sup>217</sup> EASO, Article 15(c), Qualification Directive (2011/95 EU), A judicial analysis, December 2014 and EASO Curriculum for Members of Courts and Tribunals, Judicial Trainer’s guidance note, Article 15(c), Qualification Directive (2011/95 EU), A judicial analysis, 2015. The guidance is public and can be used by anyone interested but it is actually developed “by judges for judges” under the EASO activities for courts and tribunals.

<sup>218</sup> For the consideration of direct and indirect effects, see also EASO, Article 15(c), Qualification Directive (2011/95 EU), A judicial analysis, December 2014, p. 31: “The following is intended as a non-exhaustive list: The ECHR ‘*Sufi and Elmi Criteria*’: the parties to the conflict and their relative military strengths; methods and tactics of warfare applied (risk of civilian casualties); type of weapons used; the geographical scope of the fighting (localised or

- The European Commission could propose deleting the term ‘individual’ from the serious harm of Article 15(c). The reasons for this are:
  - Inconsistency with Article 15(a) and (b), which also require an individualised risk, however without explicitly mentioning it;
  - According to the CJEU, the existence of a serious and individual threat to the life or person of an applicant for subsidiary protection is not subject to the condition that the applicant presents evidence that s/he is specifically targeted by reason of factors particular to his/her personal circumstances (*Elgafaji*);<sup>219</sup>
  - The presence of the term ‘individual’ appears to have created confusion among determining authorities across Member States as to its interpretation and application and may lead to an additional threshold and higher burden of proof in certain cases, as some NGOs and legal representatives stated.
- EASO<sup>220</sup> could promote the organisation of regular training and meetings for asylum case handlers and determining authorities from different Member States in order to:
  - clarify understandings of the terms of the Article 15 and especially those of 15(c);
  - assist in the dissemination of a common understanding of CJEU case law as well as information about Member States’ case law;
  - set the foundations for a forum of discussion and exchange of experiences of case handlers and determining authorities on these issues;
  - ensure a uniform approach regarding their responsibility to ask the asylum seekers specific additional questions in order to apply Article 15(c) and examine in depth the ‘individual’ conditions that render one more vulnerable, in particular in cases where the level of violence is not so high in an area, so as anyone by being present there would be at risk of serious harm.<sup>221</sup>
- EASO could consider issuing guidelines providing an analysis of the terms used under Article 15(a) on the serious risk of the death penalty or execution and 15(b) on the serious risk of torture, inhumane or degrading treatment and guidance on the method to assess them, including ECtHR and CJEU case law, as well as other international instruments’ case law (e.g. UNCAT), following the example of the judicial analysis on Article 15(c).

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widespread); the number of civilians killed, injured and displaced as a result of the fighting. The ability or lack of it by the State to protect its citizens against violence (where practicable, it will assist to set out the various potential actors of protection and to address their actual role)/the degree of State failure). Socio-economic conditions (which should include assessment of economic and other forms of assistance by international organisations and NGOs). Cumulative effects of long lasting armed conflicts.” Similarly in EASO Curriculum for Members of Courts and Tribunals, Judicial Trainer’s guidance note, Article 15(c), Qualification Directive (2011/95 EU), A judicial analysis, 2015.

<sup>219</sup> Case C-465/07: Judgment of the Court (Grand Chamber) of 17 February 2009, para 45.

<sup>220</sup> In this regard, EASO has published a report on the implementation of Article 15c in the EU, available here: [https://easo.europa.eu/wp-content/uploads/EASO\\_The-Implementation-of-Art-15c-QD-in-EU-Member-States.pdf](https://easo.europa.eu/wp-content/uploads/EASO_The-Implementation-of-Art-15c-QD-in-EU-Member-States.pdf)

<sup>221</sup> This obligation is also described in EASO practical Guide: Personal Interview, p. 18, as follows: “Where the serious harm feared is ‘death penalty or execution’ (see Article 15(a) of the QD) or ‘torture or inhuman or degrading treatment or punishment’ (see Article 15(b) of the QD), the questions asked previously under sub-sections 4.1 and 4.2 (while examining whether the person qualifies for refugee status) should have already provided the necessary information. However, where the risk of serious harm is by reason of indiscriminate violence in situations of international or internal armed conflict, specific additional questions may be needed (see Article 15(c) of the QD). Some issues may have to be raised *ex officio* when the applicant does not mention them him/herself (e.g. with regard to female applicants from certain countries of origin, existence/absence of a (male) relative or a family/clan/tribal network or acquaintances able to provide ‘protection’ and/or subsistence according to local customs).”

### 3.14.6 Benchmarks for measuring the implementation of Article 15

Table 3.13 Benchmarks for measuring the implementation of Article 15

Whether MS use guidelines for the assessment of the serious risk of death penalty or execution:	
Yes	RO, UK
No	AT, BE, BG, CY, CZ, DE, EE, EL, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, SE, SI, SK
Whether MS use guidelines (or training material) for the assessment of the the serious risk of torture or inhuman or degrading treatment:	
Yes	AT, FR, IT, LU, <sup>222</sup> RO, SE, <sup>223</sup> UK
No	BE, BG, CY, CZ, DE, EE, EL, FI, HR, HU, IE, LT, LV, MT, NL, PL, PT, SI, SK
Whether MS use guidelines for the assessment of Article 15(c) (per country or in general or both):	
Yes	AT, EL, IE, RO, SE, UK
No	BE, BG, CY, CZ, DE, EE, FI, HR, HU, IT, LT, LU, LV, MT, NL, PL, PT, SI, SK
Whether MS take into consideration indirect consequences for the assessment of the risk deriving from/as a result of indiscriminate violence:	
Yes	BE, LV, RO, SI
No	AT, BG, CY, CZ, DE, EE, EL, FI, FR, HR, HU, IE, IT, LT, LU, MT, NL, PL, PT, SE, SK

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

Articles 20(1) and (2) stipulate that the nature of the rights granted to beneficiaries of international protection under the Recast QD should not be without prejudice to the rights laid down in the Geneva Convention, and they should apply to both refugees and beneficiaries of subsidiary protection (unless otherwise indicated). In this sense, 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. Special attention should be paid as to whether Member States have indeed differentiated the rights granted to refugees and beneficiaries of subsidiary protection in relation to residence permits and social welfare, or if they have granted them similar rights.

<sup>222</sup> On the procedure to be followed when there is a claim of torture, not on the assessment of the minimum level of seriousness.

<sup>223</sup> On the procedure to be followed when there is a claim of torture, not on the assessment of the minimum level of seriousness.



The following evaluation questions were assessed:

*What are the rights granted to:*

- Refugees?
- Beneficiaries of international protection?

*Are they different? If yes, are the rights granted to beneficiaries of subsidiary protection restricted? Why?*

*Do the Member States use any specific 'tests', criteria and/or thresholds to establish which rights and benefits could be granted to the status?*

### 3.15.1 Main findings of Articles 20(1) and 20(2)

#### **Summary of findings**

The main findings in relation to Articles 20(1) and (2) can be summarised as follows:

- Stakeholders consulted welcomed the positive impact of the Recast QD regarding the further approximation of the rights and benefits of refugees and beneficiaries of subsidiary protection;
- Even where distinctions in treatment were allowed under the Recast QD (Member States' practices in granting residence permits (Article 24), travel documents (Article 25), social assistance (Article 29)), most Member States offered equal treatment. Some Member States went beyond the requirements and further approximated the rights of the two categories, and a few provided or are planning to introduce different treatment of refugees and beneficiaries of subsidiary protection).

#### **Rights granted to refugees and subsidiary protection beneficiaries and existing differences in the application of such rights**

The Recast QD constituted a step towards the approximation of the rights and benefits of refugees and beneficiaries of subsidiary protection, even if some distinctions were still kept in the text with regard to the duration of residence permits and social welfare.

Stakeholders welcomed the approximation brought by the Recast QD. According to ECRE, for example, "aligning the content of rights granted to SP beneficiaries with refugees reflects the fact that such persons often have similar protection and social needs and ensures compliance with the principle of non-discrimination as interpreted by the ECtHR."<sup>224</sup> Moreover, UNHCR indicated that "this approach recognises that distinguishing between beneficiaries of protection, and thereby between their rights and obligations, may not be justified in terms of the individual's flight experience, protection needs or ability to participate and contribute to society."<sup>225</sup>

In the majority of the content-related Articles, differences in treatment, overall, were not identified (and only some limited exceptions were reported). Moreover, even where distinctions in treatment were allowed under the Directive, evidence showed that some Member States<sup>226</sup> went beyond the requirements and further approximated the rights of the two categories. For example:

- With regard to residence permits (Article 24) – in four Member States, both refugees and beneficiaries of subsidiary protection were issued a residence card of the same duration;

<sup>224</sup> ECRE Information Note on Directive 2011/95/EU, available at: <https://bit.ly/2HjB1Xw>

<sup>225</sup> UNHCR comments on the European Commission's proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted (COM(2009)551, 21 October 2009)

<sup>226</sup> The Member States covered in this section vary depending on the Article of the Directive. For more detailed information which Member State was covered for which Article, please see footnote in the beginning of each section covering the respective Article.

- With regard to social welfare (Article 29) – only three Member States granted different entitlements to the two categories as regards the provision of social assistance.

While, as shown in the overview table below, major instances of different treatment (not foreseen by the Directive) were not identified across the EU, some stakeholders called for a further approximation of rights of refugees and beneficiaries of subsidiary protection. For example, the fact that Member States can grant beneficiaries of subsidiary protection only a temporary residence permit of one year puts them at an administratively disadvantaged position with regard to, for example, access to employment. Employers were less inclined to offer a job to someone whose stay in the Member State appeared uncertain to them.

**Table 3.14 Overview of differences in rights and benefits between refugees and beneficiaries of subsidiary protection**

Articles	Identified differences
20(3) and 20 (4)	No differences in treatment identified
21	No differences in treatment identified
22	No differences in treatment identified
23	No differences in treatment identified
24	In line with the provisions of Article 24, 15 of the 27 Member States bound by the Directive 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. 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 a longer residence permits to refugees, while nine Member States went beyond Article 24(2), granting longer residence permits to beneficiaries of SP
25	In the vast majority of Member States, 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	With regard to access to employment in most cases, MS have ensured that the laws and practices applying to beneficiaries of SP are the same as those applying to 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)
27	No differences in treatment identified
28	No differences in treatment identified
29	<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> ).
30	No differences in treatment identified in relation to access to healthcare except in Malta, where some differences apply (whereas refugees have access to all the state medical services free of charge, SP beneficiaries are entitled only to 'core' state medical services free of charge)
31	No differences in treatment identified
32	No differences in treatment identified
33	No differences in treatment identified
34	No differences in treatment identified
35	No differences in treatment identified

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

A more detailed analysis of the differences is included as part of the sections on the respective Articles.

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

#### 3.16.1 Background on information

Articles 20(3) and (4) stipulate that once an individual evaluation has been carried out to assess special needs, Member States should take into account the situation of vulnerable persons when fulfilling all the obligations contained in Chapter VII. The Recast QD, however, does not lay down any specific requirement in relation to the type of individual evaluation to be carried out, by whom and with what kind of tools.

No major changes were brought to these specific Articles by the Recast QD. However, ‘victims of human trafficking’ and ‘persons with mental disorders’ were added to the list presented in Article 20(3).

The following evaluation questions were assessed:

*Do the Member States conduct ‘individual evaluations’ to assess whether a person has special needs or do the competent authorities rely on the evaluation made in the asylum procedure?*

*What is the competent authority to undertake this evaluation?*

*Do the Member States use any specific tests, criteria and/or thresholds to assess the existence of special needs? Is the list of vulnerable persons presented in Article 20(3) considered as an exhaustive list?*

*Who is informed of the outcome of the evaluation? Are the rights/treatment granted tailored to the individual situation?*

#### 3.16.2 Findings for Articles 20(3) and 20(4)

##### **Summary of main findings**

The main findings in relation to Article 20(3) and (4) can be summarised as follows:

- The vast majority of Member States, for which information was provided,<sup>227</sup> relied on the vulnerability assessment made during the asylum procedure and did not assess the special needs of vulnerable persons again once a status of international protection had been granted;
- In most of the cases, the determining authority was involved in the assessment. Often, the authorities were supported by specialised staff (social workers, medical specialists, etc.) as well as relying on other services such as reception centres. This information was then communicated to the relevant bodies responsible for providing the services associated with the rights of the beneficiaries of international protection;
- The vast majority of Member States, for which information was provided, did not have specific tools in place to assess the needs of vulnerable individuals. Three Member States, however, indicated that guidance and training were in place to support case handlers and other competent staff when undertaking such assessments;
- With regard to the list of vulnerable individuals included in Article 20(3), the latter was considered as not exhaustive by stakeholders in seven Member States. It seems that the majority of Member States preferred to evaluate vulnerable needs on a case-by-case basis, without being limited to a pre-set list of vulnerable beneficiaries;

<sup>227</sup> Information regarding all EU Member States bound by Directive 2011/95/EU or 2004/83/EC are reflected regarding Article 20(3) and (4), with the exception of AT, BE, ES, IE, LT where no information could be collected for reasons explained in Section 2 of this report.

- The information coming from the assessment of needs was usually used to create a tailored integration plan or to customise the services provided (i.e. tailored to the needs of the vulnerable beneficiaries);
- 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.

**Authorities involved, use of ‘individual evaluations’ to assess special needs and existence of specific tests, criteria and/or thresholds**

Evidence collected showed that all the Member States, for which information was provided, relied on the vulnerability assessment made during the asylum procedure<sup>228</sup> and did not assess the special needs of vulnerable persons again once a status of international protection has been granted.

Such assessments usually started early in the application process. For example, stakeholders in the **United Kingdom** indicated that, if someone was considered to fall within this category, social workers would be involved very early on in the asylum procedure. The results of the assessment were also used to determine the special needs once a status of international protection had been granted.

In most of the cases, therefore, the determining authority was involved in the assessment. Often, (as further explained below) the authorities were supported by specialised staff (social workers, doctors, etc.) as well as relying on other services such as reception centres. The information was then communicated to the relevant bodies responsible for providing the services associated with the rights of the beneficiaries of international protection (as also further described below).

The situation was however different in **Greece**, where there was no central authority responsible for undertaking evaluations for assessing special needs. As mentioned by stakeholders, each service/authority responsible for providing the social benefits linked to the status could make an assessment and apply specific conditions and procedures. Similarly, in **Finland**, different authorities could also undertake different assessments and the evaluation of special needs was considered as an ongoing process, although there was a certain degree of cooperation amongst the different authorities making such assessments, and the results of previous assessments were taken into account in any new or additional ones.

Table 3.15 below presents an overview of the competent authorities. The table shows that, in the vast majority of cases, the authorities responsible for the assessment of special needs were also those responsible for processing the application.

**Table 3.15 Overview of competent authority to determine special needs of vulnerable persons**

Member State	Competent Authority
AT	N/A
BE	N/A
BG	Social Activities and Adaptation Directorate in State Agency for Refugees
CY	Asylum Service
CZ	Refugee Facility Administration within the Ministry of Interior
DE	Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge – BAMF)
EE	Police and Border Guard Board

<sup>228</sup> As required in Article 22 of the “Reception Directive” (2013/33/EU) concerning the assessment of the special reception needs of vulnerable persons, the “assessment shall be initiated within a reasonable period of time after an application for international protection is made and may be integrated into existing national procedures.”

EL	No central competent authority. Each service/authority responsible for providing the social benefits linked to the status can make an assessment
FI	Different authorities such as the police, reception centres, the Finnish Immigration Service. When the applicant receives IP/SP status, there is an individual evaluation undertaken by the municipality and the Employment Office
HR	Ministry of Immigration (MOI) through reception centres and Asylum department
HU	Asylum Authority
IE	N/A
IT	Ministry of Interior through the Asylum Seekers Protection System (Sistema di Protezione per Richiedenti Asilo – SPRAR )
LV	Office of Citizenship and Migration Affairs (Pilsonības un migrācijas lietu pārvalde – OCMA) during the asylum procedure (after refugee status has been granted, responsibility falls on the Ministry of Welfare)
LU	N/A
MT	Agency of the Welfare of Asylum Seekers (AWAS)
NL	N/A
PL	Office for Foreigners
PT	N/A
RO	The General Inspectorate for Immigration (Inspectoratul General pentru Imigrari – GII) refers to the competent authorities (e.g. Institute of Forensic Medicine, Commission for the Evaluation of Handicap)
SE	Swedish Migration Agency (SMA)
SI	Ministry of Interior
SK	Procedural Unit, the Department of the Asylum Centres, as well as social workers and NGOs
UK	N/A

While the vast majority of Member States, for which information was provided, did not have specific tools in place to assess the needs of vulnerable individuals, several made use of specialised staff.

#### Example of countries having specific tools to assess special needs

**Malta** had a tool in place to undertake this assessment, called the Vulnerable Adults Assessment Procedure (VAAP – also used by UNHCR, immigration police and NGOs), as well as a specific tool for minors. These tools applied to asylum seekers but the results were used also to determine the special needs once a status of international protection was granted. In **Sweden**, a method for identification of persons with special needs based on the provisions of the Recast Asylum Procedures Directive and the Reception Directive in relation to persons with special needs is currently under preparation by the Swedish Migration Agency.

This may have consisted of a team of healthcare workers, including doctors, psychologists and (where relevant) psychiatrists, whose role would be to support the case handler in assessing the vulnerability of the applicant, if there are reasons to believe that the person may fall within this category and/or if she/he has indicated to have been a victim of violence.

With regard to the list of vulnerable individuals included in Article 20(3), the latter was considered as not exhaustive by stakeholders in seven Member States (BG, CZ, EL, FI, HU, LU, and PL). Only **Estonia** considered the list exhaustive (while the other Member States did not comment on this specific issue). It therefore seems that the majority of Member States tended/preferred to evaluate

vulnerable needs on a case-by-case basis, without being limited to a pre-set list of vulnerable beneficiaries.

Only three Member States also indicated that guidance and training were in place to support case handlers and other competent staff when undertaking such assessments.

#### **Example of countries having guidelines and training in place**

In **Bulgaria**, case handlers were trained for dealing with the specific situation of vulnerable persons. EASO training on vulnerable persons was also mentioned as being particularly useful for case handlers in this respect. In **France**, the determining authority (Office français de protection des réfugiés et apatrides – OFPRA) conducted regular awareness campaigns and training as well as elaborated guidelines on how to undertake the assessment of special needs. Finally, in **Italy**, the Ministry of Health will issue guidelines in the near future regarding the special treatment of victims of torture and other vulnerable people. The guidelines are currently being prepared by an inter-institutional network bringing together medical specialists and organisations working in the field. This change would however concern mainly victims of torture, not all vulnerable categories

#### **Subsequent use of assessment information**

Who was informed of the outcome of the evaluation of special needs varied significantly across Member States. In the majority of cases, the authorities informed the applicant and his/her representative, if applicable, of the outcome of the evaluation. Six Member States (CZ, FI, HR, HU, MT and RO) also indicated that such information was circulated across the competent bodies/institutions dealing with applicants/beneficiaries of international protection (guardians, centres for social care, hospitals, relevant ministries, etc.).

In most cases, integration authorities were also mentioned as recipients of such information. This was to ensure that these authorities could take the special needs of the beneficiary into account in the integration measures that could be offered, or, where such existed, develop a tailored integration plan (BE, BG, CZ, FI, FR, HR, PL, RO and SK).

### **3.16.3 Examples of good application**

The existence of specific tools for assessing the needs of vulnerable individuals, based on clear indicators/criteria, contributes to improving the homogeneity of the assessment (i.e. decreases the differences in the assessment made by the different actors involved). The use of specialised staff in the evaluation (social workers, medical staff, etc.) is also considered as increasing the effectiveness of the assessment.

Moreover, the more the elaborate guidance, training and support provided to case handlers and other competent authorities for the assessment of needs of vulnerable, the more effective the assessment is.

### **3.16.4 Possible application issues**

With regard to the subsequent use of assessment information, evidence shows that, in some instances, special needs might be overlooked in practice, despite the presence of specialised staff during the assessment and/or the use of specific assessment tools.

Some stakeholders raised issues in relation to their Member State's practices, as follows:

- Issues related to the high influx of migrants and a high number of applications. Some Member States seem to struggle to carry out a systematic assessment of vulnerability (IT, MT, EL);
- Problems linked to insufficiently qualified staff (MT) and/or insufficient institutions dealing with vulnerable persons (EL); and
- Lack of specific tools in place (PT) to assess vulnerable needs.

### **3.16.5 Recommendations**

Based on the above findings, the following recommendations can be put forward:

- Member States should be encouraged to follow the EASO Training Module on Interviewing Vulnerable Persons.<sup>229</sup>
- In addition, Member States should be encouraged to follow EASO’s Practical Guide on Evidence Assessment and on the EASO Practical Guide: Personal interview as well as UNHCR’s Handbook. A consistent application of existing guidance would mitigate the risk of Member States resorting to a general statement about the credibility of the applicant in order to justify a rejection, rather than thoroughly assessing the individual grounds of the case.
- EASO’s web-based tool for identification of persons with special needs launched in January 2016<sup>230</sup> should be further developed. Currently, the ‘stages’ included in the tool comprise those from ‘First contact – making an application’ to ‘End of the first-instance asylum procedure’. EASO could further look into providing guidance on the procedures to follow once the decision on the status is made, and explore how the rights outlined in Chapter VII of the Recast QD are granted to vulnerable individuals. Such guidance would enable a more systematic and transparent approach to quantitative and qualitative measurement tools for assessing vulnerability across the Member States.
- In addition, EASO could further develop guidelines for Member States with regard to the development of their own criteria/indicators for assessing a vulnerable situation. More specifically, the following could be outlined: quality criteria for indicator development, the different phases of indicator development, the relationship between indicators, data to be collected, etc. Such guidance would enable a more systematic and transparent approach to quantitative and qualitative measurement tools for assessing vulnerability across the Member States.

### 3.16.6 Benchmarks for measuring the implementation of Articles 20(3) and 20(4)

**Table 3.16 Benchmarks for measuring the implementation of Articles 20(3) and 20(4)**

Whether or not MS, when considering special needs of a beneficiary of international protection:	
Undertake a new assessment	Greece (several assessments undertaken by different authorities) Finland (ongoing assessments) <sup>231</sup>
Rely on the assessment undertaken during the asylum procedure	All MS
List of vulnerable persons presented in Art. 20(3) was considered as an exhaustive list	EE
List of vulnerable persons presented in Art. 20(3) was not considered as an exhaustive list	BG, CZ, EL, FI, HU, LU and PL <sup>232</sup>
Use specific tools to assess vulnerability	MT, SE <sup>233</sup>

<sup>229</sup> <https://www.easo.europa.eu/sites/default/files/public/BZ0413152ENC.pdf>.

<sup>230</sup> Available here: <https://europa.eu/lxX98Rb>. Its focus to-date has been on activities related to children, including unaccompanied minors and on the link between asylum and trafficking in human beings. Identification and response to the special needs of vulnerable groups was further mainstreamed in all EASO activities, including in particular training, quality support and country of origin information. The tool can be used by anyone who is in contact with applicants for international protection and who may have a role in the identification of special needs in the asylum procedure and the reception context.

<sup>231</sup> Greece and Finland do rely on previous assessments undertaken during the asylum procedures, however, the information provided showed that, in addition, they also undertake new assessments once the status is granted. No information on this specific issue was provided by other Member States.

<sup>232</sup> No information provided by other Member States.

<sup>233</sup> No information provided by other Member States.

Tailor rights and treatment to take account of the special needs of the person	BE, BG, CZ, FI, FR, HR, PL, RO and SK <sup>234</sup>
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### 3.17 Protection from *refoulement* – Article 21

Article 21 requires Member States comply with the principle of *non-refoulement* in accordance with their obligations under international human rights law.

Article 33 of the 1951 Geneva Convention **prohibits expelling or returning (*refoulement*)** a refugee to the frontiers of territories where his or her life would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. However, **Article 33(2) defines the possible exceptions** to this principle, namely occasions when there are reasonable grounds for considering:

- The person to be a danger to the security of the Member State; or
- If the person has been convicted by a final judgment of a particularly serious crime and in addition to that conviction constitutes a danger to the community of that Member State.

This provision is identical to the wording of Article 21 of the Directive, except that the latter specifies that this provision applies to all refugees, **“whether formally recognised or not”**. The rationale behind Article 21(2) is to ensure the protection of the host Member State’s safety. However, at the same time, Article 3 of the ECHR **prohibits torture or inhuman or degrading treatment** or punishment. For Member States to return an individual to a country where s/he might be exposed to such treatments would therefore be in breach of their international obligations.<sup>235</sup> EU Member States are also bound by the *non-refoulement* principle enshrined in Article 78(1) TFEU and Articles 18 and 19 of the EU Charter of Fundamental Rights, which recall the obligations defined in the Geneva Convention as well as the prohibition of *refoulement* to a country where a risk of inhuman or degrading treatment exists. While *refoulement* as such is not prohibited, “it is **rarely if ever possible to refoule a refugee** consistently with international obligations.”<sup>236</sup> Article 21(3) provides that in the event the *refoulement* is not possible for refugees who fulfil one of the grounds defined under Article 21(2), their residence permit may be revoked, ended or not renewed. Indeed, even if the conditions set out in Article 21(2) of the Directive are not fulfilled, the refugee’s behaviour may constitute “compelling reasons of national security or public order” in the sense of Article 24(1) of the Directive,<sup>237</sup> as detailed under section 3.20 of this report.

In the Recast QD, Article 21 echoes Article 14(4), under which the same grounds are listed as grounds to revoke, end or refuse to renew international protection status. The two provisions are optional. It is therefore up to Member States to apply one – or both – of these provisions in order to address the danger to the security or to the community presented by the refugee.

No changes were introduced by the Recast QD in relation to this Article. The following evaluation questions were assessed:

*To what extent do Member States refoule refugees – whether formally recognised or not – if s/he is considered a danger to the Member State’s security?*

*To what extent do Member States refoule refugees – whether formally recognised or not – if s/he is considered a danger to the community after having been convicted of a serious crime?*

*Article 21(2)(b), Are the two criteria assessed separately?*

*- Having been convicted?*

<sup>234</sup> No information provided by other Member States.

<sup>235</sup> ECtHR, *Soering v United Kingdom*, No. 14038/88, Judgment of 7 July 1989.

<sup>236</sup> Peers, S., *What if a refugee allegedly supports terrorism? The CJEU judgment in T.*, EU Law Analysis, 24 June 2015, available at <http://eulawanalysis.blogspot.fr/2015/06/what-if-refugee-allegedly-supports.html>

<sup>237</sup> CJEU, C-373/13, H.T. v Land Baden-Württemberg, 24 June 2015.



- *Constituting a danger assessed separately?*

*If yes, is the same authority responsible for this assessment? Does the final judgment on the two criteria constitute an irrefutable presumption?*

*How does the Member State assess the seriousness of the danger? Does it use any specific test, criteria and/or thresholds?*

*Does relevant national case law exist on the application of this Article?*

### 3.17.1 Findings of Article 21

The main findings in relation to Article 21 can be summarised as follows:

- Only a few cases of *refoulement* were identified across the EU. Even where legislation allowed Member States to *refouler*, based on Article 22(2), these exceptions were rarely applied in practice. Deportation/return practices were undertaken only when refugee status had been formally revoked, ended or refused for renewal and only when not prohibited by international obligations. This means 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.
- The criteria ‘having been convicted’ and ‘constituting a danger’ were assessed separately in all but three of Member States, for which information was available;
- Amongst Member States that have provided information on their assessment of the existence of a serious danger for their security or their community, it appeared that a few use a list of criteria or a threshold. Generally, practices described by Member States 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. Great discrepancies were observed between the definitions applied in each Member State in their conception and application of the two criteria.
- In two of the consulted Member States, final judgments seemed to constitute an irrefutable presumption of causing a danger to the security of the Member State.

### 3.17.2 Exceptions to the principle of *non-refoulement*

The vast majority of consulted Member States (AT, BE, CY, DE, EL, FI, FR, HR, HU, IE, IT, LV, MT, NL, PL, PT, RO, SE, SI and UK<sup>238</sup>) indicated that, in practice, they do not *refouler* refugees under any circumstance. Only the **Czech Republic** indicated that *refoulement* took place but in a very limited number of cases (however, no quantitative data was provided). **Greece** and **Croatia** mentioned that the possibility to *refouler* refugees because ‘extreme’ circumstances existed under national law, but that it had never been applied in practice. **Croatia** also mentioned that there was one court decision concerning the extradition of a third-country national being recognised as a refugee by another Member State. In that case, the Ministry of Justice, (which is the final instance adjudicator for extradition cases), refused to extradite the person. In **Germany**, an expulsion order could be adopted against the beneficiary of international protection and not be enforced, which meant in practice that the person concerned stayed in the territory but no longer had his/her international protection status. Therefore, the person’s access to the social rights attached to the international protection status was limited. Similarly, in **Slovenia**, NGOs consulted indicated that, in recent years, two extradition procedures were stopped only after intervention by UNHCR.

<sup>238</sup> Information regarding all EU Member States bound by Directive 2011/95/EU or 2004/83/EC are reflected regarding Article 21, with the exception of ES and LT where no information could be collected for reasons explained in Section 2 of this report.

If the status was revoked, ended or refused, different situations could arise in practice:

- The foreigner is not *refouled* even if they are considered a danger to national security or the community of the Member State – **Austria** and **Finland**, for example, never *refouled* refugees if the conditions for which this person was recognised for the status still hold;
- The foreigner is not *refouled* in practice but s/he is left in a legal limbo – **France** and the **Netherlands** did not directly *refouled* but revoked the protection status, thus leaving the person without a defined legal status;
- The foreigner is provided with another form of protection – for example, in **Italy**, **Latvia** (in cases where the person could not be returned to his or her country of origin), **Poland** and **Sweden**, a tolerated stay, temporary or humanitarian residence permit might be granted.

With regard to the **application of Article 21(2)(b)**, Member States might *refouled* a person who, “having been convicted by a final judgment, constitutes a danger to the community”. The wording of the Article implies that these are cumulative conditions, in the sense that Member States should assess separately that there was a ‘final judgment of a particular serious crime’ and that there is ‘danger to the community’ and not assume that such a judgment automatically causes danger to the community.

Ten Member States (BE, CZ, EL, HR, HU, IT, PL, RO, SK and SI) confirmed that they followed this interpretation, by establishing the causal relationship between the conviction and the danger presented. Some of them took into account factors such as the time elapsed since the final conviction, the motives of the crime, or the country in which the judgment was pronounced. A more detailed assessment of Member States’ understanding of this concept is provided under section 3.13 on Articles 14 and 19 on revocation, ending or refusal to renew international protection statuses. On the other hand, in **Cyprus**, **Estonia** and **Sweden** they were assessed together, meaning that the final conviction was considered as the constitutive element of the danger to the community.

In most cases (and where the criteria were assessed together), the same authority was responsible for the whole procedure, with the exception of **Greece**, **Croatia** and **Slovakia**. In **Greece**, the courts and police were responsible for the two different criteria (the conviction by a judgment and the danger to the community, respectively), while in **Croatia**, the assessment was conducted in coordination with several relevant state bodies, e.g. Ministry of Interior, Ministry of Foreign Affairs, police department, Security and Intelligence Agency. In **Slovakia** the courts decided in court proceedings, whereas police departments decided in the administrative procedure.

Few of the consulted Member States indicated whether the final judgment of a particularly serious crime constituted an irrefutable presumption that the person represented a danger to the community of the Member State in line with Article 21(2)(b) (HR, HU).

An overview of how Member States assessed the seriousness of the danger created by a beneficiary of international protection for the State’s security or community is provided in section 3.13 on Articles 14 and 19 of the Directive.

### 3.17.3 Examples of good application

- In instances where *refoulement* or extradition cases were decided by relevant national courts, actors such as the Ministry of Justice and UNHCR acted as a final instance adjudicators/wardens avoiding *refoulement* in practice (HR, SI).
- In the assessment of the existence of a particular danger to the community of a Member State following an individual’s conviction by a final judgment for a particularly serious crime, the individual assessment of the **current nature of the danger** ensures that the decision to revoke someone’s status is proportionate. Elements to assess include the date of the conviction, whether the individual served his/her sentence, etc. It is also important that Member States examine **by which court the conviction was pronounced**, in order to make sure that the individual was tried under fair conditions and according to EU standards.

### 3.17.4 Possible application issues

The following practices can be considered as being incompliant, not properly implemented and/or not ‘within the spirit’ of the Directive.

As mentioned above, **Croatia** and **Hungary** indicated that the final judgment of a particularly serious crime constituted an irrefutable presumption that the person represented a danger to the community of the Member State. No possibility to challenge such decisions was provided to beneficiaries of international protection.

Considering that a conviction by a final judgment for a particularly serious crime automatically leads to an individual being considered as constituting a danger for the community of the Member State may not conform to the wording of Article 21(2)(b). Indeed, the wording of the provision may imply that the conditions of ‘having been convicted by a final judgment of a particularly serious crime’ and constituting ‘a danger to the community of that Member State’ are cumulative.

### 3.17.5 Recommendations

Based on the above findings, the following recommendations can be put forward:

- Recommendations regarding the application and clarification of Article 14(4) are also relevant to the application of Article 21(2).
- 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)<sup>239</sup> are systematically revoked, ended or not renewed.

### 3.17.6 Benchmarks for measuring the implementation of Article 21

Whether or not the Member State <i>refoule</i> who fall under the scope of Article 21(2):	
No <i>refoulement</i> in practice	AT, BE, CY, DE, EL, FI, FR, HR, HU, IE, IT, LV, MT, NL, PL, PT, RO, SE, SI, UK
<i>Refoulement</i> possible in limited cases	CZ
No information	BG, LT, LU, SK
Whether or not the Member State assesses separately the criteria of Article 21(2)(b):	
Cumulative assessment (a causal relationship between the conviction and the danger needs to be demonstrated)	BE, CZ, EL, HR, HU, IT, PL, RO, SK, SI
Joint assessment (the final conviction is considered as the constitutive element of the danger)	CY, EE, SE

## 3.18 Information – Article 22

### 3.18.1 Background on information

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. Such information should be provided in a language that they are reasonably supposed to understand, and access should be granted as soon as possible following granting of the refugee or beneficiary of subsidiary protection status. In practice the Article allows significant room for Member States to choose how and when such information should be provided to the beneficiary of international protection.

<sup>239</sup> This provision applies to refugees when (a) there are reasonable grounds for considering him/her as a danger to the security of the Member State in which he or she is present; or (b) he/she, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that Member State.

No changes were introduced by the Recast QD. However, the new phrasing puts more emphasis on the extent to which information should be provided in a language that beneficiaries understand.

The following evaluation questions were assessed:

*How do the national authorities guarantee the right of access to information on the rights and obligations relating to the status granting?*

*What type of information is provided to those granted asylum (content)?*

*Is the information provided in a language that is understandable for the person granted asylum?*

*How is the information delivered (e.g. face-to-face, hotlines, helpdesks, etc.)? By whom?*

### 3.18.2 Findings for Article 22

#### *Summary of main findings*

The main findings in relation to Article 22 can be summarised as follows:

- The timeliness in the provision of information across the EU was assessed positively;
- Both State actors and NGOs were involved in the provision of information. NGOs were seen as crucial actors in this process, filling gaps when, in some instances, State actors “failed” to comply with the information requirements set out in Article 22;
- Information to beneficiaries of international protection was overall comprehensive across the EU as well as, in most of the cases, provided in a language that they understood (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).

#### *When information is provided*

Article 22 indicates that Member States will provide information on their rights and obligations to beneficiaries of international protection as soon as possible after the protection status has been granted. Overall, timeliness in the provision of information was high across the EU. In fact, for the majority of the Member States, for which information was provided, (BG, CZ, EE, EL, FR, HR, HU, IT, NL, PL, PT, RO, SE, SI<sup>240</sup>) the information on the rights and obligations relating to the status granted was delivered together with the positive decision.

Moreover, **Malta**, **Slovakia** and the **United Kingdom** also stressed that information about the rights and obligations of beneficiaries of international protection was already given during the asylum application procedure and not only once the status was granted.

#### *Actors involved in the provision of information*

As shown in Table 3.17 below, in the majority of the Member States consulted, the determining authorities were responsible for the provision of information on the rights and obligations linked to the status. In addition, in the vast majority of Member States, NGOs played an important role in complementing the information provided by state agencies or, in some cases, providing it in the first place.

<sup>240</sup> Information regarding all EU Member States bound by Directive 2011/95/EU or 2004/83/EC are reflected regarding Article 22, with the exception of ES, LT where no information could be collected for reasons explained in Section 2 of this report.

**Table 3.17 Actors involved in the provision of information**

Member State	Competent Authority	Member State	Competent Authority
AT	Federal Ministry for Europe, Integration and Foreign Affairs and other integration authorities	IT	UNHCR
BE	CGRA	LT	N/A
BG	N/A	LV	CMA and Safe House (NGO)
CY	Asylum Services	LU	N/A
CZ	N/A	MT	Relevant authorities and NGOs
EE	Police	NL	N/A
DE	BAMF, competent foreigners authorities that issue the residence permit, NGOs and jobcentres	PL	NGOs
EL	Asylum Services	PT	SEF
FI	Ministry of Employment and the Economy	RO	GII and NGOs working with GII
FR	OFPRA	SE	SMA reception officer
HR	Ministry of Interior	SI	Ministry of Interior and NGOs
HU	Case handler	SK	Procedural Unit
IE	Different relevant authorities	UK	N/A
HU	N/A		

Evidence further showed that, in some Member States, efforts were invested in improving coordination of the delivery of information across State actors and NGOs.

**Example of cooperation in the provision of information.**

In **Ireland**, there was no central authority responsible for delivering information; rather, after being informed of the status they have been granted beneficiaries of international protection are subsequently referred to each relevant service (e.g. healthcare, accommodation, etc.) to get information directly from there. The way in which these services delivered information, however, varied significantly. For instance, the Health Service Executive produced leaflets with all necessary information. There was, nevertheless, an attempt by the Department of Justice and Equality to hold regular inter-agency meetings in order to ensure some level of consistency and coherence. A pilot was also implemented by local NGOs, which consisted in six information sessions (given by different government agencies) for beneficiaries of international protection in relation to social protection and employment. The pilot may soon be rolled out to accommodation centres, which indicates that there were steps to address issues with information for beneficiaries of international protection.

**Content and language of the information provided**

Information to beneficiaries of international protection overall was comprehensive in the Member States as well as, in most of the cases, provided in a language that they could understand thus complying with the requirements of the Directive.

The information provided related systematically to the rights and obligations of the beneficiary of international protection, which also included information on how to access these rights as well as the necessary documents. A number of Member States also provided additional information. For instance, in **Cyprus, Croatia and Romania**, beneficiaries of international protection also received a list of useful contact details to help them in the process of integration.

For the majority of the consulted Member States, information was generally provided both in written form (through brochures, leaflets, booklets

distributed by the authorities and available on those authorities' websites) and oral form (face-to-face meetings with the beneficiary of refugee or subsidiary protection status).

Table 3.18 presents an overview of the languages in which the information was provided. The table shows that, in most of the countries, the language availability was good (i.e. the information was provided in a language understood by the beneficiary). This was, in most of the cases, done through an interpreter where information is provided orally. However, in some countries (BE, CY, FR, EL, MT), the availability of information in a language, which is understandable to beneficiaries, still seemed to be limited.

**Table 3.18 Overview of languages in which information is provided**

Member State	Languages & interpreters
AT	Website in Austrian and English. Leaflet available in different languages (not specified)
BE	Brochure available in Dutch, French and English
BG	Language understood by beneficiary
CY	English
CZ	Language understood by beneficiary with an interpreter
DE	N/A
EE	Language understood by beneficiary
EL	Interpreter at Asylum Service Short 1-page note with basic information is provided in multiple languages More comprehensive 5-page booklet is provided in Greek only
FI	Interpreter
FR	Leaflet on in French (there is planned translation in English)
HR	Handbook in English, French, Russian, Farsi and Arabic. When the information is delivered orally, an interpreter is available.
HU	Orally an interpreter is present In written form, the information is written in a language understood by the beneficiary
IE	N/A
IT	Brochure in English, French, Spanish or Arabic. Interpreters are also available.
LV	Several languages
LU	N/A
NL	The brochure exists in Arabic, Azeri, Chinese, Dari, English, Farsi, French, Georgian, Russian, Sorani, Somali, Tamil, Tigrinya and Turkish
MT	English
PL	Language understood by beneficiary
PT	Language understood by beneficiary
RO	Brochure in a language that the applicant speaks and counselling sessions with interpreter
SE	An interpreter is available
SI	Information is provided in more than 10 languages No interpreter is available
SK	Language understood by beneficiary
UK	The information is given in English primarily, but their legal representative can help them translate

### 3.18.3 Examples of good application

In most of the Member States for which information was available, information is provided to beneficiaries of international protection through different channels (in a written form as well as orally). This combination of information channels (and especially when oral information is provided

through an interpreter) is expected to increase the effectiveness of information provision (by reaching more beneficiaries as well as by increasing the possibility that such information is well-understood).

As already mentioned above, cases of cooperation between relevant authorities while providing information (as currently tested in **Ireland**) is also expected to provide beneficiaries with comprehensive information on their rights and obligations, avoiding information gaps and/or overlaps.

### 3.18.4 Possible application issues

A number of stakeholders consulted raised issues in relation to their Member State's ability to adequately comply with Article 22. Such difficulties range from inadequate information provided in some areas to major difficulties leading to gaps in informing all beneficiaries of their rights and obligations. The use of highly legal/technical language, in which such information is delivered, was also considered as a major obstacles to communication and understanding for beneficiaries.

In **Belgium**, the information regarding the rights of family members of beneficiaries of international protection, was deemed insufficient, whilst in **France**, the system of social security was assessed as too complex to fit in an information leaflet or handbook and was therefore not included. The lack of available interpreters was lamented in **Slovenia** and **Luxembourg**, which stakeholders argued could sometimes lead to a lack of understanding of one's rights.

In **Luxembourg** and **Portugal** stakeholders reported that the information contained in the leaflets/handbooks was at times too technical and legal, making it difficult for beneficiaries to fully understand. Similarly, in **Poland** the information provided in relation to the procedures to access the rights associated with their status was perceived as not clear enough, using too much legal jargon.

In **Cyprus**, an NGO commented that access to information was hindered because of cultural misunderstandings or because the psychological condition of the refugee was unstable.

While the Directive requires Member States to provide information to every person receiving an international protection status (and this was confirmed to be the case by **Estonia**, **Romania** and **Slovenia**), the information collected also showed that, in practice, this does not always happen. In **Italy**, the government concluded an agreement with UNHCR and other NGOs to provide beneficiaries of international protection with information on their rights and obligations. However, with the current large influx of people it was extremely difficult for these organisations to systematically provide this information, leaving some beneficiaries unaware of all their rights and obligations. In **Malta**, access to information was assessed as very poor by the stakeholders consulted, leading many beneficiaries of international protection to subsequently refer to NGOs to be provided the information they could not get from state agencies. Similarly, in **Cyprus**, stakeholders indicated that "the authorities complied with their obligation for information simply by providing a leaflet with general information about procedures, rights and obligations. Inevitably the NGOs provided more accurate and updated information to refugees and SP beneficiaries." In **Greece**, stakeholders also pointed out that there was a "longstanding failing on the part of the state to inform foreigners on their rights." Finally, in **Germany**, stakeholders pointed out that the information provided by State actors is "far from uniform". In this context, they stressed the work of NGOs, counselling centres for social rights and jobcentres in providing refugees and beneficiaries of subsidiary protection with information on their rights and obligations.

### 3.18.5 Recommendations

Based on the above findings, the following recommendations can be put forward:

- The provision should include minimum standards as to the content of the information to be provided to beneficiaries of international protection, which should include, as a minimum, information on all the rights mentioned in the legislative instrument (family union, residence permit, travel document, access to employment, education, accommodation, and to integration

programmes, recognition of qualifications with and without certificates, social welfare, healthcare, representation of UAMs, freedom of movement, etc.);

- EASO could issue guidance for national authorities responsible for information provision, with the aim to:
  - Further clarify the above-mentioned minimum standards;
  - Encourage Member States to simplify the language of the written information, avoiding technical and legal jargon;
  - Encourage Member States to make use of multiple channels of information (for example, individual and collective information sessions, leaflets and other dissemination material) albeit in a coordinated manner;
  - Encourage Member States to use interpreters when providing information to beneficiaries;
  - Identify and share best practice in this field (in terms of countries, which have implemented particularly innovative and effective practices, etc.);
  - Further clarify that the rights conferred by the Directive are only attached to the country where the status was obtained.

These measures would ensure that information is provided to beneficiaries of international protection in a more systematic and uniform manner compared to what is currently done by the Member States. Ultimately, such measures are expected to improve the awareness of beneficiaries of international protection of their rights and obligations. In particular, the clarification that the beneficiary will only be entitled to the rights attached to international protection in a particular Member State will supposedly serve as a disincentive for secondary movements.

### 3.18.6 Benchmarks for measuring the implementation of Article 22

**Table 3.19 Benchmarks for measuring the implementation of Article 22**

<b>Whether or not MS, when informing beneficiaries of international protection of their rights and obligations:<sup>241</sup></b>	
Disseminate printed material	AT, BE, CY, CZ, DE, EE, EL, FR, HR, HU, IE, IT, LV, MT, NL, PL, PT, RO, SI, UK
Provide the information by means of their determining authorities and/or reception/integration centres (orally)	BE, BG, CY, CZ, DE, EE, EL, HR, HU, LV, MT, PL, PT, RO, SE, SI, SK
Use websites	AT, BE, EL, IE, SE
Established a helpdesk/(part of) Information centre	AT
Established a hotline	CZ, UK
<b>Whether the information provided covers:</b>	
Information on the rights granted	All MS
Details of relevant authorities/services/organisations that can provide support	All MS
Other	CY, CZ (information on general living conditions)
<b>Whether the language availability is:<sup>242</sup></b>	
Good	AT, BG, CZ, EE, FI, HR, HU, IT, LV, NL, PL, PT, RO, SE, SI, SK, UK

<sup>241</sup> Information on the method for the provision of information was not available in two Member States

<sup>242</sup> No information on language coverage was available for three Member States



Limited	BE, CY, FR, EL, MT
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### 3.19 Maintaining family unity – Article 23

#### 3.19.1 Background on family unity

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. Furthermore, Member States have the possibility to extend the definition of ‘family members’ to include other relatives outside the nuclear family, as defined in Article 2(j) of the Recast QD. However, Article 23 also stipulates that Member States may choose to refuse, reduce or withdraw such protection for reasons of national security or public order. Special attention here should be paid in relation to who Member States consider to be a family member (i.e. ensuring that the definition is not too strict) and whether family members can easily access the same rights granted to the beneficiary of international protection.

The Recast QD has brought three main changes:

- It extended the definition of family members by deleting the requirement that minor children of the beneficiary of international protection must be dependent (Article 2(j));
- It extended the definition of family members by including the father, mother or another adult responsible for the beneficiary of international protection when that beneficiary is a minor and unmarried; and
- Family members of subsidiary protection beneficiaries are entitled to the same content of rights granted under Chapter VII in accordance with national procedures and in so far as compatible with the personal legal status of the family member (Article 23(2)).

The following evaluation questions were assessed:

*Do the Member States apply the definition of family member listed in Article 2(j) exhaustively?*

*Are there any specific conditions around the beneficiary of international protection and the number of family members who can derive rights from his/her status?*

*Are there more favourable provisions than those of the Directive in national legislations?*

*How do the Member States assess the existence of family relations?*

*In practice, what obstacles do you face when it comes to establishing the existence of family relations?*

*In practice, what obstacles arise when it comes to ensuring that family members are granted the same rights and benefits as the beneficiary of international protection?*

#### 3.19.2 Findings for Article 23

##### *Summary of main findings*

The main findings in relation to Article 23 can be summarised as follows:

- All Member States<sup>243</sup> for which information was provided 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) while broader definitions were applied in nine countries;

<sup>243</sup> Information regarding all EU Member States bound by Directive 2011/95/EU or 2004/83/EC are reflected regarding Article 23, with the exception of ES, LT, HU, IE where no information could be collected for reasons explained in Section 2 of this report.

- While no major practical issues were identified with regard to the application of the definition across the Member States, some stakeholders called for the application of a broader definition (for example including dependent ascendants, permanent partners, families formed following the entry of refugee in the country of asylum, etc.);
- There were no specific conditions around the beneficiary of international protection and the ‘maximum’ number of family members who can derive rights from his/her status. Once the family link was assessed, the members had the benefits guaranteed by the Directive (though some limitations were identified with regard to the right to be granted with a travel document);

#### Examples of Member States applying a broader definition of family member

- In **Belgium**, family member also extended to adult children with disability;
- In **Bulgaria**, spouses’ parents who are unable to take care of themselves due to old age or serious illness are also considered family members;
- In **Germany** minor and unmarried siblings of unaccompanied minors are included in the definition;
- In the **Czech Republic** certain extended family members can also apply for international protection through humanitarian reasons;
- In **Croatia**, the definition of family member also extended to unmarried partners/persons who are in a union (e.g. formal life partnership and informal life partnership for same sex couples), relatives of the second degree in a direct blood line, with whom the beneficiary lived in a shared household, if it is established that he/she is dependent on the care of the applicant, refugee, foreigner under subsidiary protection or foreigner under temporary protection;
- In **Greece**, the definition extended to the parents of the beneficiary of international protection who lived together as part of the family at the time of leaving the country of origin, and who were wholly or mainly dependent on the beneficiary of international protection at that time;
- In **France**, the definition of minors included individuals up to 19 years old;
- In **Portugal**, the definition of family members was not limited to ‘in so far as the family already existed in the country of origin’;
- **Romania** extended the application of Article 23 to relatives of the spouses who are unable to take care of themselves in the country of origin;
- In **Sweden**, children over 18 years of age may be included as family members even if they are not covered by the definition. Although the national legislation did not explicitly include more favourable provisions, relevant authorities closely observe the jurisprudence relating to Article 8 of the ECHR, which could potentially lead to a wider application of the definition in certain cases.

■ Generally, Member States assessed the existence of family relations through valid documents and, if those were not available, by using the statement made by the applicant/beneficiary of international protection. Only five Member States indicated using DNA testing and further added that these were rarely used in practice;

■ One important practical issue encountered when establishing the existence of family relations was documentation, which was often unavailable, illegible or potentially false.

#### Scope of application

Regarding the application of the definition of family member, all 23 Member States for which information was provided (AT, BE, BG, CY, CZ, DE, EE, EL, FI, FR, HR, HU, IT, LU, LV, MT, PL, PT, RO, SE, SI, SK and UK) applied the definition of family member listed in Article 2(j). However, a few limitations were reported. 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 had been living together for at least two years.<sup>244</sup>

On the other hand, other family members (in addition to those listed under Article 2(j)) were included in the national definitions in 10 Member States (as shown in the blue box).

In some Member States, stakeholders called for the application of a broader definition of family member with regard to maintaining family unity. In **Cyprus**, for example, issues were reported as the definition did not take into account that, in many cases, applicants have strong relationships with family members (such as elderly parents) who are dependent on them. The same issue was raised in the **Czech Republic**.

<sup>244</sup> This is not required if the persons have a child in their joint custody.

**Example of Member States issuing guidelines in this area:**

Maltese authorities are currently revising the procedures related to documentation assessment and guidelines, which will soon be issued with regard to the latter. The main aim of such guidelines will be to define and have more consistent rules in assessing family relations. Specific focus will be placed on clarifying rules with regard to assessing those relations which started *after* foreigners have been granted the status.

In **Greece**, stakeholders also indicated that a broader application of the concept of family was needed, so that permanent partners and same-sex partnerships could be included. Other stakeholders considered the definition of family members restrictive to the extent that it included only the members of family formed prior to the entry into the country of asylum.

Issues related to dependent ascendants and persons getting married after the flight were also raised by stakeholders in **France**. Persons who got married after the flight now fall under the (rather wide) scope of the legislation on family

reunification, while they used to fall under the scope of provisions on people receiving international protection. Authorities in **Portugal** also called for a broader definition that could include siblings.

Finally, the definition was also considered as too narrow in **Poland**. As mentioned by some stakeholders, the definition should take account the multi-faceted nature of ‘dependence’, which should cover different forms, including: emotional, mental, physical or financial dependence, etc.

The application of a broader definition was also supported by ECRE in its position paper.<sup>245</sup> Similar to what was indicated by some Member States, ECRE called for the inclusion of siblings within the family definition included in Article 2(j). Furthermore, ECRE pointed out that the definition of family members was still limited ‘in so far as the family already existed in the country of origin’. Such an approach failed to accommodate family ties which have been formed during flight or in the host country and was contrary to UNHCR’s Ex COM Conclusion No. 24 (XXXII).<sup>246</sup>

ECRE also advanced some concerns with regard to the provision in Article 2(j) that unmarried partners would only be recognised as family members where a Member State’s law or practice relating to third-country nationals treated unmarried couples in a comparable way to married ones. According to the paper, unmarried couples, including same-sex couples, in stable relationships should automatically fall within the family definition. Such an approach would more accurately reflect jurisprudence on Article 8 ECHR which has held that co-habiting same-sex couples living a stable partnership fall within the notion of family life. The current provision had the potential to disproportionately impact persons in same-sex relationships, which are not recognised under registered partnerships in a number of Member States.

**Entitlement to claim benefits as set out in Articles 24–35**

There were no specific conditions around the beneficiary of international protection and the number of family members who could derive rights from his/her status. Once the family link was confirmed, the members had access to all rights guaranteed by the Directive, with the limitation to the duration of the residence permit as allowed for in Article 24(1) and some practical limitations identified with regard to the issuing of travel documents (Article 25), which are further discussed below.

**Assessing family relations**

The evidence burden to prove family relations appeared to be low for all Member States, for which information was provided. The existence of family ties was primarily established through the documentation provided by the applicant in 21 Member States, for which information was provided (AT, BE, BG, CY, CZ, EE, EL, FI, FR, HR, HU, IT, LV, MT, PL, PT, RO, SE, SI, SK, UK), and in all but five of these Member States (EE, EL, HR, PL, PT) stakeholders specified that a statement from the applicant could also be considered if the documents were not available. In 14 Member States (BE, CY, FI, HR, IT, LU, LV, MT, NL, RO, SE, SI, SK, UK) it was also specified that DNA testing was available to assess the existence of family relations, but this was used very rarely in practice. **Italy** and **Romania**, specified that only the courts could order a DNA test. Specifically in relation to establishing family

<sup>245</sup> ECRE, information note on the Directive 2011/95/EU. Available at: <https://bit.ly/2APWG3O>

<sup>246</sup> <http://www.unhcr.org/3ae68c43a4.html>.

links with minor children, nine Member States (AT, CZ, EE, FI, HU, IT, LV, NL, SK) indicated that they used age assessment tests to establish whether the person is a minor or not.

As mentioned above, there were no specific training or manuals/guidelines available to provide guidance to authorities involved in the process of assessing family relations. Only in **Malta**, will guidelines soon be issued with regard to the procedures related to documentation assessment. Also, **Latvia** specified that staff responsible for establishing family links with minor children regularly attended training courses as well as referring to international cases, guidelines and best practice to ensure the best possible tracing and outcome.

### 3.19.3 Changes in Member States' practices since the Recast QD in 2013

As mentioned above, the Recast QD has brought three main changes:

- It extended the definition of the family by deleting the requirement that minor children of the beneficiary of international protection have to be dependent (Article 2(j));
- It extended the definition of the family by including the father, mother or another adult responsible for the beneficiary of international protection when that beneficiary is a minor and unmarried; and
- Family members of subsidiary protection beneficiaries are entitled to the same content of rights granted under Chapter VII in accordance with national procedures and in so far as these are compatible with the personal legal status of the family member (Article 23(2)).

As to the definition of family members, evidence showed that Member States have all exhaustively applied the definition of family member listed in Article 2(j) (with some exceptions related to partners and unmarried couples). When looking at the completeness assessment report of Directive 2011/95/EU, all Member States have literally transposed the definition provided in the Recast QD.

With regard to the last point, as already mentioned above, there were no specific conditions set by Member States around the beneficiary of subsidiary protection nor on the number of family members who can derive rights from his/her status. No evidence was found that Member States limited the rights of family members (with the exception of some restrictions in relation to the travel document, as further detailed below).

### 3.19.4 Possible application issues

In practice, when it comes to establishing the existence of family relations, the main obstacle mentioned by 15 Member States (BE, BG, CZ, EL, DE, FI, FR, LV, MT, PL, RO, SE, SI, SK, UK) relates to the availability, authenticity and/or legibility of the documents proving the relationship. This was not a significant problem in practice, however, since all these countries indicated that, in the absence of documents, they also accepted statements made during the interviews as evidence of family ties.

Some national authorities also mentioned that issues arise more often when family relations are assessed for certain nationalities. As mentioned by **Bulgaria**, for example, usually Syrian nationals have ID/family books to attest to family links, while people from Iraq and Afghanistan do not possess such documentation, making the process more difficult. Similarly, in **Greece**, issues arise more often when it comes to assessing family relations of Afghan nationals. Finally, German stakeholders mentioned that some documents issued by specific countries of origin like Somalia or Afghanistan are seen to have a low value as evidence as they may easily be purchased.

Other issues related to polygamy cases according to authorities in **Austria, the Czech Republic** and **Greece**. The latter specified that, in case of bigamy/polygamy only the first spouse is recognised as a member of the family.

Finally, intentional cases of fraud were reported by stakeholders in **Austria** and **Cyprus**. As mentioned by Cypriot authorities, the Asylum Service was confronted with cases of false declaration of family members (families escorted children that were members of other families, which remained in the country of origin).

### 3.19.5 Recommendations

Based on the above findings, the following recommendations can be put forward:

- Based on the evaluation findings, EASO could work on the further provision of guidance and sharing of best practice in relation to procedures for assessing family relations. In particular, the following aspects could be explored in such guidance:
  - The procedures related to documentation assessment – the guidance could outline who should be responsible for the assessment, the documents required to assess family relations, timing for completing the procedures, etc.;
  - Procedures to be adopted by national authorities in cases where the availability, authenticity and/or legibility of the documents proving the relations is limited – the guidance could outline the procedures and standards for drafting an applicant statement, the conditions and requirements for conducting a DNA test, etc.;
  - Procedures to be adopted when undertaking age assessments for children – the guidance could indicate who should be responsible for the assessment, effective methods to be used, the procedural rights and safeguards, the extent to which the outcomes of the assessment feed into the overall assessment of family relations, etc.;
  - How to treat polygamy cases – the guidance could further clarify what constitutes best practice in this area and how to treat particularly vulnerable cases. According to UNHCR guidance on this topic, the wives within a polygamous family may be dependent on each other, as well as on the husband.<sup>247</sup> For example, if one of the wives is disabled she may depend on the other wife for care and support. In these cases it is important to determine how to best ensure adequate protection;
  - Best practice – the guidance could identify particularly innovative and effective approaches to the assessment of family relations.

Particularly in relation to age assessments, EASO has already published a report on age assessment practices in the EU.<sup>248</sup> The report already includes information on the above-mentioned elements and could therefore be used in the context of guidance on assessing family relations.

- While the evaluation also identified scope for action with regard to unmarried couples (including same-sex couples) and the need to avoid discrimination (for example in relation to same-sex couples who may be lawfully married in their country of origin), past policy proposals have shown that there is no political consensus in this area amongst the Member States. For example, the initial European Commission proposal for the Family Reunification Directive was meant to also include unmarried partners living in a durable relationship with the applicant (and not only, as in the Recast QD, 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).<sup>249</sup> However, after political negotiations, the text left it up to the Member States to decide whether they wish to authorise family reunification for unmarried or registered partners. Similarly, the proposal for the ‘Free Movement’ Directive<sup>250</sup> aimed to recognise the “spouse and registered partner, irrespective of sex, on the basis of the relevant national legislation, and the unmarried partner, irrespective of sex, with whom the Union citizen has a durable relationship” as family members, but such proposal was not accepted.

<sup>247</sup> UNHCR, basic procedures to follow in processing resettlement submissions, available at <http://www.unhcr.org/3d464ee37.pdf>.

<sup>248</sup> 2103, EASO Age assessment practice in Europe, available at <https://europa.eu/!CG33jt>.

<sup>249</sup> COM/2002/0225 final.

<sup>250</sup> COM(2003) 199 final.

- However, as Member States increasingly treat unmarried couples on a par with married couples (provided certain conditions are met) and many have also included same-sex couples, the European Commission may wish to consider proposing an amendment given the changing national contexts.

### 3.19.6 Benchmarks for measuring the implementation of Article 23

**Table 3.20 Benchmarks for measuring the implementation of Article 23**

<b>Whether or not MS, when assessing family relations:</b>	
Apply the definition in Article 2(j)	AT, BE, BG, CY, CZ, DE, EE, FI, FR, HR, HU, MT, PL, PT, SE, SI, SK and UK
Apply a more narrow definition	Unmarried couples not included in EL, IT, LU, MT and RO
Allow for additional family members to those listed in Article 2(j)	BE, BG, CZ, DE, EL, FR, HR, PT, RO and SE
<b>Whether or not MS, when granting rights to family members:</b>	
Provide the same rights and benefits to family members	All MS
Limits the rights and benefits	Limitations to the duration of the residence permit as allowed for in Article 24(1) and some practical limitations identified with regard to the issuing of travel documents (Article 25)
Set conditions	No MS
<b>Whether the burden (on the beneficiary) to prove family relations is:</b>	
High	All MS
Low	No MS

## 3.20 Residence permits – Article 24

### 3.20.1 Background on residence permits

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 no less than three years for refugees and at least one year for beneficiaries of subsidiary protection). Such residence permits should also be delivered to family members, albeit with potentially shorter and renewable validities. It is further stated that the residence permit should be issued “as soon as possible”.

While the Recast QD continues to allow Member States to differentiate between refugees and beneficiaries of subsidiary protection, it does enhance the rights of the latter, as any renewal of the residence permit after the initial validity of one year must be valid for at least two years. The rules for refugees remained unchanged, i.e. their residence permit must be valid for at least three years and must be renewable. Member States can invoke compelling reasons of national security or public order to not grant or to shorten the duration of the residence permit.

The following evaluation questions were assessed:

*Which authorities are involved in the residence permit procedures, including for family members of beneficiaries of international protection?*

*What is the average length of the procedure?*

*Are there different procedures and rules applied to issuing, renewing and ending residence permits of family members of beneficiaries of international protection? If yes, what are the main consequences of these differences?*

*What are the rights and benefits associated with the issuing of residence permits?*

*What are the consequences for the status, rights and benefits of the beneficiary of international protection of the following situations:*

*- Residence permit not issued/renewed?*

*- Residence permit revoked?*

*What compelling reasons of national security and public order are generally invoked by the Member States?*

*What is the definition of 'danger', 'national security and public order' as well as the threshold for measuring the 'danger'?*

### 3.20.2 Findings for Article 24

#### **Summary of main findings**

The main findings in relation to Article 24 can be summarised as follows:

- Residence permits were granted to all beneficiaries of international protection and their family members;
- In line with the provisions of Article 24, 15 Member States,<sup>251</sup> for which information was provided, applied a difference with regard to the period of validity for residence permits granted to refugees and to beneficiaries of subsidiary protection. In four Member States, both refugees and beneficiaries of subsidiary protection were granted with a residence card of the same duration while six countries did not provide information on whether they apply differences in the duration of residence permits issued. Eleven Member States went beyond Article 24(1),<sup>252</sup> granting a longer residence permit to refugees, while nine Member States went beyond Article 24(2), granting longer residence permits to beneficiaries of subsidiary protection;
- In general, the authorities involved in the asylum procedure were also responsible for issuing the residence permit (or this is an integral process, i.e. the document confirming the protection status is the residence title). The fact that the residence permit was released by the same authority and is, in some cases, considered as an 'integral element' of the status document, appeared to speed up the issuing of the residence permit;
- The average length of the procedure to grant the residence permit varied greatly across the Member States, ranging from two weeks to up to six months. The overall issuance times were currently increasing due to the high recent increase in the number of beneficiaries of international protection. The high influx was also prompting debate on the duration of the residence permits;
- The compelling reasons of national security and public order were usually not elaborated for this specific Article, although the concepts have been elaborated through case law or as part of general (migration) law. It seems that only very few Member States made use of the respective clauses referring to the compelling reasons of national security or public order in Article 24.

#### **Statistical information**

<sup>251</sup> Information regarding all EU Member States bound by Directive 2011/95/EU or 2004/83/EC are reflected regarding Article 24, with the exception of ES, IE and LT where no information could be collected for reasons explained in Section 2 of this report.

<sup>252</sup> However, the Austrian Parliament is debating changes to the current legislative framework on asylum and refugees. The proposed amendment would provide refugees who are granted asylum a time-restricted residence permit of three years, with the option of an unlimited residence permit only after that initial period.

Five Member States were able to provide information on the number of residence permits issued to beneficiaries of international protection. From the information presented below, it seems that the number of permits granted exceeds, in the majority of cases, the number of positive decisions for subsidiary protection and refugee status (with the exception of Slovenia in 2015<sup>253</sup>). This most likely reflects the fact that a positive decision on an application can cover both the main applicant and his/her family members, which then each, individually, are provided with a residence permit.

**Table 3.21 Number of residence permits issued**

Member State	Number of residence permits issued (MST data)				Total number of positive decisions for SP and refugee status (Eurostat data)				Number of residence permits issued/renewed
	2012	2013	2014	2015	2012	2013	2014	2015	
EE	23	10	23	97 (30.11)	15	5	20	77	N/A
FI	From 1.7.2014 to 14.2.2016: 2,421 (same number of permits and statuses granted)				Not possible to compare data				N/A
HR				155				40	0
SE	17,361	28,927	35,601	32,114	11,340	22,895	29,340	30,865	N/A
SI			44	36			40	45	3 (year not specified)
SK	159	59	113	53	110	35	95	45	N/A

### Practical application

In line with the provisions of Article 24, 15 Member States, for which information was provided (AT, BE, CY, CZ, DE, EE, FR, HR, HU, LV, PL, PT, RO, SK, SI)<sup>254</sup> applied differences with regard to the **period of validity for residence permits** granted to refugees and to beneficiaries of subsidiary protection. In **Finland, Greece, Italy** and the **Netherlands**, refugees and beneficiaries of subsidiary protection were granted with a residence card of the same duration. Six countries did not provide information on the length of residence permits issued

The table below shows (for the Member States, which specified this) the differences in validity of residence permits provided to refugees and beneficiaries of subsidiary protection. The table indicates that:

- Eleven Member States (AT, BE, FI, FR, HR, IT, LV, NL, PT, SI, SK) went beyond Article 24, granting longer residence permits to refugees;
- Nine Member States (BE, EL, FI, HR, IT, NL, PT, RO, SI) went beyond Article 24, granting longer residence permits to beneficiaries of subsidiary protection.

**Table 3.22 Validity of residence permits**

Validity of residence permits
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<sup>253</sup> It might be that Slovenian authorities provided only partial data for 2015

<sup>254</sup> Not all of these countries, however, provided information on the duration of the permits (i.e. more detailed information about the differences in duration according to the status)



Member State	Refugees	Beneficiaries of SP
AT	Permanent	Valid 1 year, renewable for 2 years
BE	Permanent	Valid 5 years and then permanent
BG	N/A	N/A
CY	Valid 3 years, renewable for another 3 years	Valid 1 year, renewable for 2 years
CZ	N/A	Valid 1 year
DE	Valid 3 years, then settlement permit	Valid 1 year, renewable for 2 years (with possibility to get a settlement permit after 5 years)
EE	Valid 3 years	Valid 1 year
EL	Valid 3 years, renewable for 5	Valid 3 years
FI	Valid 4 years, renewable for 5	Valid 4 years, renewable for 5
FR	Valid 10 years	Valid 1 year, renewable for 2 years
HR	Valid 5 years	Valid 3 years
HU	N/A	N/A
IE	N/A	N/A
IT	Valid 5 years (automatically renewed)	Valid 5 years (renewed after seeking permission, usually granted)
LV	Permanent	Valid 1 year, renewable
LU	N/A	N/A
MT	N/A	N/A
NL	Valid 5 years	Valid 5 years
PL	N/A	N/A
PT	Valid 5 years	Valid 3 years
RO	Valid 3 years	Valid 2 years
SE	N/A	N/A
SI	Permanent	Valid 2 years, renewable
SK	Permanent	Valid 1 year, renewable for 2 years
UK	N/A	N/A

While many Member States went beyond the requirements of the Directive with regard to the duration of the permit, some stakeholders called for a further approximation of the rights of refugees and beneficiaries of subsidiary protection with regard to residence permits.

In its position paper ECRE, for example, mentioned that “the opportunity was lost to align the duration of residence permits for refugees and SP beneficiaries. Such an approach would be in line with the principle of non-discrimination as required under the EU Charter and interpreted by the ECtHR. The protection needs of beneficiaries of SP are equally compelling and generally as long in duration as those of refugees so any distinction between the duration of their residence permits is not objectively justifiable. The perception of the status of beneficiaries of international protection being temporary in nature has in practice proven to be incorrect.”<sup>255</sup> ECRE also pointed out that some Member States already decided to go beyond the requirements of the Directive and called national authorities to maintain and further develop those practices across the EU. As indicated in the paper “from a perspective of efficiency, the alignment of rights would also assist national authorities to streamline

<sup>255</sup> ECRE, information note on Directive 2011/95/EU. Available at: [http://www.ecre.org/index.php?option=com\\_downloads&id=805](http://www.ecre.org/index.php?option=com_downloads&id=805)

procedures and reduce administrative costs in the process. Administrative processing of multiple renewals of residence permit applications adds unnecessary costs to the asylum system. In addition, the negative impact of short-term residence permits on access to employment should not be overlooked.”

With regard to the **procedure for granting the residence permit**, in general the authorities involved in the asylum procedure were also responsible for issuing the residence permit (or this is an integral process, i.e. the document confirming the protection status is the residence title). In other countries, the status and the residence permit were two entirely separate processes.

The fact that the residence permit was released by the same authority and is, in some cases, considered as an ‘integral element’ of the status document, appeared to speed up the issuing of the residence permit. Given that the latter was often a requisite for taking the necessary steps to access other services (e.g. healthcare, housing, etc.), the sooner the permit was provided, the better.

**Examples of Member States, where residence permits are considered as an ‘integral element’ of the status document.**

In the *Czech Republic* and *Slovakia*, the ‘residence permit’ for a beneficiary of international protection was incorporated into the decision on granting the asylum or subsidiary protection.

**Table 3.23 Overview of authorities involved in the residence permit procedures and length of the issuance procedure**

Member State	Competent authority	Length of procedure	Procedure for family members different?
AT	N/A	N/A	N/A
BE	Municipality of residence for foreigners and family members Office of the Commissioner General for Refugees and Stateless Persons (CGRA) for refugees Immigration Department for beneficiaries of SP	Refugees: as soon as possible Family members: this can take up to 6 months (a period that can be extended by 3 months twice) – if no residence permit has been delivered after this time, the person should be granted ‘leave to remain’	No
BG	Ministry of Interior	30 days, although a fast order for such documents is carried out within 10 working days	No
CY	Civil and Migration Department	2 to 4 months	No
CZ	Ministry of Interior	1 month. Delays may occur when the biometric booth is busy. (The residence card includes biometrical data of the beneficiary)	No
DE	Local foreigners authority (Ausländerbehörde)	3 to 4 weeks (but delays are currently encountered)	No
EE	Police and Border Guard Board Ministry of Foreign Affairs	4 months	No
EL	Asylum Service (of Ministry of Immigration) Ministry of Citizens’ Protection	Less than 1 month	No
FI	The embassies of Finland (for family members who are not already in Finland) Police Finnish Immigration Service	For family members the maximum length of procedure is 9 months according to the law	No
FR	Prefect	3 to 4 months, but the beneficiary is delivered a receipt valid 3 months in the meantime that gives access to the rights	No
HR	MOI Police	Residence is given immediately but ID takes 3 weeks Family members it takes 1 month	For minors they are the same. Other family members acquire temporary residence according to the foreign act
HU	Delivered by the same authorities as Hungarian citizens The residence permit for family member is delivered by Office of Immigration and Nationality (OIN)	N/A	No
IE	N/A	N/A	N/A
IT	Ministry of Interior (Police) Commission on Asylum	Refugees takes 3 to 5 months (depends on region) for the first permit, then 2 to 4 months to renew For beneficiaries of SP it can take much longer	No
LU	Local authority	Less than 2 months for beneficiaries of international protection	N/A

		Can take up to 6 months for family members (due to longer bureaucratic procedure)	
LV	OCMA	Refugees and SP take 20 days Renewing SP permit takes 1 month to then renew every year	No
MT	Citizenship Department Citizens Affairs Office	It takes between 2 to 3 weeks	No
NL	Immigration Service	Up to 3 weeks	N/A
PL	Province governor in the place of residence	N/A	Yes
PT	Member of government responsible for home affairs National Director of the Immigration Service for family members	Few weeks to one and a half months; in the meantime they are delivered (upon confirmation of the status) a temporary residence permit that is valid for 6 months and can be renewed	N/A
RO	GII	It takes 3 to 4 weeks	No
SE	SMA	It takes 6 months, although recently with the influx of refugees it can take up to 1 year	No
SK	Police department	Very soon after the status has been granted	No
SI	Ministry of Interior	Residence permit is issued immediately	No
UK	N/A	NA	No

### **Access to benefits when the residence permit is withdrawn**

In the majority of the Member States, the **rights and benefits** associated 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 can 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 ). Also, in cases where beneficiaries of international protection did not apply for a renewal of the permit on time, this did not mean that they were no longer entitled to the rights and benefits. However, the situation seemed to differ 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. Moreover, they were at risk of being arrested and kept in administrative detention, since they did not hold a valid residence permit. However, stakeholders indicated that, to date, they were not aware of any such cases of revocation of residence permit.

The above confirmed that nearly all Member States respected the CJEU ruling on case C-373/13 (*H.T. v Land Baden-Württemberg*) of 24 June 2015, which indicated that: “where a Member State decides to expel a refugee whose residence permit has been revoked, but suspends the implementation of that decision, it is incompatible with that Directive to deny access to the benefits guaranteed by Chapter VII of the same Directive, unless an exception expressly laid down in the Directive applies”.

As mentioned above, Member States confirmed they did not *refouler* beneficiaries of international protection in cases where the residence permit revoked or not renewed. In practice this meant that the consequences of a residence permit not being renewed or revoked were that a person could seek to apply for another status/residence permit, or might be left in limbo within the territory of the Member State, if no other country willing and able to offer him/her protection could be found.

### **Grounds for not issuing/renewing or revoking a residence permit**

The compelling reasons of national security and public order were not elaborated in the specific context of Article 24 in the Member States, but rather elaborated through case law or as part of general (migration) law, as presented in Table 3.24 below. All Member States, for which information was provided, indicated they used the provisions which allowed for the status to be revoked, ended

or refused (Articles 14 and 19). None of the Member State seemed to have used the compelling reasons to reduce the duration of the residence permit granted or to not renew it.

**Table 3.24 Overview of the definition of danger to the security and public order**

Member State	Compelling reasons of national security and public order	Definitions
AT	N/A	N/A
BE	N/A	N/A
BG	N/A	N/A
CY	What constitutes compelling reasons is decided by the District Court	There is no specific interpretation
CZ	N/A	N/A
DE	Where the person endangers [currently and concretely] the free democratic basic order or the security of the Federal Republic of Germany Where the person participates for political or religious reasons in violence or does publicly call for violence or does threaten (publicly) with violence of this kind	N/A
EE	They are defined by security police	There is no specific interpretation, though it can include criminality (e.g. drug-related crimes) and threat to public order
EL	There are internal guidelines of the competent authorities. The ministerial decision for residence permits (ΦΕΚ 2461/16 / 9/ 2014) does not specify the compelling reasons of national security and public order	N/A
FI	Provision of false information (e.g. the person has knowingly provided false personal data or other false information that has affected the decision, or has held back information that might have prevented him/her from obtaining a residence permit), the criminal behaviour or behaviour considered a threat to security	Each case is examined on its own merits and there is a case-by-case assessment
FR	Cases or risks of terrorism would be the best example, either when the person is sentenced or when there is a body of reliable, accurate and consistent evidence (a criminal sentence would be an element of proof but is not necessary or sufficient). Generally speaking, it is determined on a case-by-case basis, with the help of case law	A body of evidence needs to be available in order to characterise the 'danger'; this test is defined in the CE case law but does not feature in the law
HR	Terrorist acts, other forms of violence, intelligence activities of foreign intelligence services, organisation of extremist activities, organisation of an economic crime, unauthorised access to protected information and communication system of state authority bodies, other activities aiming at endangering the national security	No specific definition
HU	Same as for the general procedure	N/A
IE	N/A	N/A
IT	Serious crimes against national security or public order (organised crime, terrorism)	N/A
LV	State Security as well as Criminal bodies of law define the levels of endangerment, but in practice OCMA does not collect such information, rather it assesses that received from security authorities	No experience thus far
LU	N/A	N/A

Member State	Compelling reasons of national security and public order	Definitions
MT	N/A	No specific thresholds are used to define the concepts of 'danger' or 'security' – should the case arise, this shall be examined on a case-by-case basis. However, the threshold would be high because based on national legislation, residence permits are also issued to people who have criminal records and this provision would apply to international protection beneficiaries as well
NL	Serious crime	
PL	Each application goes to the chief of police, the head of the Internal Security Agency and the Border Guard. Each of these bodies has the right to comment as to whether a person threatens the security of the state or not. The province governor may also assess it on its own The main reasons may include: felonies, participation in an organised criminal group, human smuggling and smuggling of illicit goods (narcotics)	There is no definition. The national case-law, which is very limited, and international case-law (Tribunal in Strasbourg) apply
PT	N/A	N/A
RO	N/A	No specific definition of 'danger' Threat to national security and public order: Plans and actions which can touch upon the sovereignty, independence or indivisibility of the RO state. Actions that have as a direct or indirect scope of provocation of war against the country or civil war; treason by helping the enemy; violent actions; espionage; threats to important people in state; terrorist acts or supporting such actions.
SE	e.g. sabotage, spy, work for other countries, etc.	The definition of 'danger, national security and public order' is based on the jurisprudence of CJEU, i.e. the personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. An example is given in CJEU C-373/13 ( <i>H. T. v Land Baden-Württemberg</i> ).
SI	No experience in this area as not allowed to withdraw or seize the residence permit	No experience in this area as not allowed to withdraw or seize the residence permit.
UK	When the applicant has been convicted for committing a serious crime	NA

### 3.20.3 Examples of good application

While no particular 'good' examples could be identified, the fact that the residence permit was released by the same authority, and in some cases an integral element of the status document, appeared to speed up the issuing of the residence permit. Given that the latter was often a requisite for taking the necessary steps to access other services (e.g. healthcare, housing, etc.), the sooner the permit was provided, the better.

### 3.20.4 Possible application issues

The understanding of the concept 'as soon as possible after international protection has been granted' varied across the EU. According to all the Member States, the right to a residence permit was granted immediately after the decision on the status. However, as shown in Table 3.24 above, the average length of the administrative procedure to grant the residence permit varied greatly across the Member States, ranging from two weeks to up to six months. Renewal times also varied from three months in *Italy* to a month in *Latvia*.

Some stakeholders also pointed out that delays arose due to technical reasons. In **the Czech Republic**, for example, delays occurred due to over-utilisation of the biometric booth as the residence card includes biometrical data of the beneficiary.

The conditions for being granted a residence permit were not judged as burdensome with the exception of **Malta**. NGOs in **Malta**, indicated that in order to be able to get a residence permit, beneficiaries of international protection needed to provide a valid lease agreement, which could be significantly problematic when beneficiaries did not have the revenue to pay for accommodation, which meant that it could take much longer to receive a residence permit (case law showed that it could, for instance, take up to 11 months).

Finally, some Member States noted that overall issuance times were increasing due to the high recent increase in the number of beneficiaries of international protection (e.g. **Austria Germany** and **Italy**). For example, in **Germany**, evidence collected showed that, as most of the foreigners' authorities (especially in bigger cities) are understaffed, the issuance of a residence permit may be significantly delayed, which may cause practical problems for beneficiaries of international protection to be granted some of the benefits that are dependent on the residence permit (e.g. full and unrestricted access to the labour market).

The high influx was also prompting debate on the duration of the residence permits, albeit within the limits of the Directive. The Austrian Parliament is also currently debating whether to provide refugees with a time-restricted residence permit of three years, with the option of an unlimited residence permit only after that initial period.

With regard to family members, Table 3.24 above showed that:

- Two Member States applied a different procedure for family members (HU, PL), while in the majority of Member States, no difference was made;
- Regarding the length of the procedure six Member States (BE, FI, HR, IT, LU, LV) indicated that it takes longer to obtain a residence permit for family members than for beneficiaries of international protection.

Moreover, in three Member States (BE, FR, HR), differences in the validity of residence permits granted to family members and beneficiaries of international protection were identified (in line with the provisions of the Directive). For example, in **Belgium**, family members of refugees are granted a residence permit of five years (while the residence permit granted to refugees in permanent). In **France**, family members acquire temporary residence (the validity was, however, not specified) while the permit granted to refugees has a duration of 10 years. In **Croatia**, family members were granted a temporary residence permit that gave them the same rights as that of the beneficiary of international protection, but which needed to be renewed every year upon condition that all the criteria to be a family member continue to be fulfilled.

### 3.20.5 Recommendations

Based on the above findings, the following recommendations can be put forward:

- The provision should state a maximum period following the granting of the status within which the residence permit would have to be issued, for example, of 30 days. Alternatively, it could state that a residence permit should be issued 'within a reasonable timeframe'. As mentioned in the evaluation, the concept of 'as soon as possible after international protection has been granted' varied across the EU. The introduction of a time frame would supposedly decrease the variations identified.
- Article 24 could clarify that the revocation of the residence permit under Article 24(1) would not deprive beneficiaries of international protection of the rights pursuant to Chapter VII of the Recast QD.
- As recommended for Articles 11 and 16, Member States should be encouraged to undertake a regular and systematic review of, in particular, subsidiary protection statuses in order to ensure

that the need for protection is still justified. In case of such review concluding that the grounds for granting the status no longer apply, Member States should be invited to consider whether another status may be applicable, for example based on long-term residency, employment, family situation, etc.

### 3.20.6 Benchmarks for measuring the implementation of Article 24

**Table 3.25 Benchmarks for measuring the implementation of Article 24**

<b>Whether or not the MS, when granting residence permits to beneficiaries of international protection:</b>	
Apply differences in the duration of permits between the two statuses	AT, BE, CY, CZ, DE, EE, FR, HR, HU, LV, PL, PT, RO, SK, SI
Apply the same duration	EL, FI, IT, NL <sup>256</sup>
Go beyond the minimum duration specified for both refugees and SP beneficiaries	BE, FI, HR, IT, NL, PT, SI
Go beyond the minimum duration specified for refugees	AT, BE, FI, FR, HR, IT, LV, NL, PT, SI, SK
Go beyond the minimum duration specified for SP beneficiaries	BE, EL, FI, HR, IT, NL, PT, RO, SI <sup>257</sup>
Apply a shorter duration for family members	BE, FR, HR
<b>Whether or not the MS issue the residence permits as soon as possible after international protection has been granted</b>	
More than 3 months	BE (family members), FI (family members), LU (family members), SE
Between 1 and 3 months	BG, CY, CZ, EE, FR, IT, LU
Less than 1 month	DE, EL, HR, LV, MT, NL, PT, RO <sup>258</sup>
<b>Whether the burden (on the beneficiary) to obtain a residence permit is:</b>	
High	MT
Low	All MS (except MT)

## 3.21 Travel documents – Article 25

### 3.21.1 Background on travel documents

Article 25 stipulates that Member States have the obligation to provide travel documents to beneficiaries of international protection. For refugees, this should be automatic and follow the form set out in the Schedule to the Geneva Convention. For beneficiaries of subsidiary protection, on the other hand, travel documents should be delivered if beneficiaries are unable to obtain a national passport from their country of origin's authorities. The Article, however, maintains a certain level of room for manoeuvre in relation to beneficiaries of subsidiary protection, and special attention was therefore paid as part of the evaluation not only in relation to the type of documents issued by Member States, but also what conditions are attached to the different documents (especially as concerns beneficiaries of subsidiary protection).

No major changes were introduced by the Recast QD. However, the reference to “at least when serious humanitarian reasons arise that require their presence in another State” was deleted from the text

<sup>256</sup> No information on whether differences in the duration are applied was available for six Member States

<sup>257</sup> No information on the duration of residence permits was available for eight Member States

<sup>258</sup> No information on the timeframe for issuing the residence permit was provided by five Member States while SI and SK indicated “very soon/immediately”.



in relation to subsidiary protection beneficiaries (which seems to indicate that fewer restrictions are placed on granting travel documents to the latter).

The following evaluation questions were assessed:

*What are the authorities involved in the travel document issuance procedures in the Member States?*

*What are the conditions and (documentary and other) requirements for obtaining the travel document in the Member States?*

*What is the average length of the procedure?*

*What type of document is issued by the Member States? Are there any differences between the travel documents issued for refugees and for beneficiaries of subsidiary protection?*

*In practice, what can affect the beneficiary's ability to exercise his/her rights to travel?*

- *Limitations implied by the travel document?*
- *Different requirements in the Member State? Etc.*

*How do the Member States assess whether and when beneficiaries of subsidiary protection are able to obtain a national passport?*

*What type of compelling reasons of national security and public order to not issue a travel document are generally invoked by Member States?*

*What is the definition of 'danger', 'national security and public order' as well as the threshold for measuring the 'danger'?*

### 3.21.2 Findings for Article 25

#### **Summary of main findings**

The main findings in relation to Article 25 can be summarised as follows:

- Travel documents were issued to all beneficiaries of international protection;
- 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. Subsidiary protection beneficiaries always needed to request a visa when travelling abroad, while some exemptions were available 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;
- With regard to the procedure for granting the travel document, in general the asylum determining authorities were responsible for its issuance;
- Generally, the procedures required to obtain the travel documents were not burdensome for beneficiaries of international protection. In most of the cases, the travel document was granted as part of the status or immediately following the issuance of a residence permit. However, more requirements were placed on beneficiaries of subsidiary protection as the latter needed to prove that they could obtain a national passport from their country of origin;
- In terms of issuance times, these varied significantly amongst Member States, ranging from a few days to six months;
- In the vast majority of Member States, that were no particular limitations to the right to travel, with the exception of visa requirements (especially for beneficiaries of subsidiary protection) and interdiction to travel to the country of origin;

- Some restrictions, with regard to granting a travel document, were applied to family members of beneficiaries of international protection in three Member States. 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.

### Statistical information

Quantitative data on the number of travel documents issued was very limited. However, the information provided confirmed that travel documents were issued to all beneficiaries of international protection (with the exception of **Estonia** in 2015<sup>259</sup>). The number of travel documents issued increased in the period 2012–2015 both in **Estonia** and **Sweden**. In **Sweden** the number of travel documents not issued/renewed also increased in the same period.

**Table 3.26** Number of travel documents issued

Member State	Number of travel documents issued				Number of travel documents not issued/renewed				Total number of positive decisions for SP and refugee status (Eurostat data)			
	2012	2013	2014	2015	2012	2013	2014	2015	2012	2013	2014	2015
EE	15	18	31	24 (30.11)	NA	NA	NA	NA	15	5	20	77
HR				105								40
SE	21,000	30,000	30,000	23,000 (17.11)	8,300	9,500	8,800	11,000 (17.11)	11,340	22,895	29,340	30,865

### Type of document issued and conditions for granting travel documents

Regarding the type of documents issued by Member States to beneficiaries of international protection, in the vast majority of countries differences existed as to the type of document provided to refugees and beneficiaries of subsidiary protection (in line with the provisions of the Directive). As showed in the table below, most of the Member States<sup>260</sup> provided a Geneva passport to refugees or ‘refugee passport’, while beneficiaries of subsidiary protection provided a ‘foreigner passport’ (or equivalent in national legislation).

The main difference between the two types of documents was linked to visa requirements. Firstly, according to the evidence collected, it was easier to obtain a visa with a Geneva 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. The latter aimed to facilitate travel for refugees residing in the territory of Parties, providing that refugees may enter without visas on the territory of all Parties for a maximum of three months. It set out also that the refugees shall be re-admitted at any time to the territory of the Party by whose authorities a travel document was issued, at the simple request of the other Party. The agreement was signed by 20 Member States.<sup>261</sup>

<sup>259</sup> Estonian authorities provided only partial data for 2015

<sup>260</sup> Information regarding all EU Member States bound by Directive 2011/95/EU or 2004/83/EC are reflected regarding Article 25, with the exception of ES and LT where no information could be collected for reasons explained in Section 2 of this report. Moreover, the Netherlands did not provide answers in relation to Article 25.

<sup>261</sup> BE, CY, CZ, DE, DK, FI, FR, HU, IE, IT, LU, MT, NL, PL, PT, RO, SE, SK, SP, UK.

Subsidiary protection beneficiaries, who were provided with a foreigner passport, always needed to request a visa when travelling to another Member State.

Other differences related to the technical features of travel documents. For example, in **Poland**, the foreigner passport issued to beneficiaries of subsidiary protection did not include biometric data in an electronic form, while the Convention passport did include such data.

Conversely, national authorities in three Member States (HU, IT and LU) issued the same document to both refugees and beneficiaries of subsidiary protection. For example, Italian stakeholders specified that the travel documents provided to refugees and beneficiaries of subsidiary protection, despite having different names, entitle them to the same rights. Similarly, in **Hungary** and **Luxembourg** there are no differences in the travel documents issues to both categories.

**Table 3.27 Type of document granted**

Member State	Refugees	Beneficiaries of SP
AT	Passport – Geneva Convention	Foreigner passport
BE	Refugee travel document	Foreigner passport
BG	Travel document – Geneva Convention	Passport for a SP beneficiary
CY	Passport – Geneva Convention	Laissez passer
CZ	Passport – Geneva Convention	Foreigner passport
DE	Passport – Geneva Convention	Foreigner passport
EE	Refugee 's travel document	Foreigner passport
EL	N/A	N/A
FI	Refugee travel documents	Foreigner passport
HR	Refugee passport	Foreigner passport
HU	N/A	N/A
IE	N/A	N/A
IT	Refugee 's travel document	'Titolo di viaggio' for foreigners
LV	N/A	N/A
LU	N/A	N/A
MT	Passport – Geneva Convention	Foreigner passport
NL	N/A	N/A
PL	Passport – Geneva Convention	Foreigner passport
PT	Passport – Geneva Convention	Foreigner passport
RO	Passport	Passport
SE	Passport	Foreigner passport
SI	Refugee passport	Foreigner passport
SK	N/A	N/A
SK	Passport – Geneva Convention	Foreigner passport
UK	N/A	N/A

Another difference between the travel documents granted to refugees and subsidiary protection beneficiaries related to the validity of such documents. As shown in Table 3.28, the validity of travel documents provided to refugees was usually longer than for beneficiaries of subsidiary protection, with the exception of **Germany**. The table also showed that the majority of Member States went beyond what is included in paragraph 5 of the Schedule of the 1951 Geneva Convention, which

stipulates that “the document shall have a validity of either one or two years, at the discretion of the issuing authority”.

**Table 3.28 Validity of documents granted**

Member State	Validity of refugee travel document	Validity of SP travel document
AT	N/A	N/A
BE	2 years	N/A
BG	5 years	3 years
CY	N/A	6 months
CZ	N/A	N/A
DE	3 years	6 to 10 years
EE	NA	N/A
EL	N/A	N/A
FI	N/A	N/A
FR	2 years (will soon be 5)	1 year
HR	5 years	2 years
HU	1 year	1 year
IE	N/A	N/A
IT	N/A	N/A
LV	N/A	N/A
LU	N/A	N/A
MT	3 years	1 year
NL	N/A	N/A
PL	2 years	1 year
PT	5 years	3 years
RO	2 years	2 years
SE	N/A	N/A
SI	10 years	Same length as status
SK	2 years	N/A
UK	N/A	N/A

Table 3.29 presents an overview of the authorities responsible for delivering the travel documents, the conditions attached and the length of the procedure.

**Table 3.29 Overview of the authority responsible for delivering the travel documents, conditions and length of procedure**

Member State	Authority	Conditions	Length of procedure
AT	Austrian Federal Office for Immigration and Asylum ( <i>Bundesamts für Fremdenwesen und Asyl –BFA</i> )	– No conditions	NA
BE	Public Federal Service – Foreign Affairs	– To prove one’s identity and status – Permanent stay (beneficiaries of SP can be permanent residents)	5 days

Member State	Authority	Conditions	Length of procedure
	Provincial Passport Services	<ul style="list-style-type: none"> <li>- Not being subject to a custodial measure</li> <li>- Not being subject to a legal measure restricting one's freedom of movement</li> </ul>	
CY	Civil and Migration Department	<p>Documents to accompany the application for the issuance of a refugee travel document is:</p> <ol style="list-style-type: none"> <li>1. Letter of Recognition</li> <li>2. A valid Residence permit</li> <li>3. Alien Book</li> <li>4. Birth Certificate or Affidavit from the Court</li> <li>5. €90</li> </ol>	1 month
BG	SAR, Ministry of Interior Ministry of Foreign Affairs General Directorate of Civil Registration and Administrative Service	<ul style="list-style-type: none"> <li>- A copy of the official document for refugee status, humanitarian status, etc.</li> <li>- A certificate of registration in the population register in the database</li> <li>- Proof of payment of the state fee</li> </ul>	30 days, although a fast order for such documents is carried out within 10 working days
CZ	MOI	N/A	30 days
DE	Local foreigners' authorities	SP beneficiaries have to prove that they cannot be issued with a passport from their country of origin	Varies depending on the authority/longer for SP beneficiaries
EE	Police and Border Guard Board Ministry of Foreign Affairs	According to the national law beneficiaries of SP have to hold residence permit of at least 8 years	N/A
EL	Asylum Service (of Ministry of Immigration) Ministry of Citizens' Protection	<p>Beneficiaries of IP need to make an application with a formal written statement before the competent Regional Asylum Office that they have never been convicted of forgery, forgery of certificates, false statements, related to the issuance, loss, use or theft of passport, or for kidnapping or kidnapping of minors, slave trade, human trafficking, smuggling. They also have to declare whether they have ever been prosecuted for a felony or for one of the above crimes or whether they are not allowed to exit the country or whether they have served a prison sentence</p> <p>In order to have their travel document printed they need to submit the following:</p> <ul style="list-style-type: none"> <li>- A copy of the decision of the Head of the competent Regional Asylum Office that permits the issuance of travel document for the applicant</li> <li>- A photo</li> <li>- Administration fees, and</li> <li>- Present their resident permit as beneficiaries of IP or their card as IP applicants with a stamp stating that the issuance of a residence permit is pending</li> </ul>	3 to 6 months
FI	Police Finnish Immigration Service	An alien's passport may be issued to aliens residing in Finland if the alien cannot obtain a passport from the authorities of his or her home country, if he or she has no citizenship or if there are other special reasons. Aliens who have been issued with a residence permit on the basis of a need for SP are issued with an alien's passport	3 months with FIS At police stations it varies
FR	Prefect	The protection status and the residence permit are the only conditions	2 to 4 months
HR	MOI Police station	Submit the application for the document Pay the fee	2 weeks
HU	Asylum authority	N/A	2 weeks, though it can be longer
IE	N/A	N/A	N/A
IT	Police headquarters	No conditions for refugees. The SP have to prove that they cannot receive a passport from the diplomatic authorities in the country of citizenship	1 week for passport – it may take longer to issue the biometric passport

Member State	Authority	Conditions	Length of procedure
LU	N/A	N/A	Approximately 2 months
LV	OCMA	N/A	On average 15 days
MT	Ministry of Home Affairs and National Security Refugee Commissioner Office	For the Geneva passport: <ul style="list-style-type: none"> <li>- An application form – to fill in passport application form</li> <li>- A photo</li> <li>- Recommender’s signature – this document is needed for first-time applicants (including Maltese nationals) and those under 18 years of age. It is generally signed by an authoritative person (guardians for minors, for instance). These procedures are currently being reviewed</li> <li>- Guardian consent or court order</li> <li>- Expired passport – in case applicants have one</li> <li>- Certificate of asylum status</li> <li>- Residence card</li> <li>- Police report – if the passport has been stolen or lost (this includes taking an oath if the passport has been stolen).</li> <li>- Medical certificate required by house-bound applicants and by those applicants who are not able to provide fingerprints</li> </ul>	Geneva Passport: 4 days Alien Passport: 3 months (because there are more checks to carry out)
NL	N/A	N/A	N/A
PL	Province Governor Head of the Office of Foreigners (in case there are issues with the previous)	For obtaining a foreigner passport (for SP beneficiaries): 1) a person has a SP; 2) a document from country of origin is not valid (it was destroyed, lost, stolen, expired etc.), and 3) there is no possibility to obtain a new document issued by the country of origin  A foreigner must also present a document confirming his/her identity (e.g. a valid residence card)	Geneva passport: 35 days Alien passport: 3 months (because there are more checks to carry out)
PT	N/A	N/A	N/A
RO	GII	Beneficiary of SP needs to pay for his travel document	3 to 4 weeks
SE	SMA	N/A	6 months
SI	Ministry of Interior Administrative Units	N/A	2 to 5 days
SK	Alien Police Department	N/A	30 days
UK	N/A	N/A	N/A

The table above showed that, with regard to the procedure for granting the travel document, the authorities generally involved in the asylum procedure were also responsible for issuing such documents. The fact that the decision to grant a travel document was based on the assessment made during the application, appeared to speed up the issuing of the travel document.

In **Belgium**, the decision to grant subsidiary protection was used as a basis for providing the beneficiary with a travel document. The decision stated whether the person concerned presented “real and personal risks for serious harm” (in which case the travel document could be issued upon presentation of an attestation by the Office of the Commissioner General for Refugees and Stateless Persons) or whether the person fled a general situation of violence (in which case it is assumed that the person can contact his/her national authorities).

In some cases, when the travel document was not issued by the same authority, cooperation arrangements were put in place to ascertain that the beneficiary is entitled to such document. For example, the Cypriot Government assessed the travel documents for subsidiary protection in cooperation with the police and Asylum Service.

In terms of issuance times, these varied significantly amongst Member States, going from only a few days (BE, BG, LV, MT, SI) to six months (EL and SE). The vast majority of Member States appeared to be delivering the documents in approximately one month. **Germany** specified that issuance times varied considerably (depending on the responsible foreigners’ authority) and was longer for beneficiaries of subsidiary protection as they had to prove that it was impossible or unreasonable to ask for a passport at the

embassy of their country of origin. In terms of recent/future developments, which affected issuance times, the following were identified:

- In **Italy**, since the end of 2015, travel documents have been issued in an electronic format. As it was a new and more complex procedure, this was expected to trigger some delays (at least initially);
- In **Luxembourg**, the rules concerning the travel document to be provided to beneficiaries of international protection are currently governed by legislation on third-country nationals. A specific law governing matters in relation to beneficiaries of international protection is currently under discussion. The latter should also provide beneficiaries of international protection with easier access to national passports.

### Limitations

Evidence was also gathered with regard to the extent to which there were limitations to the beneficiary’s ability to exercise his/her rights to travel. In the vast majority of Member States, the evaluation showed that there were no particular limitations to the right to travel. However:

- As explained above, some visa requirements were applicable, especially for beneficiaries of subsidiary protection;
- Both refugees and beneficiaries of subsidiary protection could not travel to their country of origin (with the exception of **Greece** where this requirement was imposed only on refugees).

Some restrictions, with regard to granting a travel document, were also applied to family members of beneficiaries of international protection:

- In **France**, family members were only entitled to a travel document if they received protection from OFPRA, except for minors;
- In **Poland**, family members were not given a foreigner passport by Polish authorities;
- In **Malta**, travel documents for family members of refugees were issued in the form of a foreigner passport (valid one year) similar to the one issued to beneficiaries of subsidiary protection.

It therefore seemed that, in these countries, the rules in place might have restricted the freedom of movement of family members and, in the case of **France** and **Poland**, contradicted 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.

### Exception to Article 25

In relation to the compelling reasons of national security and public order to not issue a travel document, as well as the definition of 'danger' and 'national security and public order', seven (FI, FR, HR, HU, LV, RO and SE) Member States, for which information was available, referred to their answers presented and analysed in the section above (residence permit). They were therefore, in practice, not using the specific compelling reasons of national security or public order stipulated in this Article, but rather relied on similar concepts associated with ending, revoking or refusing to renew the status. In **Germany**, the reasons not to issue a travel document were the same reasons leading to the possibility to deny a passport to nationals.

#### 3.21.3 Examples of good application

In some Member States, tools were put in place to facilitate the decision with regard to granting beneficiaries of subsidiary protection with a travel document. In **Greece**, guidelines for national authorities responsible for granting travel documents specified that national passports should be provided to beneficiaries of subsidiary protection in cases where that there is no embassy/consulate of the country of their nationality in **Greece** (and provide a list). In **Italy** and **Latvia**, a list of third countries considered not to be able to issue passports to their citizens was available to national authorities responsible for granting travel documents.

#### 3.21.4 Possible application issues

As mentioned above, evidence showed that some application issues occurred linked to the provision of travel documents to family members of beneficiaries of international protection. In three Member States (FR, MT and PL), it seems that the rules in place might have restricted the freedom of movement of family members and, in the case of **France** and **Poland**, contradicted 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.

Concerning the procedures for obtaining such documents, while generally not experienced as overly burdensome, in order to obtain the travel document, beneficiaries of international protection needed to gather and submit some papers which, as a minimum, included the proof of status, residence card, civil status documents, photos, etc. An administrative fee (EUR 100 on average) was also usually required by the national authorities, which might have constituted a substantial sum for recent beneficiaries of international protection. In **Slovenia**, the fee is waived for refugees who do not have sufficient financial means.

Overall, more requirements were placed on beneficiaries of subsidiary protection. In all the Member States consulted, the latter needed to prove that they could not obtain a national passport from their country of origin. According to most of the stakeholders interviewed, however, this was easy to ascertain and, in most of the cases, was already evident during the application process. In some instances, for example in **Croatia**, the beneficiary of subsidiary protection who failed to prove that s/he was unable to obtain a national passport, could sign a statement, which was recognised by national authorities.

Only stakeholders in **Germany** and **Poland** indicated that proving that there is no possibility to obtain a new document issued by the country of origin might be challenging for the beneficiary of subsidiary protection. Moreover, in **Germany**, evidence showed that the requirements for the assessment of reasonableness set by the jurisprudence and the practice of the different local foreigners authorities varied considerably, creating additional uncertainty for the individuals concerned. In **Malta**, interviews also indicated that beneficiaries of subsidiary protection usually sought NGO assistance in this process.

#### 3.21.5 Recommendations

Based on the above findings, the following recommendations can be put forward:



- Article 25 could be amended to state a maximum period following the granting of the status within which the travel document would have to be issued, for example within 60 days following confirmation of the status or 30 days following issuance of the residence permit. Alternatively, reference could be made to the need to issue such documents within 'a reasonable timeframe'. The evaluation showed that issuance times varied significantly amongst Member States, going from only a few days to six months. The introduction of a time frame would reduce the variations identified;
- The European Commission should remind Member States which apply different rules and conditions in relation to travel documents for family members of beneficiaries of international protection that this is not in line with Article 23(2) of the Directive. This would supposedly reduce the occurrence of instances where the practice/rules in place have restricted the freedom of movement of family members.

### 3.21.6 Benchmarks for measuring the implementation of Article 25

**Table 3.30 Benchmarks for measuring the implementation of Article 25**

<b>Whether the issuance time for travel documents is:</b>	
More than 3 months	No MS
Between 2 and 3 months	EL, FI, FR, LU, MT (SP beneficiaries), PL (SP beneficiaries), SE
1 or less than 1 month	BE, BG, CY, CZ, HR, HU, IT, LV, MT (refugees), PL (refugees), RO, SI, SK <sup>262</sup>
<b>Whether or not the MS apply conditions to issuing a travel document to beneficiaries of international protection:</b>	
Proof of identity	All MS
Proof of stay	All MS
Payment of fee	All MS with the exception of SI
Expired passport – in case applicants have one	N/A
Proof that there is no possibility to obtain a new document issued by the country of origin (SP beneficiaries)	All MS
<b>The duration of the travel document issued to refugees is:<sup>263</sup></b>	
5 years and more	BG, HR, PT, SI
Between 3-4 years	DE, MT
Less than 3 years	BE, FR, HU, PL, RO, SK
Linked to duration of the status	No MS
<b>The duration of the travel document issued to a beneficiary of SP is:<sup>264</sup></b>	
5 years and more	DE
Between 3 and 4 years	BG,
Between 1 and 3 years	FR, HR, HU, MT, PL, PT, RO
Less than 1 year	CY
Linked to duration of the status	SI

<sup>262</sup> Information on the time frame for issuing the travel document was not provided by five Member States.

<sup>263</sup> No information on the duration of the travel documents issued to refugees was available in 13 Member States.

<sup>264</sup> No information on the duration of the travel document issued to refugees was available in 14 Member States.

Whether the burden (on the beneficiary) to obtain a travel document is:	
High	No MS
Medium	In all MS for beneficiaries of SP
Low	In all MS for refugees
Whether or not MS apply limitations to:	
Family members	FR, MT, PL

## 3.22 Access to employment – Article 26

### 3.22.1 Background on access to employment

Article 26(1) provides that beneficiaries of international protection shall have access to employment immediately after protection has been granted “subject to rules generally applicable to the profession and to the public service”.

Article 26(2) states that beneficiaries of international protection shall also be granted access to vocational training, including training courses for upgrading skills, practical workplace experience and counselling services afforded by employment offices *under equivalent conditions as for nationals*.

Compared to Directive 2004/83, Article 26(2) of the Recast QD makes an explicit reference to training courses for upgrading skills and to employment office counselling services as activities that might help beneficiaries of international protection gain access to employment.

The Recast QD also increases the rights provided to beneficiaries of subsidiary protection as compared to Directive 2004/83. While under the Recast QD Articles 26(1) and 26(2) apply equally to individuals with refugee status *and* of subsidiary protection status, under Directive 2004/83 Member States were able to apply different (and less favourable) rules to beneficiaries of subsidiary protection: these could be subject to national rules on prioritisation of access to employment, and Member States could decide the conditions under which beneficiaries of subsidiary protection would be given access to employment-related education opportunities for adults, vocational training and practical workplace experience.

Article 26(3) has been newly introduced in the Recast QD. It encourages Member States to not only *grant the right* to access but also to *facilitate* beneficiaries’ access to the types of activities listed in Article 26(2), stating that Member States shall “endeavour to facilitate full access for beneficiaries of international protection to the activities referred to in Article 26(2)”.

Article 26(4) remains the same as Article 26(5) in Directive 2004/83 and states that the law in force in the Member State on remuneration, access to social security and other conditions of employment will apply to beneficiaries of international protection (*as they do to nationals*).

The following evaluation questions were assessed:

*What type of administrative conditions and requirements to access the labour market (e.g. a work permit and related administrative procedures) are requested by Member States?*

*Are there any practical obstacles in relation to access to employment (e.g. need to obtain a work permit, knowledge of national language, etc.)?*

*Are beneficiaries of international protection authorised to engage in employed or self-employed activities subject to the rules generally applicable to the profession and to the public service?*

*When does this authorisation enter into force?*

*Are the requirements for beneficiaries of international protection more stringent than for nationals?*

*Are activities such as employment-related education opportunities for adults, vocational training (including training courses, counselling services afforded by employment offices, etc.) offered to beneficiaries of international protection, under equivalent conditions as nationals?*

*How do the Member States ensure full access to the activities listed above?*

*Are there wider programmes for migrants or other disadvantaged groups to facilitate access to employment? How are they funded?*

*What are the main practical obstacles hindering access to employment and VET related services in the Member States for beneficiaries of international protection?*

*In comparison with nationals, did Member States create more favourable conditions to take into account the special needs of refugees and subsidiary protection beneficiaries?*

*Do national legal provisions concerning remuneration, access to social security systems and other conditions of employment apply to beneficiaries of international protection?*

*In practice, are there obstacles to the application of these provisions to beneficiaries of international protection?*

*What are the review mechanisms in place in case of discrimination between nationals and beneficiaries of international protection? Is there any relevant case law?*

### 3.22.2 Findings for Article 26

#### *Summary of main findings*

The main findings in relation to Article 26 can be summarised as follows:

- Most Member States<sup>265</sup> allowed beneficiaries of international protection access to the labour market without applying additional administrative conditions. Administrative 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. These obstacles included language barriers, problems in having qualifications recognised and negative attitudes of employers towards employing beneficiaries of international protection.
- As had been permitted by Article 26(1) several Member States restricted beneficiaries of international protection from accessing certain professions (e.g. EL) and the public sector (e.g. EE, EL, FI, FR, MT, PL) in line with their national legislation.<sup>266</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, in practice, the fact that the *same eligibility conditions* applied to beneficiaries of international protection as to nationals meant that the former would not have been able to access all these services since they would not have met the eligibility criteria (e.g. on level of education, level of language skills, etc.).

<sup>265</sup> Information regarding all EU Member States bound by Directive 2011/95/EU or 2004/83/EC are reflected regarding Article 26, with the exception of DE, ES, UK where no information could be collected for reasons explained in Section 2 of this report.

<sup>266</sup> This list may not be comprehensive since we do not have data for all Member States and since not all Member State representatives consulted gave clear or comprehensive information on this question. Indeed it is likely to be the case that more Member States restrict access to employment in the public sector to beneficiaries of international protection or third-country nationals in general.

- Several Member States implemented tailored employment-related activities and services for beneficiaries of international protection to facilitate their access to employment. This is considered good practice.
- In all Member States, general national legal provisions concerning remuneration, access to social security systems and other conditions of employment applied equally to beneficiaries of international protection as to nationals, though beneficiaries of international protection could be prevented from accessing these rights because of a lack of awareness of them or because of the language barrier preventing them from accessing information.

### **Member State application of Article 26**

In line with Article 26(1), at least 17 Member States<sup>267</sup> allowed beneficiaries of international protection to access the labour market as soon as their status is granted (AT, BG, CZ, FI, HR, HU, IE, LU, PL, RO, SI) or as soon as they receive a certificate of their status proving their right to residence (CY, DE, FR, IT, LV, SE).

Administrative 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) as described below. Until recently (July 2015), beneficiaries of international protection in **Croatia** were also required to have a work permit to access employment.

- In **Belgium**, while refugees needed only a residence permit to access the labour market, beneficiaries of subsidiary protection needed a type C work permit, which they had to request at the offices of the regional authorities on receiving a formal recognition of their residence rights. This administrative formality will be soon removed with the Single Permit Directive<sup>268</sup> being transposed in **Belgium**.
- In **Greece** beneficiaries of international protection were required to have a work permit. To receive a work permit, they had to obtain a) a certified copy of the residence permit, b) a document certifying their status as a beneficiary of international protection (e.g. a certified copy of the decision), c) a declaration from an employer wishing to recruit him/her,<sup>269</sup> and d) a certificate from a public hospital that s/he was not suffering from a contagious disease. However, this changed in 2016 with Article 69, Law 4375/2016 of 3/4/2016. Now residence permits of refugees and beneficiaries of subsidiary protection give them direct / immediate right to access to employment under the same conditions as Greeks- a work permit is no longer needed.
- In **Lithuania** beneficiaries of international protection were required to have a work permit. The public authority consulted in **Lithuania** for this study stated that Lithuanian and EU citizens were prioritised over beneficiaries of international protection when allocating jobs. It might need to be further investigated whether this practice is in line with the Directive.
- In **Malta**, beneficiaries of international protection were required to have a work permit. To receive a work permit, they had to obtain a valid residence permit which had to be requested through the Identity Offices of the Maltese Ministry of Home Affairs. Whilst the work permit issued to legal migrants in **Malta** was specific to a particular post/employer, beneficiaries of international protection were issued a 'personal work permit' that was valid for any type of (future) job in **Malta**.
- Also in **Malta**, beneficiaries of subsidiary protection might be subject to labour market tests under national law, but authorities did not generally apply these in practice. Also in **Malta**,

<sup>267</sup> Information not available for EE, ES, NL, UK

<sup>268</sup> Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State.

<sup>269</sup> If it is likely that the employee will have several interchangeable employers they do not need to submit this declaration.

subsidiary protection beneficiaries could not register with the Employment Training Corporation which meant that they were not notified of vacancies or other rights and were not given this information unless they requested it.<sup>270</sup>

- In **Portugal**, in accordance with national legislation (Law 20/98), more stringent rules applied to employers when signing work contracts with third-country nationals – including beneficiaries of international protection – than with citizens.<sup>271</sup> These rules required employers to complete work contracts in writing, referencing the worker's residence permit number, and to register the contract with the national Authority for Work Conditions and social security services.
- In **the Slovak Republic**, beneficiaries of international protection were required to inform the Migration Office of the place where they would be employed.

### **Obstacles to accessing employment**

In practice, several obstacles existed which could prevent beneficiaries of international protection from having access to the labour market. These are described below.

**Language** was cited by most State and non-State actors as a major practical obstacle to the labour market. Only one actor in **Bulgaria** considered that having the appropriate practical skills was more important than having language skills. Language could be more of a challenge for beneficiaries of international protection residing in Member States where the national language was not widely spoken internationally.

In **France**, one NGO interviewed also acknowledged that **lack of appropriate skills and differences in cultural working practices** might also create barriers to employment, as would the beneficiary's **lack of a personal network** and **insufficient knowledge of the national job market**. These challenges were not specific to beneficiaries of international protection, but rather common to all third-country nationals living in the EU.

As will be discussed in section 3.24 on Article 28, one practical obstacle which might disproportionately affect beneficiaries of international protection more than other third-country nationals living in the EU, is the fact that **many jobs required third-country nationals to present documentary proof of qualifications or skills that are recognised by the Member State**. By not having their skills/qualifications recognised, beneficiaries might not be prevented from accessing the labour market altogether, but it was likely to prevent them from accessing jobs which matched their skills and experience, leading to 'brain waste'.

NGO representatives interviewed in **Italy** and **Romania** suggested that **employers were often deterred** from employing beneficiaries by a perception that this required additional administrative processes. Similarly, an NGO representative interviewed in **Belgium** and **the Slovak Republic** suggested that the temporary nature of the residence permit for beneficiaries of subsidiary protection could render employers reluctant to hire the applicant. A **Cypriot** NGO representative and the Slovak state authority representative suggested that employer xenophobia could also sometimes deter them from employing third-country nationals in general. A state authority representative in **Finland** suggested that employers might be prejudiced against hiring people who have a different cultural background and imperfect language skills.

In **Greece** and **Malta** the **additional administrative conditions** (to have work permits) **placed on beneficiaries** of international protection accessing the workplace might also have created delays to accessing employment though, according to the consultation completed for this evaluation, the work permit was usually issued quite quickly (within four days in **Malta** and within 10 days in Greece). In **Sweden**, for regulated professions, all persons needed to get a licence to work and this could be a lengthy process for beneficiaries to obtain; however, the Swedish requirements applied equally to

<sup>270</sup> Information provided in an interview with an NGO in Malta.

<sup>271</sup> The stricter rules exclude some nationalities.

nationals as to migrants meaning that beneficiaries of international protection were not at a particular disadvantage.

Where beneficiaries of international protection had already been **granted access to the labour market during their application procedure** (this is the case under certain conditions in the **Czech Republic, France, Italy** and **Poland** for example), they found it easier to access or continue accessing the labour market once they were granted their international protection status.

### **Article 26(1) – Extent to which Member States restrict access in relation to rules generally applicable to the profession and to the public service**

In most Member States (AT, BE, BG, CZ, CY, DE, EE, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, PL, PT, RO, SE, SI, SK),<sup>272</sup> beneficiaries of international protection could access *all* professions and positions in the **private sector**, with the exception of regulated professions. Regulated professions require a specific professional qualification, licence or certificate, for which it could be possible to have existing qualifications recognised or prior learning accredited, which can be a challenging process, as described above. One exception was **Greece**, where only Greek and EU citizens could access certain professions requiring licences (such as lawyer, architects, engineers, social workers, etc.). This was still the case even if the third-country national had completed their studies in **Greece**.

Most national restrictions on beneficiaries of international protection occurred within the **public sector**. Member States' restrictions on nationals of other EU Member States or third-country nationals working in the public sector varied quite significantly. Some examples are provided below.

- Restrictions affecting *third-country nationals*:
  - In **Estonia**, they could not work in any part of the public services, and
  - In **Greece** they could not be employed as civil servants.
- Restrictions applying to *all foreign nationals, including nationals of other EU Member States*, for example:
  - In **Finland**, they could not work in some of the highest positions in the State administration, and
  - In **Poland**, they could not work in positions of public authority.
- In **Malta**, refugees had the same access to positions in the public service as Maltese and EU citizens, but *beneficiaries of subsidiary protection* had secondary priority for some government positions.

### **Article 26(2) – Differences in the conditions applied to beneficiaries of international protection and to nationals**

In all Member States,<sup>273</sup> 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 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. To enter mainstream employment-support activities and services, beneficiaries of international protection usually had to demonstrate proof of schooling, proof of qualifications and a certain level of language ability. These requirements tended to create practical obstacles, since they might not fully meet eligibility requirements or not meet them as well as national and EU citizens who would often also be competing for a place on the course or competing for service resources.

<sup>272</sup> No information available for ES, NL, UK.

<sup>273</sup> Except those for which no information was available: ES, NL, UK

In view of these practical obstacles, services and courses that had been tailored exclusively for beneficiaries of international protection or for job-seeking third-country nationals could be considered a good practice.

### **Article 26(3) – Member State actions to facilitate full access to employment-related activities and services**

The following national authorities provided services specifically aimed at helping asylum applicants (BE, IT, LT), beneficiaries of international protection (AT, CY, FI, IT, RO, SI, SK) or third-country nationals in general (BE, CY, DE, FR, HR, LU, NL, PL, SE) to access employment and employment-related educational opportunities. The types of services they provided were as follows:<sup>274</sup>

- Specialist language courses (AT, CY);
- Orientation services (BE, DE, FR, HR, LT, LV, LU, NL, PL, RO, SE);
- Vocational training (CY, SK);
- Counselling (CY, SI);
- Access to education (FI);
- Internships specifically for refugees and asylum applicants (IT).

The authorities in **Sweden** provided subsidies and grants for employee training, to employers employing newly arrived migrants and those who had entered the country on family reunification grounds.

A few Member States (FI, HR, IT, LT) reported specifically that funding for these courses came in part from the European Social Fund (ESF) or the Asylum, Migration and Integration Fund (AMIF).

### **Article 26(4) – Extent to which relevant national laws apply equally to beneficiaries of international protection and nationals**

In all Member States,<sup>275</sup> general national legal provisions concerning remuneration, access to social security systems and other conditions of employment applied equally to beneficiaries of international protection. In **Sweden**, beneficiaries of international protection were also entitled to an additional benefit during their first two years in **Sweden**.

In all Member States, national legislation on anti-discrimination in the workplace and beyond applied. In view of this, beneficiaries of international protection could, like nationals, lodge complaints in cases of discrimination with entities such as:

- The ombudsman (as reported by AT, EL, FR, LT, LV, SE);
- Labour courts (as reported by AT, PL, SI);
- Anti-discrimination courts (PT);
- Specialised NGOs (LU, SK);
- The Commissioner for Administration and Human Rights and its Anti-Discrimination Body (CY);
- National Council for Combating Discrimination (as reported by RO);
- Department of Industrial and Employment relations (as reported by MT);
- Workplace Relations Commission and Social Welfare Appeals Office (as reported by IE).

<sup>274</sup> Note that the information presented below is not comprehensive for all Member States, since Member States were not required to provide information on *all* services available.

<sup>275</sup> Except those for which no information was available: ES, NL, UK

It was also highlighted that the complaints could be lodged with the General Inspectorate for Immigration in **Romania**, and labour inspectors played a role in detecting discrimination in **Greece** and **Slovenia** (as was also likely to be the case in other Member States).

Most stakeholders consulted considered that there were no obstacles to beneficiaries of international protection accessing the same rights to remuneration, access to social security systems and other conditions of employment as nationals. However, stakeholders consulted in **France, Greece** and **Malta** suggested that while relevant laws applied equally to beneficiaries of international protection, they were in practice often in a comparatively disadvantaged position to nationals concerning remuneration, access to social security systems and other conditions of employment. This was because beneficiaries of international protection were **less likely to be aware of their employment rights and the redress mechanisms** than nationals or EU citizens, especially if they had not been given this information through orientation or integration services. There was also a possibility that this left beneficiaries of international protection more vulnerable to exploitation. Stakeholders consulted in **Ireland** considered that **language** might also create a **practical barrier** to beneficiaries of international protection accessing information on legal provisions.

### 3.22.3 Changes in Member States' practices since the Recast QD in 2013

As described above, the two main changes to Article 26 introduced through the Recast QD were to:

- Articles 26(1) and 26(2), which now provided for equal rights to beneficiaries of subsidiary protection as to refugees (in accessing employment and employment-support activities and services); and
- Article 26(3), which now encouraged Member States to *facilitate* full access for beneficiaries of international protection to employment-support activities and services.

In line with the first amendment, most Member States now treated *beneficiaries of subsidiary protection* in the same way as refugees when granting access to the labour market and to employment-support activities and services. This was following legislative changes in fifteen Member States (AT, CY, CZ, DE, EL, FI, HR, IT, LU, MT, PL, PT, RO, SE, SK).<sup>276</sup> No legislative change was made in **Hungary, Latvia, the Netherlands** or **Slovenia** in order to transpose Article 26 of the Recast QD.<sup>277</sup>

In view of the legislative changes, most Member States no longer took into account the situation of the labour market nor subjected beneficiaries of subsidiary protection to national rules on prioritisation of access to employment for nationals. The only exception was in **Malta** where beneficiaries of subsidiary protection may be subject to a labour market test. Public authority interviewed in **Lithuania** reported that Lithuanian nationals and EU citizens were prioritised over beneficiaries of international protection when allocating jobs.

Six Member States (CY, ES, FI, LT, RO, SK) had amended their national law to introduce a provision/provisions equivalent to Article 26(3). In more than half of the Member States (AT, BE, BG, CZ, DE, EE, EL, FI, HR, HU, IT, LU, LV, MT, NL, PL, PT, SE, SI) no equivalent provision was introduced.<sup>278</sup> Nonetheless, in practice, some Member States did endeavour to facilitate full access for beneficiaries of international protection to the activities referred to in Article 26(2) by offering tailored services (e.g. language courses, vocational training courses, orientation services) to beneficiaries of international protection to help them access employment (AT, CY, FI, IT, RO, SI, SK)<sup>279</sup> or by providing individualised support such as interpretation or specialist support through the job centres (DE), a

<sup>276</sup> Based on the completeness assessment report of Directive 2011/95/EU.

<sup>277</sup> Based on the completeness assessment report of Directive 2011/95/EU.

<sup>278</sup> Analysis based on the review of the Completeness assessment report of Directive 2011/95/EU. Ireland and the United Kingdom were not obliged to introduce this article since they have not signed up to the Recast QD.

<sup>279</sup> See: DG EMPL (2016), 'Labour market integration of asylum seekers and refugees 'and EMN (2016) 'Integration of beneficiaries of international/humanitarian protection into the labour market: policies and good practices' – *both as yet unpublished*.



mentor to guide the beneficiary of international protection through the system (LV,<sup>280</sup> SI), an individualised integration package (PL) or by providing a basic minimum income specifically for destitute beneficiaries of international protection (RO). It is not clear whether these services and activities have been offered to beneficiaries only since – or as a result of – the transposition of the Recast QD.

### 3.22.4 Examples of good application

In view of the multiple obstacles preventing beneficiaries of international protection accessing employment and employment-related activities and services, Member States (e.g. AT, BE, CY, FR, HR, IT, LT, PL, RO, SE, SI) offering **tailored services to facilitate access** to employment for beneficiaries of international protection can be considered good practice. In view of the fact that the reluctant attitude of employers could be an obstacle to accessing employment, it is good practice that **Sweden** incentivised employers to employ beneficiaries of international protection through, for example, subsidies or grants for training to employers which would hire newly arrived migrants.

### 3.22.5 Possible application issues

The phrasing of Article 26(1) allowing Member States to authorise access to employment for beneficiaries “subject to rules generally applicable to the profession and to the public service” left some room for interpretation by Member States. This broad phrasing may have led to an implementation issue in **Lithuania**, whereby national and EU citizens can be prioritised over beneficiaries of international protection when assigning jobs.

The fact that in **Malta** beneficiaries of subsidiary protection may be subject to a labour market test (according to the law) constitutes a contravention of the Recast QD which requires that beneficiaries of subsidiary protection are granted the same rights to access employment as refugees. However, Maltese authorities state that in practice the labour market test is not applied. Nonetheless, subsidiary protection beneficiaries *are* restricted from registering with the employment-support agency, which places them in a disadvantaged position compared to refugees because it means that they will not be notified of vacancies.

The fact that *beneficiaries of subsidiary protection* in **Belgium** and the **Slovak Republic** are only granted a temporary residence permit puts them at a disadvantage when accessing employment compared to refugees, even though by law they are entitled to the same rights to access employment.

The fact that employment-related activities and services are offered *under equivalent conditions as nationals* can create practical obstacles to beneficiaries of international protection wanting to benefit from these services (for example, because they are unlikely to have the necessary language skills, qualifications or knowledge to enable them to be eligible for the activity). Whilst Article 26(3) is supposed to have addressed this issue by providing that Member States should *endeavour to facilitate full access* for beneficiaries of international protection, in reality few Member States have transposed this Article, though many more Member States apply it in practice. Subsequently, support services do exist in most Member States, but the quality, relevance and effectiveness of these in facilitating beneficiaries’ access to employment vary significantly between Member States (see also access to integration facilities (Article 34) and the case study on Article 34 in Annex 3).

### 3.22.6 Recommendations

Based on the above findings, the following recommendations can be put forward:

- The European Commission might consider notifying those Member States who appear to be acting in breach of the Directive by applying labour market tests to beneficiaries of international protection or otherwise limiting their access to employment, and encourage them to correctly apply the Directive.

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<sup>280</sup> From 2016 only.

- The European Commission should continue to make funding available for services and activities facilitating access to the labour market for beneficiaries of international protection, for example through the European Return Fund and the Asylum Integration and Migration Fund.
- The European Commission should consider funding other national initiatives aimed at facilitating access to employment for beneficiaries of international protection, e.g. those that target employers to incentivise them to employ beneficiaries of international protection. Such support has been found to be effective in facilitating employment in at least one Member State and can be considered good practice.

### 3.22.7 Benchmarks for measuring the implementation of Article 26

**Table 3.31 Benchmarks for measuring the implementation of Article 26**

<b>Whether or not MS have ensured that there are no administrative obstacles to beneficiaries of SP having the same access to employment as refugees:</b>	
No administrative obstacles exist for either refugees or beneficiaries of SP	AT, BG, CY, CZ, DE, FI, FR, HR, HU, IE, IT, LU, LV, PL, RO, SI, SE
Administrative obstacles exist only for beneficiaries of SP	BE
Administrative obstacles exist for both refugees and beneficiaries of SP	EL, LT, MT, PT, SK
No information	EE, ES, NL, UK
<b>Whether or not MS are offering beneficiaries of international protection access to employment-related activities and services (e.g. employment-related education opportunities for adults, vocational training, including training courses for upgrading skills, practical workplace experience and counselling services) under equivalent conditions as nationals:</b>	
Access to employment-related activities and services are offered	AT, BE, BG, CY, CZ, DE, EE, EL, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, PL, PT, RO, SI, SE, SK
Additionally, tailored/targeted services exist for beneficiaries of international protection	AT, CY, FI, IT, RO, SI, SK
Equivalent (or tailored) conditions do not exist	-
No information	ES, NL, UK
<b>Whether or not MS are facilitating full access (in practice) for beneficiaries of international protection to employment-related activities and services:</b>	
Facilitating access through services targeting beneficiaries of international protection	AT, CY, FI, IT, RO, SI, SK
Facilitating access through individualised support (e.g. mentorships)	DE, LV, PL, SI
Facilitating access to a wider target group (e.g. all third-country nationals legally resident in the country or all newly arriving non-nationals)	BE, CY, DE, FR, HR, LU, NL, PL, SE
Facilitating access to asylum seekers in reception centres	IT, LT
Not facilitating access	BG, CZ, EE, HU, MT
No information	ES, PT, UK
<b>Whether or not MS have ensured that there are no administrative obstacles to the application of national law on remuneration, access to social security systems relating to employed or self-employed activities and other conditions of employment to beneficiaries of international protection:</b>	
No administrative obstacles	AT, BE, BG, CY, CZ, DE, EE, EL, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, PL, PT, RO, SI, SE, SK

Administrative obstacles exits	-
No information	ES, NL, UK

### 3.23 Access to education – Article 27

#### 3.23.1 Background on access to education

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.

Access to education is also ensured to family members, as stated in Article 23(2) of the Recast QD which clarified the right of family members to the benefits and rights – including access to education – to enable them to participate fully in and contribute to the host society.

No changes to Article 27 have occurred since the recast of Directive 2004/83, with the exception of paragraph 3 which was deleted and instead became paragraph 1 of Article 28 of Directive 2011/95/EU obliging Member States to ensure equal treatment between beneficiaries of international protection and nationals in the context of the existing recognition procedures for foreign diplomas, certificates and other evidence of formal qualifications.

The following evaluation questions were assessed:

*Who is involved in providing access to education to minors and adult beneficiaries of international protection in the Member States?*

*What are the conditions and requirements for adults to access education in the Member States? Do the same conditions apply to beneficiaries of international protection as to third-country nationals legally residing in the Member States?*

*What are the conditions and requirements for children to access education in the Member States? Do the same conditions apply to beneficiaries of international protection as to nationals?*

*Is additional support available for children and adult beneficiaries of international protection? Is it part of a wider programme for migrants or other disadvantaged groups?*

#### 3.23.2 Findings for Article 27

##### **Summary of main findings**

The main findings in relation to Article 27 can be summarised as follows:

- In most Member States, the Ministry of Education was responsible for providing access to education to minors and adult beneficiaries. In some cases, regions, municipalities and/or educational institutions, such as universities and schools, were also involved in providing access to education.
- With the exception of **Slovenia**, no data existed or had been made available on the number of adult or minor beneficiaries accessing education.
- All Member States granted access to education to minor beneficiaries of international protection under the same conditions as to nationals, in line with Article 27(1). Most Member States provided additional support to minor beneficiaries of international protection to access education, mainly in the form of preparatory/induction courses or additional language classes.
- All Member States granted access to education to adult beneficiaries of international protection under the same conditions as to legally residing third-country nationals for adults in line with Article 27(2). In Member States that applied the same conditions as for other third-country nationals, adult beneficiaries of international protection were faced with some additional requirements compared to nationals, such as holding a regular residence permit, an identity document, having social security or where access to education (notably higher education) was

not for free. These additional requirements could create obstacles in practice. Most Member States had not introduced more favourable standards for beneficiaries.

- Knowledge of the national language of 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.

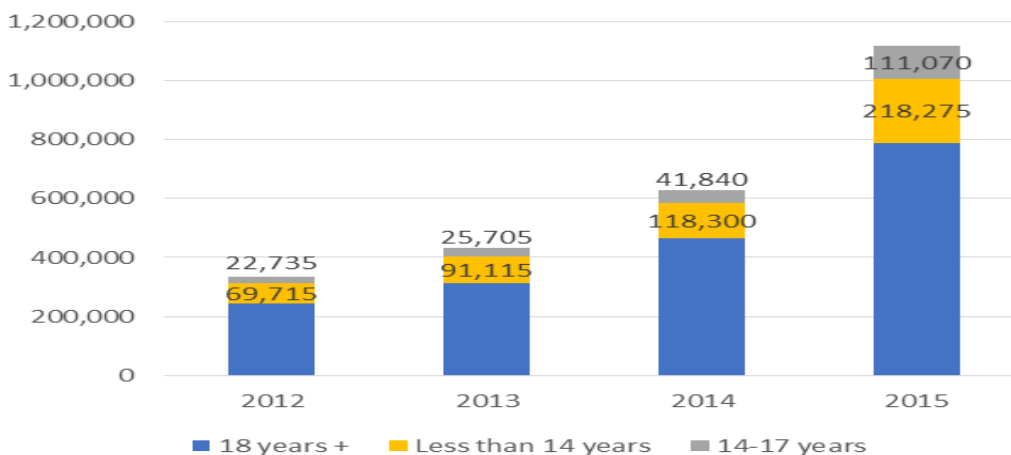
### Statistical information

Eurostat does not collect any data on minor or adult beneficiaries accessing education.

Member States consulted reported not collecting such data, with the exception of **Slovenia**. In 2015, 13% (30 adults) of the total number of beneficiaries of international protection in **Slovenia** were involved in education (adult = aged over 18). Fifty-two per cent (32 minors) of the total number of minor beneficiaries of international protection were involved in education and 29% (18) of minor beneficiaries of international protection were below the age of compulsory education (below six years old). Finally 19% were not yet included in the statistics because they had just arrived in the country on the basis of family reunification.<sup>281</sup>

On average, over the period 2012–2015, 27% of asylum applicants in the EU were minors, under 18 years old. However, in 2015, the proportion of asylum applicants in the 14–17 age group increased in comparison to previous years (10% in comparison to 7% in 2014 and 2012). The table below presents the number of minor asylum applicants within the EU 28 in 2012–2015.

**Figure 3.7 Number of minor asylum applicants in EU 28, 2012–2015**



Source: Eurostat, migr\_asyappctza; extracted on 29 February 2016

### Access to education

In most Member States<sup>282</sup> consulted, the Ministry of Education was responsible for providing access to education to minors and adult beneficiaries (BG, CY, CZ, EE, EL, FR, HR, IT, LT, LU, MT, RO, SE, SK).<sup>283</sup> In **Austria, Germany** and **Italy**, the education system was mainly decentralised with the federal

<sup>281</sup> Data collected through stakeholder consultation.

<sup>282</sup> Data regarding all EU Member States bound by Directive 2011/95/EU or 2004/83/EC are reflected regarding Article 27, with the exception of ES, IE and UK, where no data could be collected for reasons explained in Section 2 of this report.

<sup>283</sup> Information regarding all EU Member States bound by Directive 2011/95/EU or 2004/83/EC are reflected regarding Article 27, with the exception of ES, IE, UK, where no information could be collected for reasons explained in Section 1 of this report.

states (*Länder*), regions and/or provinces having certain competencies in the areas of legislation and implementation.<sup>284</sup> In **Estonia, Finland, Latvia, and Sweden**,<sup>285</sup> in addition to the Ministry of Education, municipalities were involved, while in **Slovenia**, Integration Officers, Guardians for Unaccompanied Minors and NGOs on a project basis were included in the process. The Office of Immigration and Nationality within the Ministry of Interior, local governments and the national childcare system were involved in providing access to education to beneficiaries of international protection.

### **Access to education for minors (Article 27(1))**

In all Member States consulted (AT, BE, BG, CY, CZ, DE, EE, EL, FI, FR, HR, HU, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK), minors granted international protection status were entitled to have access to the general system of education under the same conditions as those applied to minor nationals, in line with Article 27(1). Furthermore, access to education was also guaranteed to those minors not (yet) legally staying in the Member State in the following Member States: **Belgium, Greece, Latvia**,<sup>286</sup> **Malta, Romania** and **Sweden**. In **Italy, Sweden** and the **United Kingdom**, minors had access to education even before they were granted protection status, as required by the Reception Conditions Directive.<sup>287</sup>

Some Member States (BE, CY, DE, EL, FI, FR, HR, HU, LT, LU, LV, MT, NL, RO, SE, SK) had **additional support for migrant minors** in place, but not specifically for beneficiaries of international protection. For example, minors in the **Belgian** region of Flanders were provided with reception classes, which specifically targeted migrant pupils. In **France**, a transition phase in compulsory level schools with preparatory and additional support courses was envisaged for migrants and newly enrolled pupils, while in **Malta**, induction classes for minors who did not speak Maltese and foreigners in general were organised. In **Latvia**, minor asylum seekers and beneficiaries of international protection had one-to-one support for all subjects.

In some Member States (EL, EE, LT, LV, PL), minor beneficiaries of international protection needed to present documents certifying their school level. If documentary evidence was not available, their educational level was assessed by a committee or a specialised agency. These assessment tests were carried out in **Sweden** too, although there, pupils did not need to present any documentary evidence. In **Poland**, there was no unified method of verifying the educational level of migrant minors. Each school had an individual assessment test, with a significant level of discretion.<sup>288</sup>

Most Member States (AT, BE, BG, CY, CZ, DE, EL, HR, LU, LV, MT, RO, SE, SK) had language classes targeting migrant students in place. In **Austria**, the National Action Plan on Integration of 2015 foresaw language support classes in kindergartens, at school, after school and in summer holidays. In most cases, these courses were mandatory for those with a low level of German knowledge. Preparatory classes were also provided by **Finland** for minors whose knowledge of the national language was considered insufficient to access education. As stated in national legislation,<sup>289</sup> minors who were granted protection status in **Romania** received a free introductory language course in Romanian for one year. This course was needed to assess the level of education and the

<sup>284</sup> Nevertheless, in Italy the central system provides the general framework with regard to access to education at all levels.

<sup>285</sup> In Sweden, the municipality of residence is responsible for providing adult education, including Municipal Adult Education (komvux), Special Education for adults (sär vux) and Swedish for immigrants (SFI). The legal framework and curricula are developed by the Ministry.

<sup>286</sup> In Latvia, Illegal minors have the right to access education until they are returned.

<sup>287</sup> Article 14 of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection.

<sup>288</sup> Interview with national NGO.

<sup>289</sup> Law no. 122/2006, Article 20 and G.O. no. 44/2004, Article 10.

corresponding study year in which the minor would be enrolled in. Finally, **Sweden** provided mother tongue tuition to pupils in primary and secondary education.<sup>290</sup>

NGOs reported that there was an increased need for language classes (notably intensive language classes of the national language or English). For instance, there were reportedly only a few induction classes in some schools in **Cyprus** and in **Greece** – in which minors especially were assisted by NGOs or social workers within a wider programme of support for migrant students<sup>291</sup> – while in **Poland** a maximum of a course of six hours per week was provided to minor migrant students.<sup>292</sup> In **Italy**, minor beneficiaries of international protection received support through programmes for migrants or other disadvantaged groups at local level, while in **Romania** these support programmes were financed through EU funding or through NGOs.

The crucial role of NGOs emerged also in **Slovenia** and **Latvia** where schools complained about the lack of funding for interpreters and language classes for enrolled students.<sup>293</sup> Similarly, in **Malta** most beneficiaries and applicants for international protection attended language classes organised by NGOs working in reception centres. However, the Ministry of Education recently introduced classes of Maltese and English for newly enrolled migrant pupils (regardless of their status).

### **Access to education for adults (Article 27(2))**

In all Member States consulted (AT, BE, BG, CY, CZ, DE, EE, EL, FI, FR, HR, HU, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK), adults granted international protection status were entitled to have access to the general system of education and further training under the same conditions as those applied to legally residing third-country nationals, in line with Article 27(2).

As regards access to higher education, generally the same conditions granted to legally residing third-country nationals applied to beneficiaries and applicants for international protection. However, in **France** access to non-compulsory education was reportedly open to all students (including beneficiaries of international protection), but in practice, where places were limited, priority was given to nationals that had already attended classes in **France**. Similarly, some Slovenian universities had a quota for foreign students, which in some cases included beneficiaries of international protection.

In some Member States (EL, EE, LT, LV, PL), adult beneficiaries of international protection needed to present documents certifying their school level. If documentary evidence was not available, their educational level was assessed by a committee or a specialised agency. These assessment tests were carried out in **Sweden** too, although students did not need to present any documentary evidence.

Most Member States (BE, CY, DE, EL, FI, FR, HR, HU, LT, LU, LV, MT, NL, RO, SE, SK) had put in place additional support for migrant adults, but not specifically for beneficiaries of international protection. This additional support mainly consisted of language classes, although in a few countries (AT, FI, FR, SE) adult foreigners received a personalised integration plan that included – in addition to language classes – courses on general knowledge of the country, social rules and seminars on the code of conduct, job and education orientation and assistance.

In **France** migrants were provided with a *contrat d'accueil et d'intégration*, which supported adult foreigners in their efforts to integrate into French society through linguistic and civic training.<sup>294</sup> This initiative and programme was not specifically tailored for adult beneficiaries of international protection but formed part of a wider programme for migrants. The French University of Paris-Ouest-

<sup>290</sup> Pupils and students in primary and secondary education with a mother tongue other than Swedish are entitled to mother tongue tuition.

<sup>291</sup> The General Secretariat for lifelong learning organises Greek language classes for migrants, and international protection beneficiaries are allowed to participate.

<sup>292</sup> This service is provided to any migrants, irrespective of the status.

<sup>293</sup> In Latvia, when national funding is scarce, schools are assisted by national NGOs, which are aiming in the future to provide additional financial support to schools to address specific needs of migrant pupils.

<sup>294</sup> [http://www.ofii.fr/IMG/pdf/Affiche\\_La\\_formation\\_civique.pdf](http://www.ofii.fr/IMG/pdf/Affiche_La_formation_civique.pdf).

Nanterre-La-Défense (Paris X) however, set up a programme specifically targeted at refugees to facilitate their access to different levels of higher education, from university degrees<sup>295</sup> to PhDs. In addition, a programme has been recently set up to enable refugees to obtain a university degree in Initiation to the French Language and Civilisation (*Diplôme Universitaire d'Initiation à la Langue et la Civilisation Françaises*). Nevertheless, from the data available it seemed that the procedure was difficult, although the university provided help with the registration procedure. The university covered the tuition fees but not the contribution to social security, which was mandatory for all students under 28 years of age.

### **Requirements and other obstacles to access education for both minors and adults**

Access to education under the same conditions as nationals for minors and as third-country nationals legally residing in the Member State was ensured in all Member States. Nevertheless, in order to access all levels of education, beneficiaries of international protection faced a few additional requirements, which were identical to those applied to all third-country nationals. These included the requirement to hold a legal residence permit (BE, CY, EL,<sup>296</sup> IT, MT) or to show proof of social security (FR). In some cases, the delays caused by these requirements could also affect the right of access to education. For instance, in **Malta** the issuing of residence permits might take months and, without this, adult beneficiaries of international protection were prevented from enrolling in school, according to NGOs consulted. NGOs in **France** stated that the requirement to hold social security (which represented an annual fee of EUR 200) could be a substantial obstacle for beneficiaries of international protection who generally had little or no income. Obstacles related to the issuing of residence documents are further assessed in section 3.20 while access to welfare and social security is further explored in section 3.25.

**Cyprus** and **Greece** reported that adult beneficiaries of international protection did not have access to national higher education but only to 'second chance schools'<sup>297</sup> or to 'technical/vocational high schools' and to educational programmes and training. Formally, access was not prevented, however, in practice the language barrier (entry exams and classes at public universities were taught in Greek) and the absence of an appropriate scheme for recognition of secondary education qualification in the country of origin hindered access to higher education. Obstacles related to the recognition of qualifications in absence of documentation are further assessed in section 3.24 below.

Similarly, access to higher education was deemed as complicated for adult beneficiaries of international protection in some countries (FR, HR, PT, SI), mainly

#### **Example of an individualised integration plan in Finland**

This personalised plan was drawn up for all foreigners legally residing in **Finland** to promote and support their integration into Finnish society and working life. It included, amongst others, measures and services to promote and support basic education, vocational education, upper-secondary education, studies leading to a higher education degree, continuing education or further training. Migrants were also provided with support to learn Finnish or Swedish to facilitate and promote their full participation into social life. The plan was drafted either by employment offices (for unemployed adults who could access the labour market) or in the municipality (for those who could not enter the labour market, such as people with young children, people with disabilities, illnesses or retired people).

Most of the education available in **Finland** is free of charge for nationals and refugees.

<sup>295</sup> In France this is a specific type of degree awarded by the University and not by the State. The degree corresponds to a restricted domain, for temporary or professional purpose.

<sup>296</sup> In Greece, beneficiaries of international protection were accepted to attend school even if they do not possess the necessary documents (birth certificates, for instance, that are requested to nationals) however, in some cases they needed to present documents regarding their health condition and the vaccinations they have completed.

<sup>297</sup> Second chance schools have been developed to combat social exclusion of adults who have no basic education or do not have the necessary qualifications and skills to adapt to modern vocational requirements, <http://www.ekep.gr/english/education/deuteris.asp>.

because of the fees and the strict preselection based on an accession test and a minimum score in order to be admitted to universities. Financial support (either financial benefits or fee exemptions) was reportedly provided by **Hungary**, the **Netherlands** and **Lithuania**, while **Croatia** and **Slovenia** excluded beneficiaries of international protection from accessing financial support.

### 3.23.3 Examples of good application

- A limited number of Member States have provided beneficiaries of international protection with additional support to facilitate access to the national education system. For instance, **Sweden** provides mother tongue tuition<sup>298</sup> to pupils and students in primary and secondary education, while **Finland** provides beneficiaries of international protection with an individualised integration plan.
- Although this is a one-off initiative in **France**, the University of Paris-Ouest-Nanterre-La-Défense (Paris X) set up two programmes specifically targeted at refugees: the first one to facilitate their access to different levels of higher education; the second programme enables refugees to obtain a university degree in Initiation to the French Language and Civilisation (*Diplôme Universitaire d'Initiation à la Langue et la Civilisation Françaises*).

### 3.23.4 Possible application issues

From data collected, there are no practices related to Article 27 that can be considered as being non-compliant, not properly implemented and/or not 'within the spirit' of the Directive, with the exception of **Croatia** and **Slovenia** that exclude beneficiaries of international protection from accessing financial support for higher education.

### 3.23.5 Recommendations

Based on the above findings, the following recommendation can be put forward:

- Member States should be encouraged to invest in specific measures to facilitate access to education for minors (Article 27(1)) and for adults (Article 27(2)), also allocating EU funding to this. A number of NGOs noted that minors and adults are in need of additional support to ensure fair access to the national education system.
- For minors, this additional support could for example consist of language classes and preparatory courses on specific subjects (i.e. maths, science, history) for which additional support may be needed by the minor. Member States could ensure that these course are accessible to all minor beneficiaries of international protection.
- For adults, such support could be part of a personalised integration plan including – in addition to language classes – induction courses on general knowledge about the country, the national education and training system, seminars covering social rules and codes, job and education orientation and assistance. Induction courses on specific subjects could be also provided, based on individual learning needs.

### 3.23.6 Benchmarks for measuring the implementation of Article 27

**Table 3.32 Benchmarks for measuring the implementation of Article 27**

**The extent to which MS grant access to education systems:**

<sup>299</sup> Data regarding all EU Member States bound by Directive 2011/95/EU or 2004/83/EC are reflected regarding Article 27, with the exception of ES, IE, and UK, where no data could be collected for reasons explained in Section 2 of this report.



Access to adult education under the same conditions as legally residing adult third-country nationals	AT, BE, BG, CY, DE, EE, EL, FI, FR, HR, IT, MT, NL, PL, PT, RO, SE, SI, SK <sup>299</sup>
Access to adult education differs from access granted to nationals	AT, BE, CY, EL, FI, FR, HR, HU, IT, LT, LU, LV, MT, NL, RO, SE, SK
'Practical' problems exist in relation to access to education by adults	BE, CY, EL, EE, HR, IT, LT, LV, MT, PL, SI
'Practical' problems exist in relation to access to education by minors	CY, EL, EE, LT, LV, PL
<b>Whether MS have measures in place to improve access to education for IP beneficiaries:</b>	
Specifically aimed at minor IP beneficiaries	None
Specifically aimed at adult IP beneficiaries	FR <sup>300</sup>
For minor IP beneficiaries, as part of wider target groups (e.g. for migrants/vulnerable groups)	AT, BE, BG, CY, CZ, EL, HR, LU, LV, MT, RO, SE, SK
For adult IP beneficiaries, as part of wider target groups (e.g. for migrants/vulnerable groups)	AT, BE, BG, CY, CZ, EL, HR, LU, LV, MT, RO, SE, SK

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

#### 3.24.1 Background on recognition of qualifications

Article 28(1) provides that Member States should 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.

Article 28 constitutes a new Article in the Recast QD.

The following evaluation questions were assessed:

<i>Are the recognition procedures and mechanisms in place in the Member States accessible to beneficiaries of international protection?</i>
<i>Is additional support available specifically for beneficiaries of international protection (or as part of wider programmes for migrants or other disadvantaged groups)?</i>
<i>In practice, what are the obstacles to the formal recognition of qualifications for beneficiaries of international protection?</i>
<i>Are there schemes in the Member States in relation to the assessment, validation and accreditation of skills and competencies when documentary evidence of qualifications cannot be provided?</i>
<i>Are these schemes accessible to beneficiaries of international protection?</i>
<i>What are the costs associated with these schemes? Is financial support offered by the Member States?</i>

#### 3.24.2 Findings for Article 28

##### *Summary of findings*

<sup>299</sup> Data regarding all EU Member States bound by Directive 2011/95/EU or 2004/83/EC are reflected regarding Article 27, with the exception of ES, IE, and UK, where no data could be collected for reasons explained in Section 2 of this report.

<sup>300</sup> This programme is implemented only by one University.

The main findings in relation to Article 28 can be summarised as follows:

- In all Member States<sup>301</sup> recognition procedures and mechanisms were accessible to beneficiaries of international protection. National institutions or centres responsible for recognition generally applied the same conditions and requirements to nationals and foreigners, thus ensuring equal treatment in line with Article 28(1). In some Member States, procedures for recognition of qualifications were reportedly free of charge for applicants and beneficiaries of international protection, and additional financial support (for those procedures, such as translations, that are not for free) was provided by public authorities only in a limited number of Member States.
- Eleven Member States implemented schemes in relation to the assessment, validation and accreditation of skills and competencies when documentary evidence of qualifications could not be provided or when prior learning was not documented or certified, in line with Article 28(2). Three Member States reported not having such schemes in place. In one case, the scheme existed, however, it was not applied in practice (a certificate of the academic title was required for recognition of qualifications).
- 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>302</sup> none of the consulted Member State provided specific support to access such schemes.
- In the vast majority of Member States, support was generally provided in the context of wider national programmes targeting third-country nationals. This general support was, in some instances, considered to be insufficient. In fact, some NGOs called for the provision of specific support for international protection beneficiaries, for example, in accessing the procedures in a language they understand, support in filling the forms, etc.
- The main practical obstacles in accessing schemes for the recognition of qualifications were reportedly language barriers, the excessive length and complexity of the procedures, the numerous bureaucratic requirements and the fees charged to access the schemes.
- The main obstacles to accessing mechanisms and schemes to assess, validate and accredit prior learning mainly related to the language requirement, understanding the full procedures, etc.

### **Statistical information**

With the exception of **Slovenia** (where only two persons of the 44 granted with international protection status in 2014 required recognition/validation of education) and **Croatia** (where such cases were not reported), Member States did not collect or make available data in relation to Article 28.

### **Procedures for recognition of qualifications (Article 28(1))**

In all Member States, procedures and mechanisms existed for the **recognition of qualifications** and were available to beneficiaries of international protection. Evidence showed that national institutions or centres responsible for recognition generally applied the same conditions and requirements to nationals and foreigners, thus ensuring equal treatment in line with Article 28(1).

<sup>301</sup> Information regarding all EU Member States bound by Directive 2011/95/EU or 2004/83/EC are reflected regarding Article 28, with the exception of ES, IE, and UK where no information could be collected for reasons explained in Section 2 of this report. UK (and IE) are not bound by Article 28 as it did not exist (or only in parts as Article 27(3)) in DIR 2004/83 however, these countries have practices in place in relation to Article 28. Information on UK’s practices reported in this section are based on data collected through desk research.

<sup>302</sup> In Germany, specific support is only available to refugees.

The **National Academic Recognition Information Centres in the European Union (ENIC-NARIC)** played a crucial role in the recognition of qualifications in all Member States. The centres were established in 55 countries constituting a common tool to harmonise procedures of recognition throughout the EU and facilitate procedures of recognition between neighbouring and third countries.<sup>303</sup> The ENIC-NARIC networks and stakeholder organisations in the EU also collaborate to promote best practice by suggesting guidelines and models for institutions tasked with the recognition of qualifications held by refugees, displaced persons and persons in ‘refugee-like’ situations.<sup>304</sup>

In most Member States support for the recognition of qualifications was generally provided to all third-country nationals (AT, BE, CY, CZ, EE, FI, FR, HR, HU, LT, LV, MT, PT, SE, SI), including refugees and subsidiary protection beneficiaries (but such support was not specifically targeted to the latter).

While often national authorities considered there was no necessity to have specific support for beneficiaries of international protection, NGOs on the other hand argued that such support *was* actually necessary, given that beneficiaries of international protection encountered additional obstacles compared to national citizens (as further indicated below). For example, additional support to beneficiaries of international protection (such as assistance in accessing the procedures in a language they understand, support filling in forms, general counselling and assistance with the different procedures, etc.) was generally provided by NGOs or integration counsellors (FR, LV, MT, and SI).

One exception was **Germany** where support was particularly targeted at refugees.

### **Main obstacles to access procedures**

The main obstacles to getting access to recognition of qualifications reported by stakeholders included:

- **Language barriers:** in some cases (BE, EE, MT, IT, PT) forms could only be completed in the country’s national language and the personnel rarely spoke any other language than the national one. In **Belgium**, NGOs reported that language may constitute an obstacle in the Flanders region where Flemish was required to access the procedure in most cases;
- **Burdensome and lengthy administrative procedure:** in three Member States (EL, IT, PL), the procedure for the recognition of qualifications took a very long time mainly due to the numerous requirements and documents requested from the applicants. For example, while an official translation of certified documents was requested in most cases by the Greek responsible authority for recognition of qualifications, only one service competent for official translations (the Translation service of the Ministry of Foreign Affairs) existed, which did not offer an official translation for a number of languages (e.g. Dari, Farsi, Urdu). Moreover, even when

### **Examples of the NARIC work at national level**

The Belgian NARIC provided practical support to all persons requesting recognition of qualifications (mainly through provision of information on website, flowcharts, etc.).

Similarly, the National Commission for Further and Higher Education – the competent authority for recognition of qualification in **Malta** – provided the same type of assistance to all applicants and had no specific support for migrants.

The multilingual online information portal ‘Recognition in Germany’ provided answers to questions relating to the recognition of a foreign professional or vocational qualification. Persons interested in seeking recognition could use the site to carry out their own research and gain an initial overview of the topic. Alongside German, the portal was also available in English, Spanish, Italian, Romanian, Polish, Turkish, Greek and Arabic.

The portal was also available as a ‘Recognition in Germany’ phone app in German, English, Arabic, Dari, Farsi, Tigrinya and Pashtu.

Finally, the ‘Recognition Finder’ tool enabled potential applicants to check whether recognition would be necessary or helpful in their own specific case. Users could obtain information on how to apply for recognition of their qualification.

<sup>303</sup> <http://www.enic-naric.net/>

<sup>304</sup> See also: <http://www.enic-naric.net/recognise-qualifications-held-by-refugees.aspx?srcval=refugees>

documentation was available, applicants were requested to present ‘certified’ documents (i.e. certified through stamps and/or apostilles). NGOs in **Belgium, Greece** and the **Czech Republic** noted that the procedure for recognition of qualifications was complicated and often wound up with ‘partial’ recognition of qualifications, especially for highly-skilled professions (i.e. doctors). Similarly, the Italian system for the recognition of qualifications was extremely complex (not only for non-EU citizens, but also for Italian or EU citizens who had obtained their qualifications outside the EU). In addition, the procedure was decentralised, thus a number of different authorities were involved at regional and/or central level, making the procedure highly burdensome.

- Fees charged for accessing the procedure:** In five Member States (BE, EL, HR, MT, and SI), procedures for recognition of qualifications were free of charge for applicants and beneficiaries of international protection. More specifically, in **Croatia**, recognition of qualification was free of charge for all nationals and foreigners legally residing in **Croatia** with no financial means. In **France**, the procedures were for free for refugees only (while subsidiary protection beneficiaries and any other legally staying third-country nationals were required to pay a fee). In **Poland**, financial support was offered by public authorities for the first 12 months after granting international protection, while in six Member States (AT, CY, IT, LT, LU, LV), recognition of qualification was a paying service implemented by national authorities. In **Poland**, financial support was offered by public authorities for the first 12 months after granting international protection, while in **Croatia**, recognition of qualification was free of charge for all nationals and foreigners legally residents in **Croatia** with no financial means.

Table 3.33 below provides a partial overview of the fees charged for accessing the procedure for the recognition of qualifications in Member States for which such information was available.

**Table 3.33 Overview of fees for recognition of qualifications in EU Member States**

Member State	Fees (average)	Waiver or financial support by the State available for beneficiaries of international protection (Yes/No)
AT	EUR 150	-
BE	EUR 80–130	Yes (for the entire cost)
CZ	CZK 2000 (EUR 75)	-
DE	EUR 200–600 <sup>305</sup>	Yes <sup>306</sup>
EE	Free of charge	Yes <sup>307</sup>
EL	NA	No
FI	EUR 100–150	-
FR	Free of charge	No
LU	NA	No
LV	EUR 68.85	No (some support provided by NGOs – no systematic approach)
HR	Free of charge	Yes (translations paid by State)
MT	Free of charge	No
SI	Free of charge	-
SE	Free of charge	-

<sup>305</sup> Information available at: <https://bit.ly/2W1T7Az>

<sup>306</sup> The German Federal Employment Agency provides consultation and financial support and the nationwide Network “Integration through Qualification (IQ)” provides personal and free of charge consulting for recognition-seekers in different languages.

<sup>307</sup> Article 75 AGIPA

Source: Stakeholder consultation and desk research

- Professions not included in the **official list of professions** in the Member State: In practice, applicants faced additional obstacles when the profession for which recognition was requested was not present in the official list of professions in the Member State. For example, in **Romania** the procedure may slow down in cases where the qualifications were not present in the national official list of professions or were outdated according to the national work regulations;
- **Lack of agreement** for recognition of qualifications **with certain third countries**: In some Member States (CZ, RO, UK) the procedure faced an additional obstacle if there was no agreement to recognise diplomas or qualifications with the country of origin. Furthermore, both **Romania** and the **Czech Republic** reported as an obstacle the impossibility to contact or to receive documents from the authorities in the country of origin also in presence of an agreement with the third country.

### **Procedures for recognition of prior learning when documentary evidence cannot be provided (Article 28(2))**

When beneficiaries of international protection could not provide any documentary evidence or when they did not have formal qualifications, several Member States (AT, BE, CZ, DE, FI, FR, IT, LU, MT, PL, PT, RO and SE) put **mechanisms and schemes to assess, validate and accredit prior learning** in place, in line with Article 28(2). **Lithuania, Croatia** and **Estonia** reported not to have such scheme in place.

These mechanisms and schemes varied from country to country. **Self-certification** (PL), **sworn statements** before a legally competent authority (MT<sup>308</sup>) or **declaration of the applicant** (CZ) were accepted in case of lack of documentation. These procedures were generally followed up with one or more **interviews** by experts and exams in order to receive a certificate (PL<sup>309</sup>), interviews with staff of the relevant faculty of higher education institutions (MT<sup>310</sup>) or with validation tests (CZ<sup>311</sup>). Similarly, in **Greece**, the responsible national institution, the Hellenic Academic Recognition and Information Centre might – depending on the circumstances (university, documents, etc.) – recognise the qualification as equivalent to the national one (but not as equivalent and corresponding to the Greek title), in order to allow the applicant to continue their studies. Since this recognition did not constitute a full recognition of the title, the applicant did not bear all rights deriving from a full recognition (e.g. the right to practice the profession).<sup>312</sup>

<sup>308</sup> The Maltese national institution for recognition of qualifications has published a manual to assist in the recognition of qualifications in absence of documentation, available at: <https://bit.ly/2FB20w1>

<sup>309</sup> While such a certificate would not constitute a Polish professional title, it met the requirements of higher education for the purpose of accessing employment. This is a new Regulation of the Minister of Science and Higher Education dated 19 August 2015, which does not have yet examples of practical application.

<sup>310</sup> During these interviews, the applicant is asked about the contents of the study programmes, information about the textbooks used and examinations. The applicant also provides information about the study method of the educational institution and the projects completed during the bachelor's studies. The admissions officer and the professors gather all the information in a background paper and make a decision on the basis of this. For more information, <http://ncfhe.gov.mt/en/services/Documents/MQRIC/European%20Recognition%20Manual%20of%20HEI%20Institutions.pdf>

<sup>311</sup> Act 561/2004, S. 108a(4): If it concerns a person to whom asylum or subsidiary protection was granted in the Czech Republic or who is on the basis of international commitments of the Czech Republic to be considered as a refugee or as an outlaw or a person in a similar situation as refugees, it is possible to substitute the submission of a document referred to in S. 108(1) to (3) and an authentication pursuant to S. 108(4) by a solemn declaration of this person on the facts otherwise proved by such a document or authentication. In the case of doubts on the level of education reached the Regional authority shall order an examination.

<sup>312</sup> Based on PD 141/2013, Art. 29 Access to procedures for recognition of qualifications

When self-certification or applicants' statements were not accepted, a qualifications' analysis involved various methods of assessment, for example, work samples and expert interviews (DE<sup>313</sup>) or assessment tests (PT). In **Sweden**, persons could go through different courses within the adult education system to prove the qualifications they claimed to have. Each person had the opportunity to get their knowledge and skills validated, thus shortening the education period, once it was ascertained that he or she had mastered the relevant part of the curriculum.

In **Italy**, the national legislation formally established both a scheme to assess, validate and accredit prior learning and a scheme for recognition of qualifications in the absence of documentation. However, in practice, a copy of the official title held is required to simply start the procedure. Stakeholders consulted reported that, in many cases, applicants prefer to enrol on a university course or in training to obtain the required qualifications rather than starting the procedure for recognition of their qualifications.

**Austria** and **Malta**<sup>314</sup> were in the process of improving their national schemes for the recognition of skills (both formal and informal) in the absence of documentation. In **Austria**, a legislative proposal aimed at optimising the procedure of recognising foreign qualifications and skills assessment in the absence of documented qualifications by introducing shorter time frames for recognition and providing tests should no documents be available to prove qualifications.<sup>315</sup> In **Malta**, no legislative amendment has been submitted yet but national discussions have been launched on this topic. **Croatia** was reportedly in the process of setting up a national scheme for the recognition of skills (both formal and informal) in the absence of documentation. However, no legislative proposal has been submitted yet.

### **Obstacles to accessing mechanisms and schemes to assess, validate and accredit prior learning**

As for the recognition procedures above, evidence collected shows that there were some obstacles to accessing such mechanisms and schemes to assess, validate and accredit prior learning, which mainly related to language requirements, understanding the full procedures, etc. Most of the obstacles described in relation to the application of Articles 28(1) above also apply to the application of Article 28(2), with the lack of documentation being one of the main causes for slowing down the procedures for qualification recognition.

The evaluation report on Directive 2005/36 on the recognition of professional qualifications<sup>316</sup> shows that the processing of requests for recognition of qualifications was reportedly complex for both EU citizens and third-country nationals, mainly because competent authorities faced difficulties in verifying that the conditions for recognition were met (first recognition in a Member State and three years of experience, as stated in Article 3(3)). Directive 2013/55/EU has recently introduced a number of changes in the recognition of qualifications, including the extension of the scope of the Directive to professionals who are not fully qualified. This change partially amended the provision under Article 3(3) which required recognition of qualifications by another Member State and three years of professional experience in an EU Member State. Under the 2015 Directive, professionals who hold a diploma but have yet to complete a remunerated traineeship before getting full access to the profession will be able to benefit from the procedural safeguards of the Directive (notably in terms of deadlines for processing an application).<sup>317</sup> These changes should positively affect access to

<sup>313</sup> According to section 14 of the Federal Recognition Act, it is possible to carry out a qualifications analysis to compare professional skills, knowledge and competences with those relevant in the German vocational education and training system. Nevertheless, problems may occur in context of academic recognition in the field of state-regulated professions without documents.

<sup>314</sup> <https://bit.ly/2Rx8ouq>

<sup>315</sup> April 2016: [https://www.parlament.gv.at/PAKT/VHG/XXV/ME/ME\\_00176/imfname\\_495272.pdf](https://www.parlament.gv.at/PAKT/VHG/XXV/ME/ME_00176/imfname_495272.pdf).

<sup>316</sup> Evaluation of the professional qualifications Directive (Directive 2005/36/EC), available at [http://ec.europa.eu/internal\\_market/qualifications/docs/news/20110706-evaluation-directive-200536ec\\_en.pdf](http://ec.europa.eu/internal_market/qualifications/docs/news/20110706-evaluation-directive-200536ec_en.pdf)

<sup>317</sup> COM MEMO/11/923, available at [http://europa.eu/rapid/press-release\\_MEMO-11-923\\_fr.htm?locale=en](http://europa.eu/rapid/press-release_MEMO-11-923_fr.htm?locale=en)

schemes for the recognition of qualifications for all applicants, including beneficiaries of international protection.<sup>318</sup>

As mentioned above, Article 28 constituted a new Article in the Recast QD. Member States therefore had to change their practices and/or introduce provisions in their national legislation to comply with these new requirements. Based on the information available, three different situations compared to 2013 could be identified:

- Member States that have not introduced changes because these provisions were already in the national legislation prior to changes introduced by the Recast QD (such as BE, CY, FI, FR, HU, LV, NL, PL, PT, RO, SE<sup>319</sup> and SK);
- Member States that have changed their national legislation following the Recast QD and the related obligation to transpose Article 28 (AT, BG, EL, IT, LT, MT); and
- Member States that have not changed the legislation but no additional information is available (such as CZ, EE, HR, SI and SK).

**Austria, Malta** and **Finland** reported that legislative changes have recently been proposed or are in the process of being adopted to improve the scheme for both the recognition of qualifications and prior learning in the absence of documentation.

### 3.24.3 Examples of good application

In some Member States, specific forms of support to facilitate access to the recognition procedures are made available to refugees and subsidiary protection beneficiaries, for example through the ENIC-NARIC networks or NGOs providing counselling and assistance with the different procedures. However, the initiatives implemented by NGOs are often one-off measures, not included in a systematic or national approach. **Germany** provides tailored information on how refugees can access relevant schemes.<sup>320</sup>

### 3.24.4 Possible application issues

From data collected, there are no practices related to Article 28(1) that can be considered as being non-compliant, not properly implemented and/or not 'within the spirit' of the Directive.

While in principle all Member States have correctly applied Article 28(1), the notion of 'equal treatment' to nationals may not be sufficient in a context in which beneficiaries of international protection start from a disadvantaged position when having to apply for recognition (e.g. little or no language skills, no funds to pay for fees, etc.).

Only a limited number of Member States however, appear to have fully implemented Article 28(2), which requires them to "endeavour to facilitate full access ... to appropriate schemes for the assessment, validation and accreditation of their prior learning". While the wording (e.g. "shall endeavour to facilitate") leaves room for discretion, the Article does call for appropriate schemes to be put in place, which at present does not seem to be the case, as in most Member States such schemes do not exist and, even where they exist, they are not always easy to access for beneficiaries of international protection.

<sup>318</sup> Third country nationals benefit from equal treatment with regard to recognition of diplomas, certificates and other professional qualifications, in accordance with the relevant national procedures, under specific Union legal acts such as those on long-term residence, refugees, 'blue card holders' and scientific researchers.

<sup>319</sup> The Swedish Government Regulation on Higher Learning regulation of 1993 is relevant to this transposition in relation to Article 27(2) and Article 28 of the Directive. This regulation has been amended since the entering into force of this directive. No amendments relevant in this regard has been made since the transposition of the Directive (completeness assessment report of Directive 2011/95/EU).

<sup>320</sup> <https://www.anerkennung-in-deutschland.de/html/de/1843.php>

### 3.24.5 Recommendations

Based on the above findings, the following recommendations can be put forward:

- In addition to the existing support provided for the development of national qualifications frameworks through EU funding (notably under the ESF<sup>321</sup>), the European Commission should consider supporting targeted measures for beneficiaries of international protection in accessing the relevant procedures and schemes, as well as to the development of appropriate schemes (Article 28(1)).

It was noted that the notion of ‘equal treatment’ to nationals may not be sufficient in a context in which beneficiaries of international protection start from a disadvantaged position when having to apply for recognition (e.g. little or no language skills, no funds to pay for fees, etc.). Therefore, additional support may be needed by beneficiaries of international protection to access the relevant procedures and schemes and funding could be provided, for example, in accessing the procedures in a language they understand, support filling in the forms, general counselling and assistance with the different procedures, etc. These initiatives are already implemented by a number of NGOs in a few Member States and could be included in the Integration Plan implemented in some Member States (AT, FI, FR, SE). EU funding could be used to include these measures in a more systematic or national approach (instead of being one-off measures implemented by some NGOs).

- Without prejudice of Member State’s competencies in the development of national qualifications frameworks, the European Commission could consider supporting targeted measures 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 (Article 28(2)). These measures could include the possibility to go through different courses within the adult education system to prove the qualifications applicants claim to have or to self-certify certain skills or qualifications where there was a lack of documentation and to have them assessed through examinations and/or interviews. This has the advantage of allowing applicants to update their skills and/or undergo tailored training to meet the skills needs of particular employers or sectors in the labour market of the specific Member State.
- The European Commission may want to further promote the work undertaken by the ENIC-NARIC networks<sup>322</sup> with regard to the recognition of qualifications held by refugees, displaced persons and persons in ‘refugee-like’ situations (Article 28 (1)) and (2). The ENIC-NARIC networks constitute a common tool to harmonise procedures of recognition throughout the EU and facilitate procedures of recognition between neighbouring and third countries. The ENIC-NARIC networks and stakeholder organisations in the EU also collaborate to promote best practice by suggesting guidelines and models for institutions tasked with the recognition of qualifications held by refugees, displaced persons and persons in refugee-like situations. It was noted that in those Member States where the ENIC-NARIC was the main authority responsible for the recognition of qualifications more structured and efficient schemes were available for beneficiaries of international protection. The further enhancement of these networks would also allow for further harmonisation.

<sup>321</sup> Under Article 3.2 (a) of the ESF Regulation, the ESF can support the implementation of reforms in education and training systems, including supporting the development of national qualification frameworks. For more information: [http://ec.europa.eu/employment\\_social/esf/docs/tp\\_education\\_en.pdf](http://ec.europa.eu/employment_social/esf/docs/tp_education_en.pdf)

<sup>322</sup> The National Academic Recognition Information Centres in the European Union (ENIC-NARIC) were established in 55 countries. These constitute a common tool to harmonise procedures of recognition throughout the EU and facilitate procedures of recognition between neighbouring and third-countries. The ENIC-NARIC networks and stakeholder organisations in the EU also collaborate to promote best practice by suggesting guidelines and models for institutions tasked with the recognition of qualifications held by refugees, displaced persons and persons in ‘refugee-like’ situations. For more information, <http://www.enic-naric.net/>.



### 3.24.6 Benchmarks for measuring the implementation of Article 28

**Table 3.34 Benchmarks for measuring the implementation of Article 28**

The extent to which MS:	
Have a specific procedure in place for recognition of qualifications of beneficiaries of international protection	DE (only for refugees)
Have granted access to the procedures for recognition of qualifications free of charge (or waivers and subsidies are provided automatically to beneficiaries of international protection)	AT, BE, CZ, EE, EL, FI, FR, HR, LU, LV, MT, SE, SI,
Have a scheme in place for the assessment, validation and accreditation of prior learning (including recognition of formal and informal skills)	In the law: AT, BE, CZ, FI, FR, IT, LU, MT, PL, PT, RO and SE In practice: BE, FI, FR, LU, SE No scheme in place: EE, HR and LT
Have a scheme in place that is specifically adapted to beneficiaries of international protection, in particular to those that have no documentation to present	None

## 3.25 Social welfare – Article 29<sup>323</sup>

### 3.25.1 Background on social assistance

Article 29 of the Recast QD lays an obligation on the Member States to ensure that beneficiaries of international protection receive “the necessary social assistance as provided to nationals of that Member State”.<sup>324</sup> Member States can derogate from this general rule and limit the social assistance granted to beneficiaries of subsidiary protection status to core benefits.<sup>325</sup> Recital 45 stipulates that the possibility of limiting such assistance to core benefits 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 these benefits are granted to nationals under national law.”<sup>326</sup> These provisions broadly reflect the content of Article 28 and Recitals 33 and 34 of Directive 2004/83.

In its ruling on the *Kamberaj v IPES (Italy)* case,<sup>327</sup> the CJEU reflected on the concepts of ‘core benefits’ and ‘social security’, ‘social assistance’ and ‘social protection’ within the context of the Long-Term Residence Permit (LTR Directive) third-country national.<sup>328</sup> The CJEU acknowledged that there was no autonomous and uniform definition under EU law of the concepts of social security, social assistance and social protection; however, this did not mean that Member States could undermine the effectiveness of EU law (in this specific case, the LTR Directive) when applying the principle of equal treatment.<sup>329</sup> On the notion of core benefits, the Court stated that national authorities at various levels (national, regional or local) could rely on the derogation provided for in Article 11(4) of the LTR Directive only if the bodies responsible for the implementation of the said Directive in the Member

<sup>323</sup> The Recast QD uses the term ‘social welfare’ in the title of Article 29, while referring to ‘social assistance’ in the text of the Article. In what follows the term social assistance is used to denote in general the social support provided to beneficiaries of international protection. When referring specifically to contributory benefits, the notion of social security is used.

<sup>324</sup> Article 29(1).

<sup>325</sup> Article 29 (2).

<sup>326</sup> Recital 45.

<sup>327</sup> CJEU, Case C-571/10 *Servet Kamberaj v Istituto per l’Edilizia sociale della Provincia autonoma di Bolzano, Giunta della Provincia autonoma di Bolzano, Provincia autonoma di Bolzano*, 24 April 2012.

<sup>328</sup> Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents.

<sup>329</sup> Case C-571/10, para. 78.

State concerned had clearly stated that they intended to rely on that derogation.<sup>330</sup> The Court also established that the concept of core benefits must be interpreted in conformity with the principles of the Charter of Fundamental Rights,<sup>331</sup> which recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources. The case had further implications in relation to the provision of housing benefits to third-country nationals, which are examined in detail in section 3.28 on access to accommodation below.

In addition, the CJEU has provided guidance for the interpretation of Article 29, in conjunction with Article 33 on freedom of movement within the Member State, of the Recast QD in the *Alo and Osso* case.<sup>332</sup> The judgment concerned a request for preliminary ruling from the German *Bundesverwaltungsgericht* (Federal Administrative Court) concerning the cases of Mr Ibrahim Alo and Ms Amira Osso, two Syrian nationals granted subsidiary protection in **Germany**. German law provides that, where beneficiaries of subsidiary protection receive social security benefits, their residence permit is issued subject to a condition requiring residence to be taken up in a particular place. Specifically in Article 29, the CJEU addressed the question of whether a place-of-residence condition imposed on beneficiaries of subsidiary protection was compatible with Articles 29 and 33 of the Recast QD, when such a condition was based on the objective of achieving an appropriate distribution of social assistance burdens among the relevant institutions within the territory of the Member State. The Court found that “Articles 29 and 33 of Directive 2011/95 must be interpreted as precluding the imposition of a residence condition, such as the conditions [imposed by German law], on a beneficiary of subsidiary protection status in receipt of certain specific social security benefits, for the purpose of achieving an appropriate distribution of the burden of paying those benefits among the various institutions competent in that regard, when the applicable national rules do not provide for the imposition of such a measure on refugees, third-country nationals legally resident in the Member State concerned on grounds that are not humanitarian or political or based on international law or nationals of that Member State in receipt of those benefits.”<sup>333</sup>

The following evaluation questions were assessed:

*What is the number of beneficiaries of international protection receiving social assistance?*

*What are the entitlements granted to beneficiaries of international protection and the conditions for accessing social assistance?*

*What authorities/stakeholders are involved in the granting of social assistance to beneficiaries of international protection?*

*What is the procedure for the Member States to assess what constitutes ‘necessary social assistance’?*

*Do beneficiaries of international protection receive specific necessary social assistance? Is there any evidence of any discrimination with regard to access to social assistance?*

*In practice, are there obstacles to the provision of social assistance to the beneficiaries of international protection?*

*Have there been cases where the Member States limited social assistance granted to beneficiaries of international protection to core benefits? Why?*

*What constitutes core benefits? Are they provided at the same level and under the ‘#}same eligibility conditions as nationals?*

<sup>330</sup> Ibid, para. 87.

<sup>331</sup> European Union, ‘Charter of Fundamental Rights of the European Union’, 26 October 2012, 2012/C 326/02.

<sup>332</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.

<sup>333</sup> Ibid, para. 65.

### 3.25.2 Findings for Article 29

#### *Summary of main findings*

The main findings in relation to Article 29 can be summarised as follows:

- 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. **Belgium, Lithuania, Latvia** and **Malta** granted different entitlements to the two categories. Differences were also made in **Austria** at the regional level.
- In most of the consulted Member States there was no evidence of discrimination as regards access to social assistance for beneficiaries of international protection. However, practical obstacles to accessing social assistance existed in a number of Member States. These were linked in particular to the need to provide proof of residence in order to receive the corresponding benefits.
- There was variation across the Member States as regards whether beneficiaries of international protection were provided specific forms of assistance, with some Member States offering particular support and others providing only general assistance as available to nationals.
- In the vast majority of the consulted Member States there had been no cases where the social assistance granted to beneficiaries of international protection was limited to core benefits. The concept of 'core benefits' was understood differently across the Member States.

#### *Statistical information*

Only two Member States provided statistical data on the number of beneficiaries of international protection receiving social assistance (HR, SE). In **Croatia** 17 beneficiaries of international protection received the guaranteed minimum benefit in 2014. **Sweden's** statistics from the economic assistance registry indicated that 32,324 recipients (including both asylum seekers and beneficiaries of international protection), aged 18 or older, had received economic assistance during 2014. In addition, it was indicated that in **Slovenia** most beneficiaries of international protection received social assistance as they were unemployed.<sup>334</sup>

#### *Social assistance: entitlements and access conditions*

In the vast majority of the consulted Member States it was explicitly indicated that beneficiaries of refugee and subsidiary protection status were entitled to the **same treatment as nationals with regard to social assistance** (BE, CY, CZ, DE, EL, FI, HR, HU, IE, IT, LV, MT, PL, RO, SE, SK, SI).<sup>335</sup> The entitlements available to persons granted international protection included access to the contributory benefits provided under the general social security regime – available for those employed or self-employed – as well as non-contributory benefits or needs-oriented support – granted to those with very low or no income.<sup>336</sup> Needs-oriented support was generally provided on the basis of a means test to determine whether an individual or family met the eligibility conditions for receiving social

<sup>334</sup> According to the Accommodation, Care and Integration Division of the Slovenian Ministry of Interior, in 2014 there were 222 beneficiaries of international protection in Slovenia.

<sup>335</sup> This section provided information regarding the implementation of Article 29 for all EU Member States bound by Directive 2011/95/EU or 2004/83/EC, with the exception of BG, ES, LU and NL, where no information could be collected for the reasons explained in Section 2 of this report. Further information on the access to social security rights by refugees and beneficiaries of SP can be consulted at EMN, 'Ad-Hoc Query on Possible changes in the social security concerning the foreigners with residence permit on the grounds of protection status - Requested by FI EMN NCP on 18<sup>th</sup> September 2015', available at <https://europa.eu/!VD76BG>, last accessed on 25 May 2016.

<sup>336</sup> 'Contributory benefits' are benefits financed, directly or indirectly, from social contributions. 'Non-contributory benefits' are financed from taxation and not from social contributions. See European Commission - Employment, Social Affairs & Inclusion, 'E-learning tool', available at: <https://europa.eu/lqC79Tq>, last accessed on 24 May 2016.

In **Austria**, beneficiaries of international protection continued to receive the ‘basic benefits’ available to asylum seekers (*Grundversorgung*) for a transitional period of four months after their status was granted. Such benefits included accommodation, food and medical care and were provided in two ways:

- By offering sheltered accommodation, in which case the programme comprised accommodation, health insurance, food and “pocket money” for an amount of EUR 40/month;
- By providing grants to those in private accommodation consisting of health insurance, a maintenance grant of ca. EUR 200/month and an accommodation grant of EUR 150/month (EUR 300 for families) if rent payments could be proved.

In addition, all beneficiaries of international protection received so called needs-oriented guaranteed minimum resources (*bedarfsorientierte Mindestsicherung*), which also applied to Austrian citizens with no or low income.

The provision of social assistance to beneficiaries of international protection is a competence of the federal states (*Länder*), which could offer higher pay-outs and supplementary benefits, for example if the actual accommodation costs were higher. Income, unemployment benefits, maintenance payments and similar income were taken into account, reducing the levels of in-cash assistance. There were differences among the levels of assistance provided to beneficiaries of subsidiary protection among the federal states.

At federal level, irrespective of the needs-oriented guaranteed minimum resources, beneficiaries of international protection had the right to receive a care allowance (*Pflegegeld*), under the same conditions as nationals, if they needed continuous care due to mental health issues or physical disabilities.

assistance (e.g. in BE, CY, CZ, FI, HR, IE, LV, MT, PL, RO, SE). In **Germany**, the entitlements granted were dependent on whether a person was able to work or not. In the former case, contributory benefits could be granted under Book II of the Social Code, including benefits which were specifically targeted to end unemployment (in particular the ‘unemployment benefit II’). In the latter case Book XII of the Social Code applied and comprised the ‘normal’ social assistance provided for all persons who had their ‘usual place of residence’ in **Germany**.<sup>337</sup>

In addition to these general types of support, five Member States provided some form of specific social assistance to beneficiaries of international protection (AT, FI, LV, PL, SI). In **Finland** such specific assistance consisted of a ‘starting package’ granted by the municipality of residence. The package could include food and kitchen supplies, bed linen and other necessary household items, and its value ranged from EUR 295 to EUR 1,000 for an individual package, and according to the number of children in the case of families. This form of income support was discretionary and varied among the municipalities, although some general limits and recommendations had been established. **Latvia** granted special benefits to beneficiaries of international protection with an income lower than the minimum salary. In **Poland** specific social assistance was provided in two stages. For the first two months after the status was granted, international protection beneficiaries continued to be entitled to the support provided during the asylum procedure. After two months, assistance was granted for one year through Individual Integration Programmes (IPI) implemented by the district family assistance centres. Support consisted of cash benefits intended to cover living costs and language courses, the latter being a precondition to benefit from the IPI. The amount provided was up to PLN 1,200 (around EUR 280) per

person and the beneficiaries could supplement this income with gainful employment given that the reception of IPI benefits was not subject to income criteria. The amount granted to each person decreased as the number of recipients in the family increased. **Slovenia** offered beneficiaries of international protection a one-off cash allowance and financial assistance to pay housing costs for up to three years.

### **Discrimination and practical obstacles in access to social assistance**

The vast majority of the Member States reported that there was no evidence of discrimination concerning access to social assistance. Two Member States (IT, RO) observed that local authorities had sometimes not correctly applied the legal framework on social assistance, which may have led

<sup>337</sup> See Federal Employment Agency, ‘Unemployment Benefit II (Arbeitslosengeld II) / Social Benefit (Sozialgeld)’, available at: <https://bit.ly/25FyBYA>, last accessed on 24 May 2015. Additional benefits available upon separate application comprised: child benefit; child allowance (where applicable, together with housing benefit); advance payment of maintenance for children up to their 12th birthday; unemployment benefit; (reduced) retirement pension from the age of 63; foreign retirement pension, if this was comparable to the German retirement pension; other pensions (disability pension, widow's / widower's pension, orphan's pension); sickness benefit; training-related benefits; housing benefit for tenants / ‘Lastenzuschuss’ for home owners; maternity benefit; and parental allowance after the birth of a child.

to unfavourable outcomes for beneficiaries of international protection. Concerning mechanisms available to redress possible cases of discrimination, it was noted that in **Romania** beneficiaries of international protection could submit their complaints in relation to social assistance to the National Council for Combating Discrimination, as well as to the General Inspectorate for Immigration. Similarly, in **Finland** decisions on benefits reached by the social office were issued in writing and included a right to appeal.

Practical obstacles for beneficiaries of international protection to access social assistance were reported in 10 Member States (BE, DE, EL, FI, HR, HU, IT, LV, PL, PT). In a majority of cases, these related to the fulfilment of administrative residence conditions (EL, HR, IT, LV). In **Croatia**, under the International and Temporary Protection Act refugees and subsidiary protection beneficiaries were obliged to register a place of residence within a 15-day period following the recognition of the status,<sup>338</sup> and documentary proof of legal stay (place of residence) constituted a prerequisite in order to qualify for benefits. Official residence requirements also applied in **Italy**, which hindered access to social support for holders of refugee or subsidiary protection status who were homeless or lacked suitable accommodation. In order to address this issue, national legislation was introduced to allow beneficiaries of international protection to stipulate reception centres as their place of residence; however, those beneficiaries who had to leave the reception centres (after six months following recognition of the status) or who had never been accommodated in reception facilities during the asylum procedure were still affected. Similarly, in **Latvia** beneficiaries of international protection faced problems in fulfilling official registration requirements with the municipalities for the purposes of receiving social assistance, due to the reluctance of landlords to allow them to declare their rental property as their home address. In the case of **Greece**, UNHCR reported that in order to be eligible for the non-contributory retirement pension, a person was required to have permanently resided in the country for 10 years, which did not take into consideration the fact that many refugees and beneficiaries of subsidiary protection would have resided in the country for a shorter period.

In **Portugal**, social assistance was allocated at the local level on the basis of a unilateral decision by the administration determining where a beneficiary of international protection should live. Beneficiaries of international protection were thus required to apply for social assistance in a particular area of the country and lost their right to social benefits if they chose to live somewhere else. According to the Portuguese Refugee Council, this constituted a *de facto* dispersal policy mechanism.

Additional obstacles mentioned were: the highly formalised and bureaucratic character of the procedures to access social assistance (EL, PL); the complexity linked to the involvement of various administrations and territorial jurisdictions (BE, DE); difficulties concerning some beneficiaries' lack of a verifiable identity, which prevented them from opening a bank account where benefits could be paid (FI); language difficulties (DE, EL); the limited availability of funding for social assistance, a problem which also affected nationals (IT); and other capacity issues linked to the stretching of social services (HU). In **Germany**, for example, the main practical obstacle reported was the general unavailability of translation services at the jobcentres, the bodies centralising the provision of social assistance. This could hinder access to additional benefits if the relevant information was not well-understood. In addition, as the jobcentres were located at the local

In **Belgium** the Constitutional Court had ruled on potential discrimination regarding benefits granted on the basis of residence rights (Case 3/2012 of 11 January 2012).

The Court established that the fact that disability benefits were not granted to people registered on the aliens register (devised for the registration of foreigners who were not permanent residents) as opposed to the population register (targeted to nationals and permanent residents including refugees) did not constitute discrimination. Thus, beneficiaries of international protection who had not registered in the population register were not entitled to disability benefits, as their ties to **Belgium** were considered transitory. This reasoning was based on the fact that foreigners could claim other forms of social aid that took disabilities into account.

<sup>338</sup> Article 64(4)(2) ] International and Temporary Protection Act (Official Gazette No 70/15)

level the approach of how to assist beneficiaries of international protection varied.

### **Core benefits**

There was no consistent understanding in the Member States of what constituted ‘**core benefits**’. To mention a few examples, in **Belgium** this notion was equated with social security, which was closely linked to employment. A majority of beneficiaries of international protection entering the social assistance system in **Croatia** appeared as beneficiaries of guaranteed minimum benefit (a cash benefit for claimants whose resources were below a specified minimum income threshold) and also received one-off cash allowances. In **Italy** core benefits consisted of a social allowance paid on the basis of residence, a maternity allowance for non-working mothers, an allowance for numerous families (over three children), a social card and a child allowance. All of them were provided under the same eligibility conditions as nationals.

Most Member States made **no distinction between refugees and beneficiaries of subsidiary protection when granting social assistance** (BG, CY, CZ, EE, EL, HR, HU, IE, IT, PL, RO, SE, SK, SI). In **Austria**, the choice to differentiate or not between beneficiaries was left to the federal states (*Länder*) of residence of the beneficiaries of international protection. According to UNHCR, in practice this had resulted in beneficiaries of subsidiary protection getting lower levels of social assistance in several *Länder*.<sup>339</sup> In transposing EU standards, **Belgium** had started providing guaranteed family benefits and minimum pension rights to beneficiaries of subsidiary protection in addition to refugees from 2013 onwards. In contrast, disability benefits were still being offered to the latter but not the former. In **Latvia** social assistance other than contributory benefits, such as disability benefits and child allowances, were available to refugees in the same conditions as nationals but not to subsidiary protection beneficiaries. In **Lithuania**, two different residence permits were issued depending on the grounds for protection: in case of subsidiary protection, a temporary residence permit would be issued; in case of a refugee status, a permanent residence permit would be issued. Third-country nationals holding a permanent residence permit were entitled to the equal social security status as citizens, with very few exceptions. However, third-country nationals holding a temporary residence permit, such as beneficiaries of subsidiary protection, could access only contributory benefits.<sup>340</sup> **Malta** granted social support to refugees under the same conditions as nationals, but not to beneficiaries of subsidiary protection.

In **Italy**, the 2011 Budget Law (No 388/2000) introduced a provision excluding all foreign nationals without a long-term residence permit from accessing social security services (Article 80(19)).<sup>341</sup> However, this provision was repeatedly ruled unlawful by the Constitutional Court in proceedings concerning its compatibility with a number of social security benefits. Given that the judgments of the Constitutional Court were applicable to all similar cases, this meant that the above-mentioned Article 80(19) has become inapplicable, even though it is included in the legislation.

In **Germany**, there had been ongoing discussions since the beginning of the refugee crisis on the possibility to limit the benefits available to beneficiaries of subsidiary protection, but such debates mainly focused on rights other than social assistance. This was because social assistance in **Germany** was only meant to secure a very basic minimum guaranteed for everybody under the constitutional requirements established by Basic Law (*Grundgesetz*). In this regard, it was understood that limiting social assistance to a level below that minimum would violate German constitutional law.

Two Member States (FI, RO) planned to introduce changes to their existing policies in this area. **Romania** intended to grant a special benefit of RON 540/month (around EUR 122) conditional on beneficiaries of international protection following an integration programme. In **Finland** the government planned to introduce a new ‘integration benefit’, which would be lower than the

<sup>339</sup> UNHCR, ‘Subsidiär’schutzberechtigte in Österreich’, February 2015, pp. 26-7, available at: <https://bit.ly/2QXsMzC>, last accessed on 23 May 2016.

<sup>340</sup> See EMN, ‘Ad-Hoc Query on Possible changes in the social security concerning the foreigners with residence permit on the grounds of protection status - Requested by FI EMN NCP on 18th September 2015’.

<sup>341</sup> Ibid.

assistance granted to nationals in need of social assistance. This measure was to be adopted within the context of the creation of a parallel social security system for beneficiaries of international protection, foreseen under the Government's Action Plan on asylum policy, adopted in December 2015.<sup>342</sup> The reasons behind the projected change in policy were the need to cut down on public costs at a time of increasing refugee flows, the desire to speed up the integration process of beneficiaries, and the wish to deter new arrivals by signalling that social benefits had ceased to be generous. While not having any specific plans in this area, in **Slovakia** the Ministry of Labour, Social Affairs and Family of the Slovak Republic did not exclude the possibility to apply measures restricting the benefits of subsidiary protection beneficiaries.<sup>343</sup> In addition, in **Austria** the *Land* Upper Austria (*Oberösterreich*) was allegedly debating the possibility to lower core benefits for subsidiary protection beneficiaries to around EUR 320.

### 3.25.3 Changes in Member States' practices since the Recast QD in 2013

All the Member States have transposed Article 29 in their national laws. Three Member States reported (planned) changes in practice, either at the national or at the regional/federal level, concerning the granting of social assistance to international protection beneficiaries (AT, FI, RO). Further details on such changes have been provided above.

### 3.25.4 Examples of good application

Overall, Member States correctly apply Article 29 of the Recast QD providing that all beneficiaries of international protection should receive the necessary social assistance as provided to nationals.

Those Member States which have specific transitional support measures targeting beneficiaries of international protection in place may be said to constitute examples of good application of the Recast QD as such measures aim to address the specific needs and the particular integration challenges of the target group (AT, FI, LV, PL, SI).

### 3.25.5 Possible application issues

The following practices can be considered as not being 'within the spirit' of the Directive:

- Considering the CJEU jurisprudence in the *Kamberaj v IPES (Italy)* case, the limitation of social assistance to 'core benefits' for beneficiaries of subsidiary protection by national/regional/local authorities without an explicit basis in the national law implementing the Recast QD. The restrictions to the social assistance granted to beneficiaries of subsidiary protection by a number of Austrian *Länder* may constitute an example of a practice presenting this kind of application issues, as it is unclear whether such restrictions have a basis in the national law transposing the Directive.
- In light of the CJEU jurisprudence in the *Alo and Osso* case, the imposition of registration requirements on refugees/beneficiaries of subsidiary protection which are not proportionate or duly justified. The *de facto* dispersal policy applicable in **Portugal** may constitute an example of a practice presenting this kind of application issue.
- The possible introduction in **Finland** of an 'integration benefit' applicable to beneficiaries of international protection which would be lower than the assistance granted to nationals in need of social assistance.

### 3.25.6 Recommendations

- Based on the above findings, the following recommendations can be put forward: Against the background of the CJEU jurisprudence in the *Kamberaj v IPES (Italy)* case, the European Commission should investigate whether the limitation of social assistance to 'core benefits' for

<sup>342</sup> Ibid. Further information on this is available in the case study on access to social welfare and accommodation.

<sup>343</sup> Ibid.

beneficiaries of subsidiary protection by national/regional/local authorities without an explicit basis in the national law implementing the Recast QD constitutes a violation of the Directive.

- In light of the CJEU jurisprudence on the *Alo and Osso* joined cases,<sup>344</sup> the European Commission should investigate whether any administrative residence conditions (e.g. the obligation to reside in a specific area of the country) imposed by the Member States on beneficiaries of refugee and/or subsidiary protection status to access social assistance are duly justified on the grounds that these are not in an objectively comparable situation with legally residing third-country nationals or nationals of the Member States as regards the objectives pursued by national law.
- According to the CJEU verdict in *Alo and Osso*, 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. While Article 29 allows for restrictions to the rights of beneficiaries of subsidiary protection, the European Commission should encourage Member States to provide both categories of beneficiaries of international protection with equivalent rights as is, in fact, already standard policy in most Member States.
- The European Commission should, through the relevant EU funding instruments, support Member States' policies aimed at providing subsidiary protection-specific social assistance to beneficiaries of international protection for a transitional period in order to better take into consideration their specific needs.

### 3.25.7 Benchmarks for measuring the implementation of Article 29

<b>Whether or not Member States had granted the same social assistance to international protection beneficiaries as to nationals:</b>	
In law and in practice	BE, CY, CZ, DE, EL, FI, HR, HU, IE, IT, LV, MT, PL, RO, SE, SK, SI
In law only	No information
In practice only	No information
<b>Whether or not Member States had differentiated between refugees and beneficiaries of SP in relation to social assistance:</b>	
In law and in practice	BE, LT, LV, MT
In law only	None
In practice only	AT
<b>Whether or not Member States had introduced specific social assistance measures for IP beneficiaries:</b>	
In law and in practice	AT, FI, LV, PL, SI
In law only	No information
In practice only	No information
<b>Whether or not there was evidence of discriminatory practices in the Member States:</b>	
In law and in practice	No information
In law only	No information
In practice only	IT, RO
<b>Whether or not there was evidence of practical obstacles in the Member States for beneficiaries of international protection to access social assistance:</b>	
Linked to registration and residence requirements	EL, HR, IT, LV, PT
Other	BE, DE, EL, HU, IT, PL

<sup>344</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: <https://bit.ly/2CsKR3F> [accessed 5 May 2016]



## 3.26 Healthcare – Article 30

### 3.26.1 Background on healthcare

Article 30 of the Recast QD requires Member States to provide access to healthcare under the same eligibility conditions as nationals.<sup>345</sup> Healthcare is to include both physical and mental healthcare, including the provision of treatment of mental disorders, when needed, to 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.<sup>346</sup> Article 30 has been changed to delete the provision in the former Article 29 allowing Member States to limit subsidiary protection beneficiaries' access to healthcare to the level of core benefits.

The following evaluation questions were assessed:

*What is the number of beneficiaries of international protection accessing healthcare; number of people benefiting from specific forms of healthcare (on the total number of beneficiaries of international protection)?*

*Are the conditions for beneficiaries of international protection to access healthcare the same as those set for nationals?*

*Is there evidence of any discrimination with regard to the provision of healthcare to beneficiaries of international protection?*

*Are there any administrative obstacles to the provision of healthcare to beneficiaries of international protection?*

*Are there any practical obstacles to the provision of healthcare to beneficiaries of international protection?*

*Do Member States provide any specific forms of healthcare to beneficiaries with special needs, including treatment of mental disorders, trauma related to torture, rape, exploitation and other forms of abuse and degrading treatment, etc.? If so, what are the main specific forms of healthcare provided?*

*How are the special needs assessed in the context of access to healthcare?*

*What authorities/stakeholders are involved in the provision of specific forms of healthcare?*

### 3.26.2 Findings for Article 30

#### **Summary of main findings**

The main findings in relation to Article 30 can be summarised as follows:

- All Member States granted access to healthcare to beneficiaries of international protection in the same conditions as nationals. No evidence of discrimination was reported.
- 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.
- Some Member States had particular measures in place to address the specific healthcare needs of beneficiaries of international protection. Such needs were assessed at different points in time

<sup>345</sup> Article 30(1).

<sup>346</sup> Article 30(2) and Recital 46.

(e.g. during the asylum procedure, when the person first came into contact with the authorities) and in a non-systematic manner.

### Access to healthcare

In all Member States consulted, beneficiaries of international protection were granted access to healthcare under the same conditions as nationals (AT, BE, BG, CY, CZ, DE, EE, FI, FR, HR, HU, IE, IT, LT, MT, PL, RO, SE, SI, SK).<sup>347</sup> For example, in **Austria** for the first four months after being granted international protection status, beneficiaries who did not have a job received the basic benefits available to asylum seekers, which included healthcare. If still unemployed after that period, they were required to apply for the means-oriented guaranteed minimum resources (see discussion on Article 29 above), which also covered healthcare. As soon as a beneficiary was employed s/he was automatically covered by social insurance. As required by the Recast QD, overall the Member States did not differentiate between refugees and beneficiaries of subsidiary protection in relation to access to healthcare. **Hungary** provided beneficiaries of international protection with health insurance free of charge for one year, which was an additional benefit compared to nationals.

In **Malta**, the Jesuit Refugee Council (JRS) reported that fewer rights were afforded to beneficiaries of subsidiary protection than to refugees concerning healthcare services. According to UNHCR, whereas refugees had access to all the state medical services free of charge, subsidiary protection beneficiaries were entitled only to ‘core’ state medical services free of charge.<sup>348</sup> These included: urgent care and essential primary and hospital care due to illness or accident; urgent care is defined as that care which could not be deferred without putting the life or the health of the person concerned into immediate danger; essential primary and hospital care is defined as those diagnostic and therapeutic interventions on conditions that were not dangerous in the immediate/short term, but that, if left untreated would cause major harm for the health of the person or put his life at risk due to complications, chronification or significant worsening of condition; and pregnancy and maternity care, from confirmation of pregnancy to up to 4 weeks post-partum.<sup>349</sup>

In the vast majority of the Member States the stakeholders consulted reported no evidence of discrimination in the provision of healthcare to beneficiaries of international protection. In the case of **Greece**, UNHCR noted that reports on discriminatory behaviour had been occasionally filed by NGOs and refugee community organisations. Similarly, the Portuguese Refugee Council noted that in **Portugal** healthcare personnel were often reluctant to invest time in using the translation line made available by the state to ensure that there was adequate communication with beneficiaries of international protection, on the grounds that the latter should speak Portuguese, a practice which could amount to discrimination, and that there had been instances of doctors making overt discriminatory or racist remarks.

Nine Member States reported **no administrative obstacles** relevant to accessing healthcare (AT, BE, BG, CZ, HU, IT, MT, SI, SK). In **Austria** late applications for the ‘needs-oriented guaranteed minimum resources’ sometimes constituted an issue, although beneficiaries of international protection nonetheless had the right to emergency healthcare. In **Finland** all third-country nationals (including beneficiaries of international protection) were required to first be registered as residents in a municipality in order to have full access to all forms of healthcare. However, municipalities had highlighted the fact that the Local Register Offices interpreted the Municipality of Residence Act in different ways, imposing various requirements on the persons registering (e.g. a passport to confirm identity, the consent of the accommodation provider) which could delay the registration process and hence their access to full healthcare. Similarly, the General Inspectorate for Immigration noted that

<sup>347</sup> Information regarding all EU Member States bound by Directive 2011/95/EU or 2004/83/EC are reflected regarding Article 30, with the exception of ES, LT, LU and LV, where no information could be collected for reasons explained in Section 2 of this report.

<sup>348</sup> See UNHCR Malta, ‘Persons of concern in Malta: Refugee and subsidiary protection in Malta’, available at <https://bit.ly/1MEhVIH> and <https://bit.ly/1T1s40a> [last accessed on 21 March 2016].

<sup>349</sup> EMN, Ad-Hoc Query on Article 29 of the Qualification Directive (2011/95/EU), Compilation produced on 11th October 2013, available at: <https://europa.eu/!RT94db> [last accessed on 21 March 2016].

in **Romania** the various Health Insurance Houses interpreted the legal provisions on access to healthcare differently, sometimes placing beneficiaries of international protection in less favourable conditions than nationals. In **Sweden** beneficiaries could face obstacles to receiving the healthcare needed on the basis of their personal medical history if they lacked the personal identification number used by the healthcare providers to record all services/care given in their information management systems.

In addition, Member States referred to the existence of **practical barriers** hindering access to healthcare by beneficiaries of international protection. These included language obstacles (AT, DE, EE, HR, EL, FI, IE, MT, PL, PT, SI); lack of knowledge about the functioning of the healthcare system (BE, FR); lack of information and awareness by healthcare professionals on the specific situation and particular needs of beneficiaries (HR, IE); the need to pay social security contributions for a certain number of years before gaining access to healthcare (CY); and financial obstacles such as the inability to pay the requisite fees for the services provided (IT).

Several Member States had implemented measures to redress the obstacles observed. For example, to overcome language and cultural barriers, **Austria** offered interpretation services to medical establishments via Skype; **Malta** had trained cultural mediators who were on call to support health workers treating refugees/asylum applicants; **Portugal** had created a translation line and **Slovenia** had developed guidelines for nurses and doctors on how to best communicate with beneficiaries of international protection, as well as being in the process of developing a simple dictionary to which the latter could refer in their medical visits. In **Ireland** the Irish Health Service Executive had made efforts to correct administrative difficulties by simplifying the medical card application forms and required community welfare officers to help residents complete the forms. In **Hungary** governmental guidelines were issued during the migration crisis clarifying how the costs of healthcare for migrants were to be covered so that healthcare providers were not deterred from providing services for fear of not being able to recover their respective costs.

### **Specific healthcare for beneficiaries with special needs**

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, DE, EL, FI, FR, IT, MT, PL, PT, SE, SI, SK). Special needs were addressed in various ways. In **Estonia** personal rehabilitation plans were developed for beneficiaries of international protection. In **Italy** some reception centres were planned specifically for vulnerable people with special medical needs, although these were not numerous. **Romania** exempted some beneficiaries of international protection (e.g. minors, pregnant women) from paying health insurance contributions on account of their vulnerability. A number of Member States highlighted the **role of NGOs** in providing health services to beneficiaries with special needs (AT, CY, FI, HR, IE, PT). For example, in **Ireland**, the Health Service Executive financed *Spirasi*, an NGO which helps torture survivors, and funded training programmes on rape and vulnerability, and in **Sweden** the Swedish Red Cross ran six treatment centres across the country for refugees who had suffered trauma as a result of war, persecution or torture. Stakeholders involved in the provision of specific forms of healthcare also included the regional and local authorities (AT, FI), social assistance offices (CY, IE, PL), general practitioners and other healthcare personnel (CZ, EL, IT, MT, RO) and the health services at the reception centres (IE, IT). In **Ireland** the relevant stakeholders received intercultural training to various degrees. It was noted, however, that such training was not consistently provided across all relevant government departments.

In six Member States, stakeholders expressed their concerns as regards the insufficiency of the healthcare provided to beneficiaries with special needs (BE, EL, HR, IT, PL, PT). In the case of **Croatia**, it was noted for example that, in the absence of a national, systematic rehabilitation programme, psychologists and translators often worked on a voluntary basis for NGOs but lacked sufficient capacity to serve all those in need of special assistance. Similar issues were reported in **Portugal**, where the *de facto* dispersal policy made it difficult for beneficiaries residing outside Lisbon to access

the services they required. In addition to **Portugal**, three other Member States reported the existence of significant regional and local variations on the specific healthcare provided (AT, FI, IT).

Special needs were assessed during the asylum procedure (AT, BG, FI, HU, IE) or more generally through a health assessment when the beneficiary first contacted the health services (DE, MT). In some Member States cultural mediators (MT) or specific guidelines (SI) assisted health professionals in communicating with beneficiaries. **Austria** acknowledged that there was no mechanism in place to ensure that the results of the needs assessment conducted during the asylum procedure were systematically taken into account once a status had been granted. In **Germany**, if a person subject to the obligatory health insurance needed special attention, care or a respective assessment s/he had to consult a general practitioner first in order to receive the permission to consult a specialist, who would then also assess special needs. **Ireland** indicated that it was not always possible to detect special needs when beneficiaries first came into contact with the authorities during the asylum procedure and that further work was necessary in identifying them later in the process. **Italy** noted that there was no needs assessment in place in the context of healthcare.

### 3.26.3 Changes in Member States' practices since the Recast QD in 2013

In all the Member States, except possibly **Malta**, beneficiaries of subsidiary protection have access to healthcare in the same conditions as refugees, thus being in compliance with the main change introduced by the Recast QD in relation to access to healthcare.

### 3.26.4 Examples of good application

There is evidence that practical obstacles hinder beneficiaries of international protection from getting access to the health services they are entitled to by law. Examples of good application include those measures with which Member States have sought to address these obstacles. Many of these practices aim to address language and cultural barriers by providing guidance to health professionals or developing specific resources to improve communication (e.g. AT, MT, PT, SI).

The Recast QD devotes particular attention to the provision of adequate healthcare, including treatment of mental disorders, if required, to beneficiaries of international protection with special needs. Measures introduced by the Member States to address those needs through the provision of specific healthcare, most notably the establishment of specialist clinics in **Sweden**, can be regarded as good practice in the application of the Recast QD.

### 3.26.5 Possible application issues

The following practices can be considered as being non-compliant, not properly implemented and/or not within the spirit of the Directive:

In **Sweden** there were specialist clinics for beneficiaries of international protection and other persons with special needs due to their condition as migrants, such as primary care facilities for refugees (*Flyktinghälsan*) and centres that focused on culturally specific needs (*Transkulturellt centrum*), etc. There was also a special primary healthcare centre for refugee children in Gothenburg (*Flyktingbarnteamet*).

- The provision of a more limited set of rights to beneficiaries of subsidiary protection than to refugees in relation to access to healthcare in **Malta**.
- The lack of a special needs' assessment which may hinder access by beneficiaries to the specific healthcare they need.
- The unavailability of specific forms of healthcare to address the special needs of certain beneficiaries (e.g. victims of torture or other serious forms of violence).

### 3.26.6 Recommendations

- Based on the above findings, the following recommendations can be put forward: Article 22 of the Recast Reception Conditions Directive requires Member States to assess whether an applicant has special reception needs and to indicate the nature of such needs within a reasonable period of time after an application for international protection is made. EASO could develop best practice guidelines on practical

measures to detect the special healthcare needs of beneficiaries of international protection and to ensure that, when identified during the asylum procedure, such special needs are systematically followed up once the status is granted.

- A number of practical obstacles were identified in the Member States for beneficiaries of international protection to effectively access healthcare, in terms of, for example, language barriers, the lack of awareness of the functioning of the healthcare system on the part of beneficiaries, the lack of information and awareness by healthcare professionals on the specific situation and particular needs of beneficiaries, and financial obstacles such as the inability to pay the requisite fees for the services provided. The European Commission should encourage Member States to devise measures to address these obstacles through the provision of targeted funding. In addition, drawing on the good application practices identified in a number of Member States, EASO should develop best practice guidelines in the area of access to healthcare.
- The European Commission should continue to support Member States' efforts to provide the specific forms of healthcare which are necessary to address the special needs of beneficiaries of international protection. In addition, EASO should develop guidance and training for health professionals treating beneficiaries of international protection.

### 3.26.7 Benchmarks for measuring the implementation of Article 30

<b>Whether or not Member States granted the same access to healthcare to beneficiaries of international protection as to nationals:</b>	
In law and in practice	AT, BE, BG, CY, CZ, DE, EE, FI, FR, HR, HU, IE, IT, LT, MT, PL, RO, SE, SI, SK
In law only	None
In practice only	None
<b>Whether or not special healthcare measures existed in Member States for international protection beneficiaries with special needs (e.g. dedicated clinics, trained cultural mediators, translation resources):</b>	
Yes*	BE, CZ, DE, EL, FI, FR, IT, MT, PL, PT, SE, SI, SK
No	No information
<b>Whether or not Member States assessed if international protection beneficiaries had special needs in relation to healthcare:</b>	
Yes, during the asylum procedure	AT, BG, FI, HU, IE
Yes, when the person established contact with the health service	DE, MT
No	IT

\*Healthcare for persons with special needs was not specifically aimed at beneficiaries of international protection but available within the general health services

## 3.27 Unaccompanied minors – Article 31

### 3.27.1 Background on Article 31

Article 31 of the Recast QD on UAMs reflects the content of Article 30 of Directive 2004/83/EC with the exception of Article 31(5), which further specifies Member States' obligations as regards family tracing.

Article 31(1) requires Member States to ensure the representation of UAMs as soon as possible after protection is granted. Such representation can be assumed by a legal guardian, an organisation responsible for the care and well-being of minors, or by any other appropriate representation.<sup>350</sup>

<sup>350</sup> Article 31(1).

Article 2(k) defines ‘minor’ as a third-country national or stateless person below the age of 18. Article 2(l) specifies that an ‘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”. This concept includes a minor who has been left unaccompanied after entering the territory of the Member State

Under Article 31(2), Member States are bound to ensure that the minor’s needs are duly met by the appointed guardian or representative. To this effect, the appropriate authorities should make regular assessments. Article 31(6) further stipulates that those working with UAMs should have had and continue to receive appropriate training concerning their needs.

Article 33(3) sets out where and by whom UAMs can be housed, providing that they should be placed (a) with adult relatives; (b) with a foster family; (c) in centres specialised in accommodation for minors; or (d) in other accommodation suitable for minors. In this context, the views of the child should be taken into account in accordance with his or her age and degree of maturity. As established by Article 31(4), siblings should, as far as possible, be kept together, taking into account the best interests of the minor concerned and, in particular, his or her age and degree of maturity. It is also provided that changes of residence of UAMs should be kept to a minimum.

Article 31(5) of the Recast QD regulates the family tracing procedure of family members, placing Member States under the obligation to launch a procedure to trace family members of UAMs granted international protection or to continue ongoing family tracing procedures. In contrast, Article 30(5) of Directive 2004/83/EC only required Member States to “endeavour to trace family members”, which constituted a weaker obligation. As with the previous Article 30(5), Article 31(5) provides that in cases where there may be a threat to the life or integrity of the minor or the minor’s close relatives, particularly if they have remained in the country of origin, care must be taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis.

The following evaluation questions were assessed:

- What is the number of UAMs and number of available guardians?*
- Who are the main stakeholders responsible for appointing guardians for UAMs?*
- What is the procedure to appoint a guardian? What are the conditions for appointment? Is there continuity of guardianship?*
- Who is typically appointed as guardian in practice (legal guardians, organisations, other appropriated representations, etc.)?*
- What is the mandate of the guardian? Are there limitations as to the areas in which the UAM can be represented (e.g. with regard to healthcare, education, etc.)?*
- What is the number assessments undertaken? What is the number of guardians undertaking training?*
- Are oversight mechanisms of guardianships and guardians in place in the Member States? Please describe the procedure and its frequency.*
- Are UAMs involved in the assessment?*
- What is the number of decisions for placing siblings together (on overall number of placement decisions taken)?*
- What is the procedure for placing UAMs? Who are the actors involved?*
- What are the criteria for placing UAMs? Do Member States always keep siblings together? Do exceptions occur? If so, what are the main reasons and how often does this happen in practice?*
- What is the number of family tracings undertaken? What is the share of UAMs whose family members were successfully traced?*

*Who are the responsible authorities for family tracing?*

*What is the procedure for family tracing? Is family tracing a continuation of tracing that already started during the asylum procedure? How long does it last on average?*

*How is confidentiality ensured if family members are still living in the country of origin?*

*What are the consequences of a successful tracing procedure? Unsuccessful procedure?*

### 3.27.2 Findings for Article 31

#### *Summary of main findings*

The main findings in relation to Article 31 can be summarised as follows:

- The stakeholders responsible for appointing guardians for UAMs varied across the consulted Member States. In some Member States the main actor responsible was the judiciary, whereas in others specific government departments or the municipalities took responsibility for nominating guardians.
- Procedures to appoint guardians also differed widely. In some Member States minors could be heard during the procedure and express their opinion about their prospective guardian.
- 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. 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.
- It was generally considered that keeping siblings together was in the best interests of the child, and therefore the authorities strove to maintain family unity whenever possible.
- 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.
- Family tracing procedures were sometimes implemented in cooperation with international organisations and NGOs.
- No data was provided on the number of tracing procedures which had been completed successfully and in general this outcome seemed to be rare.

#### *Statistical information*

A number of Member States provided data on the number of UAMs applying for asylum in their territories and/or granted protection.<sup>351</sup> For instance, it was reported that in **Slovenia** there were three UAMs in 2014 and guardians were assigned for all of them. Cases of UAMs in **Poland** were extremely rare, the last being registered in 2002. In **Latvia** the number of UAMs applying for asylum was also low: one in 2012, four in 2013, one in 2014 and seven in 2015 (as of 31 October). There were no UAMs in **Latvia** with international protection status. In **Romania**, the number of UAMs who

<sup>351</sup> Eurostat also published data on asylum applicants considered to be unaccompanied minors. See <https://europa.eu/lvM44qN> [last accessed on 21 March 2016]

obtained a form of protection was 16 in 2012; 13 in 2013; five in 2014; and also five in the first half year of 2015.

**Romania** also provided data on the number of guardians that had followed training: three in 2015.

### **Guardianship arrangements**

The **stakeholders responsible for appointing guardians for UAMs** varied across the Member States. In some Member States the main actor responsible was the judiciary (CZ, DE, EL, FR, IE, IT, LT, LV, NL, PL, SK) whereas in others specific government agencies (AT, BE, BG, CY, MT, RO, SI) or the municipalities (EE, SE) took responsibility for nominating guardians.<sup>352</sup>

In **Austria** the Federal Office for Immigration and Asylum (BFA) was only competent for families and minors during the application procedure; once this had concluded, the Child and Youth Service (*Kinder- und Jugendhilfe*) took over the UAM's legal representation. In **Belgium** the competence to designate a guardian was the guardianship service. In the **Czech Republic**, the court appointed the guardian considering the best interests of the child on the basis of a proposal by the Ministry of Interior. In **Germany** the appointment of guardians was regulated by the German Civil Code and, if the minor was unaccompanied, the competent Family Court was responsible for appointing a guardian. In **Italy** the Court for Guardianship was responsible for appointing the guardian upon notification of the social workers, reception centre staff or the Prosecutor. In **Latvia** the courts were also the competent authority for the appointment of guardians. The Orphan Courts, under the responsibility of the municipalities decided where the UAM should be placed and who should be their representative. Such a decision was taken in conjunction with the Office of Citizenship and Migration Affairs (OCMA) and in accordance with the child's best interests. In **Malta** the main stakeholder responsible for appointing guardians was the Ministry of Family and Social Solidarity (MFSS) and not the Ministry of Home Affairs and Security (MHAS), under whose authority the Agency for the Welfare of Asylum Seekers (AWAS) operated. In **Romania** the appointment of legal representatives was made at the request of the General Inspectorate for Immigration by the General Directorate of Social Assistance and Child Protection. In **Sweden** the authority responsible for appointing guardians was the municipality, where the Chief Guardian appointed a legal guardian.

In **Ireland** guardians are known as *Guardian Ad Litem* and their role is to act as the independent voice of the child in court proceedings. As such, they are appointed by the court system and at the discretion of the judge. Children who are not subject to court proceedings will not have a guardian.

All UAMs in Ireland are allocated a social worker, irrespective of whether or not a guardian *ad litem* has also been nominated. The social worker is responsible for guiding the child through the asylum/immigration procedure and ensuring that the child has legal representation in the proceedings. Social workers oversee all the other needs of the child including assessment, care plans, placement, protection and welfare. Thus, in Ireland the social work service fills in the role of the guardian and serves in *loco parentis*.

TUSLA, the Child and Family Agency, is responsible for allocating professionally qualified social workers to serve as guardians for UAMs. Foster carers and children's residential workers also assist in meeting the UAMs needs while the social worker holds ultimate responsibility for the child.

<sup>352</sup> Information regarding all EU Member States bound by Directive 2011/95/EU or 2004/83/EC are reflected regarding Article 31, with the exception of ES, where no information could be collected for reasons explained in Section 2 of this report.



The **procedure to appoint a guardian** also varied widely, with the following being some selected examples. In **Belgium**, once it was confirmed that an asylum seeker was definitively a UAM, a contact was established between the guardianship service and an available guardian, who, if possible, resided close to the place where the UAM was accommodated, and whose profile matched the situation of the UAM. The designation and the contact details of the guardian were then notified to the authorities and partners. In **Germany**, the youth authority and any relatives had a right to be heard in the appointment procedure, as long as this did not unduly prolong the proceedings to appoint a guardian. The Family Court had broad discretion to appoint persons as guardians, with the best interests of the child acting as a fundamental guiding principle. In **Italy** the court appointed a guardian after having been informed by the competent authority of the presence of a UAM (police or reception centre staff). Those UAM over 12 years old, or considered as mature enough, were heard before a judge. The procedure was considered appropriate and fast by the lawyers consulted.<sup>353</sup> In **Latvia** the Orphan Court received information from the State Border Guard or the OCMA regarding UAMs entering the territory. The procedure to appoint UAMs' guardians in **Malta** started with the age assessment. AWAS then presented a request before the Department for Social Welfare standards, which would subsequently issue a care order. A board was then convened to follow the implementation of the order, including by regularly meeting the minor. It was indicated that the role of the minor was not central in the procedure and that for this reason legislative changes were under consideration (see below). In **Romania** when a person declared to be a minor and requested asylum, the General Directorate of Social Assistance and Child Protection was informed in order to appoint a legal representative.

In five Member States, certain aspects of the procedure to appoint guardians were considered to be

In **Sweden** following an application from the Swedish Migration Agency (SMA) and the Social Welfare Committee, the municipality would appoint a legal guardian. However, the appointment could also take place without the SMA having applied, at the initiative of the Chief Guardian.<sup>1</sup> All UAMs were entitled to a guardian *ad litem*, who was to be appointed as soon as possible. If possible the UAM would be given the opportunity to express an opinion on the person. When appointing a guardian *ad litem* particular importance was to be attached to the vulnerable situation of the child. If the minor suggested a person who was qualified, that person was to be appointed if they agreed to act as guardians. The guardianship of a guardian *ad litem* continued until the asylum process was finalised. If the UAM was granted a residence permit, the guardian *ad litem* was to be replaced by a specially appointed custodian.

problematic by the stakeholders consulted (BG, EL, IT, PL, SE). In the case of **Bulgaria**, the Association for Pedagogical and Social Assistance for Children (APSAC/FICE-Bulgaria) argued that, while the institution of guardianship was mentioned in the latest amendments introduced to the Law on Asylum in December 2015, the public authorities did not have a clear view of how the relevant procedures should be implemented in practice. For instance, in 2015 APSAC/FICE-Bulgaria had worked with some 10 UAMs in 2015, none of whom had been appointed a guardian. UNHCR described the procedure to appoint guardians in **Greece** as ineffective due to the lack of specialised and sufficient staff and in particular of a support mechanism for Public Prosecutors acting as temporary guardians. It was also believed that the national legal framework was not adapted to cover the specific needs of UAMs in **Greece**. In **Italy** the Casa della Solidarietà (an NGO managing reception centres) characterised the procedure to appoint guardians for UAMs as very complex and noted that

the waiting times were up to a year/a year and a half. The Community of Sant'Egidio, a church association, shared the view that the procedure was complex, indicating that in some cases the juvenile courts were competent for appointing guardians, while in others the competence belonged to the ordinary courts, which had at times caused procedural duplications and delays. Legal practitioners from Advokatbyrån Gisslén & Löfroth AB explained that the procedure to appoint a guardian after a UAM had arrived in **Sweden** could take weeks or even months, which hindered the work of lawyers representing him or her in the asylum procedure.

<sup>353</sup> The Studio Legale Avv. Igor Brunello

**Who could be appointed as a guardian** differed in the Member States. Typically, designated guardians were social workers (EE, FR, HU, MT, PL), family members (IT, PL), representatives from the reception centre or care facility (EL, IT, LT, PL, RO), NGOs (IT, LU, NL, PL, PT), the Public Prosecutor (EL) or private citizens (BE, FI, SE, SI).

In **Belgium** the guardianship service could resort to a pool of 230 guardians, including 20 guardians employed by associations with whom the service had concluded agreements, and also private guardians, either professional or voluntary. Guardians were certified by the guardianship service at the end of a procedure which aimed to demonstrate their knowledge and skills in areas such as psychosocial skills to support minors, aliens' law, multiculturalism, knowledge about youth protection, social support, etc. A guardian could simultaneously exercise a maximum of 40 guardianships, although the tendency was to have around 35 wards in order to ensure some availability. However, a majority (145) of guardians exercised a maximum of five guardianships at the same time. The insufficient number of guardians was highlighted as a shortcoming by the *Vluchtelingenwerk* Brussels.

In **Croatia**, there was also a list of special guardians, usually social workers. According to the Centre for Peace Studies, however, there were cases in which a person who was not registered in this list was appointed, such as another refugee/other persons from the group the minor was travelling with.

In **Germany**, the Family Court was free to appoint any person as a guardian, as long as this was in the best interests of the child.

In **Greece**, the Public Prosecutor (first temporary guardian) appointed a person from the hosting centre for UAMs to which the minor was referred as a provisional guardian (usually a member of the NGO that managed the programme). A long-term guardian was appointed in the relatively few cases where the child remained in the care centre for a sufficient time and was recognised as a beneficiary of international protection. UNHCR indicated that in most cases the temporary guardians appointed were unable to carry out their role in a meaningful way due to the lack of support services; thus, in practice, there was no one undertaking the role of a guardian in the everyday life of the child. A pilot project for guardianship had been launched by an NGO but the latter only covered some elements of representation. The authorities also acknowledged that the legal provisions on guardianship were not being adequately implemented in practice, due to a lack of appropriate resources and structures, including trained staff, support mechanisms, evaluation and control mechanisms, funding, guardianship mechanisms and administrative support.

The following categories could be appointed as guardians in **Hungary**: lawyers, public administrators, people with university degrees in social services, teachers, psychologists, child or youth workers, family care specialist, nurses, theologians, or teachers of religious studies (with university level degrees). Prospective guardians were required to undertake 150 hours of training when joining the service and to receive regular additional training later on.

UAMs' guardians in **Italy** typically belonged to the following categories: family members, NGOs' legal representatives or people taken from legal guardian lists. In **Latvia** possible representatives included a legal representative, a child care facility or the reception centre *Mucenieki*. Depending on the circumstances, the child's best interests would be represented either by a guardian or (in most cases) the Orphan Court itself. If the minor was placed in the reception centre *Mucenieki*, then the representative would be the Orphan Court, if in a child care facility, then it would be the head of the facility who represented their best interests. The Jesuit Refugee Council considered the number of guardians insufficient.

At the time the consultations took place, employees of AWAS were appointed as guardians in **Malta**. Guardians were social workers, that is, university graduates having a specific professional qualification. It was indicated that the introduction of legislative changes to the institution of guardianship for UAMs was under consideration, with a proposal to modify the Care Orders having been presented to Parliament. The proposal under debate foresaw the establishment of a guardianship agency, whose main role would be to identify, train and continue to train specialised guardians. The idea was to avoid conflicts of interest in defending the child's best interests. The

continuity of guardianship was generally ensured – unless the guardian and the minor had a conflictual relationship.

In the **Netherlands**, guardianship was undertaken by the NIDOS Foundation, an organisation financed by the Ministry of Security and Justice. Upon the arrival of the UAM to the territory of the **Netherlands**, NIDOS became responsible and submitted an application for guardianship.

In **Poland** the guardians (curators) of UAMs were employees (lawyers) of NGOs, members of the immediate family, other than the parents (e.g. grandparents, uncles) or educators working at orphanages. It is important to mention that in the Polish system there was a guardian for each specific procedure (e.g. the asylum procedure, civil procedure). For example, a guardian of the minor in the asylum procedure could not apply for IPI, because a new curator should be established for proceedings related to the integration. According to the Association for Legal Intervention, this could delay the application for integration assistance. In addition, while it was acknowledged that the emotional bond was important, it was noted that family members were not always well-suited to represent UAMs in complex procedures. Orphanages, on the other hand, were often not adapted to the needs of those UAMs, who frequently ran away from them.<sup>354</sup> The Warsaw University Law Clinic also noted that there was a lack of qualified persons to act as guardian for minors during the asylum procedure.

In **Romania** employees of the General Directorate of Social Assistance and Child Protection were initially appointed as UAMs' legal representatives. Their mandate ended at the moment the applicant received a form of protection, after which the General Inspectorate for Immigration requested the appointment of a guardian who could be either a person working at the Placement Centres or another beneficiary of international protection. Such representation continued to operate for as long as the UAM was a minor and benefited from international protection in **Romania**.<sup>355</sup>

In **Sweden** any man or woman who was deemed fit for the role could be appointed as a guardian. Guardians were almost invariably people in retirement thus with sufficient time to devote to the task. Guardians were appointed on a voluntary basis and had to be approved by the municipality. UAMs were not placed in the family of the guardian. Due to the high number of UAMs, at the time of writing there was an insufficient number of guardians in **Sweden** and therefore each guardian was appointed to represent several minors.

In **Slovenia** the local centres for social work had an ad hoc list of guardians, who were preselected by the Ministry of Social Affairs on the basis of a public call for guardians. Those responding to the call were interviewed and, if selected, received further training. Guardians were paid for their work. A special state authority, the Bureau of employment, social and family affairs acted as guardian in **Slovakia**.

A significant number of Member States indicated that there were **no limitations as to the mandate of guardians** (BE, CY, CZ, DE, EE, HR, HU, IE, IT, LT, LV, NL, SE). In **Slovenia** guardians assisted UAMs in the asylum procedure, healthcare, education and money. In addition, the extension of the mandate of guardians to include the area of accommodation was being discussed. As indicated above, in **Poland** specific guardians were appointed to deal with different matters and stages of the procedure, which according to the Helsinki Foundation for Human Rights could delay the application for an IPI. UNHCR also referred to problems caused by lack of coordination among the child's various representatives. UNHCR welcomed the upcoming legal changes (expected to come into force in November 2015) to extend the powers of the main legal representative who had represented the child during the asylum procedure as regards later proceedings. Similarly to Poland, in the **Czech Republic, Romania** and **Sweden** different custodians represented the minor during the asylum procedure and once protection had been granted. In particular, in the case of **Romania** sometimes legal representatives argued that they were not responsible for assisting UAMs during certain legal proceedings (e.g. signing for the reception of their monthly benefits) or with school registration. In

<sup>354</sup> According to the Association for Legal Intervention.

<sup>355</sup> Law no. 122/2006, Article 40.

**Slovakia**, the guardian's mandate was limited only to represent the UAM in legal proceedings. The guardian had then to request on behalf of the UAM that the court appointed him as a trustee for the UAM, giving him representation with regard to healthcare, education and other areas.

### Assessment of guardianship

**Oversight mechanisms** for monitoring and controlling the performance of their duties by guardians were in place in 14 Member States (BE, CY, EE, FR, HR, IE, IT, LV, MT, NL, PT, SE, SI, SK), with various methods being used for this purpose. In **Ireland**, the activities of social workers working with minors took place on a monthly basis and included a one-on-one session with a social work team leader and often a review of the UAM's file. The Child and Family Agency reported that it was not aware of any regular statutory monitoring or inspection of the work of the guardians *ad litem*. In **Italy** the Court for Guardianships oversaw all activities of the guardian. This general oversight mechanism also applied for Italian and third-country national minors. In **Latvia** oversight corresponded to the

In **Belgium**, guardians conducted their missions under the control of the guardianship service and the Justice of the Peace. The guardianship service was competent to approve the guardians and withdraw their accreditation when serious failure in the performance of guardianship duties was observed. It also regularly intervened as a control authority or as mediator, either on its own initiative or upon request of the minor, the guardian or a third party.

An agent from the guardianship service was designated as a social expert, appointed for each guardian, primarily to support them but also to report on their performance. The social expert organised an annual progress interview with each guardian.

A coaching programme was organised by associations employing guardians. The programme included the possibility to call a helpdesk as well as to benefit from individual coaching on individual files/cases, and a traineeship for new guardians in training.

Each guardian received basic training before their first appointment. This consisted of a five-day course during which the main relevant laws were covered. In addition, guardians were required to follow, on a yearly basis, a multidisciplinary course of 15 hours organised by the guardianship service or by third parties.

An ongoing project aimed to gather minors' feedback on the support they received when under guardianship.

appointing authority, the Orphan Court, and guardians had to provide an annual report on the discharge of their duties. If the Orphan Court was the one representing the UAM, then the procedure was overseen by the State Inspectorate for Protection of Children's Rights and the actual support was provided by the municipality. The obligation to submit a report also applied to the Court. In the **Netherlands** NIDOS was subject to unannounced inspections by the Ministries of Healthcare and Security and Justice every two years. The inspections looked into all the aspects of guardianship and were followed by the issuance of public recommendations.<sup>356</sup> NIDOS also had its own monitoring system in place.

As for **Malta**, every six months social workers of AWAS and guardians would meet and check if the needs of UAMs were being met. The Advisory Board within the MFSS also monitored the work of the guardians. In **Portugal** guardianship arrangements were reviewed by a Court on a biannual basis with an assessment of the protection of the minor and their general well-being taking place. In **Sweden** the Chief Guardian in each municipality oversaw and supervised guardians through the inspection of annual reports and similar documents from the guardian *ad litem*. The National County Administrative Board was responsible for the supervision/oversight of the Chief Guardian and annual inspections.

There were allegedly no oversight mechanisms in five Member States (CY, EL, LU, PL, RO). In **Cyprus**, the NGO Markou indicated that, while the Commissioner for Administration and Human Rights could *ex officio* oversee guardianship arrangements, this was not a structured and systematic procedure and that the Commissioner's assessment was not binding. Systematic control mechanism were also lacking in **Luxembourg**, according to the NGO ASTI (Association de Soutien aux Travailleurs Immigrés). In the case of **Greece**, UNHCR noted that the oversight mechanisms prescribed in the Civil Code were not adapted to the needs of UAMs who were asylum seekers or beneficiaries of international protection and therefore did not apply in practice. It was indicated that in **Poland** the court could revoke the guardianship of a UAM and establish a new guardian at any time. However, it was acknowledged that this revocation procedure did not involve the substantive evaluation of the guardian's performance. In addition, the Association for Legal Intervention indicated that the guardians' activities were not being controlled in practice. As for **Romania**, no formal oversight

<sup>356</sup> Available at: <https://bit.ly/2T0fmF6> [last accessed on 17 March 2016].

mechanisms were in operation, although the authorities resorted to some informal systems to assess the guardian's performance.

UAMs were involved in the assessment of the guardian's performance in eight Member States (FR, HU, IT, LT, MT, PT, SE, SK). For example, in **Italy** the UAM could be heard before the Court upon request by the minors themselves or by request of the Prosecutor. In **Malta** the minor could also approach the MFSS Advisory Board if their needs were not being fulfilled. UAMs were not involved in the assessment of at least two Member States (IE, SI). It was noted that in **Ireland**, even if minors were not involved in the assessment of the social workers assigned to them, they participated in their own care planning. Their views were heard and taken into account with due regard to their age and their needs.

### Placement of UAMs

Member States had various procedures in operation to place UAMs. In **Germany**, a new procedure for the placing of UAMs had been applied since 1 November 2015.<sup>357</sup> Previously, minors had been taken charge of by the local authority that was competent in the area where they were first noticed by the authorities. Under the new procedures, UAMs were dispersed to the various *Länder* under a quota, taking into consideration the best interests of the child. The local youth authority took charge of the UAM provisionally and a transfer was carried out if possible depending on an individual assessment of the UAM's situation. Section 42b (5) of Book VIII of the Social Code excluded the separation of siblings in this procedure unless such separation was in the best interests of the child. The local youth authority designated after the placement procedure then took charge of the minor and start the normal procedure to appoint a guardian with the Family Court. UAMs were placed in specialised structures.

In **Greece**, the National Centre for Social Solidarity (NCSS) was competent for housing UAMs. The NCSS gathered housing requests and prioritised them taking into account, *inter alia*, their timing, vulnerability criteria, and the need maintain family unity. UNHCR expressed concerns on the number of places available in the hosting centres (around 400 for the whole country), and noted that most of the places in the centres were intended for asylum seekers and not for beneficiaries of international protection, due to their linkage to available funds. **Italy** had special reception structures for UAMs under the System for the Protection of Asylum Seekers and Refugees. Conventions were also signed with NGOs dealing with minors to grant them special care and accommodation (such as family accommodation). As a rule, children were kept together with their families or relatives in specific accommodation within the reception centres.

In **Malta** it was indicated that AWAS ran specific reception centres for minors and UAMs. The specific needs of particularly vulnerable minors would also be addressed, for example by placing them in a special reception centre. In the **Netherlands**, as soon as a child was identified as UAM, NIDOS assumed the guardianship and arranged accommodation. The procedure was fast, taking only around two days until the moment the child was placed in a family or facility, which meant that there was no time to consult the children. However, children above the age of 15 could choose not to stay with families, but to reside in residential units. The Central Agency for the Reception of Asylum Seekers also had special facilities for UAMs with special needs (such as victims of trafficking). As for **Slovenia**, the NGO PIC (*Pravno-informacijski center nevladnih organizacij* – PIC) indicated that there

Upon arrival in **Sweden**, UAMs were temporarily placed at the municipality of arrival, whilst placement in another municipality was being arranged. There were four steps in assigning a municipality for UAMs. The first option was to assign a municipality where the child had certain ties (e.g. relatives). If no such ties existed, a municipality was assigned which had agreed to receive UAMs and had an available placement. If the child had no ties to a specific municipality and there was no available placement the Swedish Migration Agency could assign a municipality which had an agreement for reception but had not started receiving UAMs yet, or a municipality with an agreement to receive fewer UAMs. Municipalities received a lump sum from the state for each UAM received. There was no specific legislation concerning the placing of siblings together, although it was emphasised that the authorities always tried to ascertain what was in the best interests of the child and respect it.

<sup>357</sup> The new procedure was regulated by Section 42a to 42e of Book VIII of the Social Code.

was an integration house in Ljubljana for minor beneficiaries, which it considered as not suitable for children given that there was no permanent personnel assigned to take care of the UAMs residing there. PIC also reported that minors were sometimes placed in a student dormitory.

In a majority of Member States **siblings were kept together** (BE, CY, EE, EL, FR, HR, HU, IT, LT, LV, MT, NL, PL, SI, SK). Reported exceptions to this general rule were cases of family conflict (e.g. in BE), gender considerations, when female and male beneficiaries had to be hosted in different facilities (e.g. in BE, CY, EL, SI), age considerations (e.g. LV) situations when it was in the child's best interests that the siblings be placed separately (e.g. SE). For example, In **Latvia** it was considered that the child's best interests also included placing siblings together. The only circumstance under which siblings could be placed separately would be if one of the siblings was minor and the other was not. In **Malta**, unless there was an important reason to the contrary – such as serious doubt that the family relation actually exists – or if there were signs of bullying and exploitation, the general criteria was to keep family together.

### **Family tracing**

A number of public authorities were involved in family tracing procedures in the Member States, including the Ministries of Interior and Foreign Affairs, the embassies in third countries, the asylum authorities, the social services, the border guard and the police. Family tracing procedures were often conducted in cooperation with the Red Cross (DE, EL, IE, IT, LU, NL, PT, RO, SE, SI) or other NGOs (AT, LU, NL) as well as international organisations such as UNHCR or IOM (MT).

For example, in **Germany** family tracing took place through the German Red Cross by means of a specialised unit. If information on the country of origin or the situation in the country of origin was needed, this was generally provided by the German embassy. In general, family tracing had already been undertaken during the asylum procedure under the framework of the Dublin Regulation. **Latvia** noted that the obligation to trace family members under the Recast QD had been transposed into national law, with the Orphan Court and the OCMA being responsible for ensuring that activities to trace family members and ensure family reunification were undertaken. Within Latvian territory such procedures would be implemented by various actors working in cooperation, namely the social services, the State Border Guard, the OCMA and the police. In **Malta** the AWAS, MHAS and MFSS were the responsible authorities for family tracing, working in partnership with the UNHCR and IOM. In **Romania** the tracing procedure was initiated by the General Inspectorate for Immigration, but in practice the request was sent to the Red Cross who then undertook actions to trace the family. In **Sweden** the authorities responsible for family tracing were the SMA during the asylum procedure, and the Social Welfare Board with support from the SMA once this had concluded. In the case of **Poland**, family tracing was the responsibility of the Office for Foreigners in Poland.

Few Member States provided a detailed account of how their family tracing procedure worked in practice. In **Malta** the family tracing procedure started immediately after the minor's arrival at the reception centre. The procedure was carried out independently from the asylum procedure, and then converged with the responsible officer for the asylum procedure in the Refugee Commissioner Office. In the **Netherlands** family tracing also started at the stage of the asylum application, taking the best interests of the child into consideration. In the case of **Austria**, it was noted that as of 1 January 2014 unaccompanied children had the duty to cooperate with family tracing in the country of origin or third countries, regardless of the organisation or person who was undertaking the tracing. It seemed, however, that family tracing was not being undertaken in countries of origin or third countries. In **Greece**, while family tracing was foreseen in the law, no mechanism had been developed to carry out family tracing in practice. Both the **Czech Republic** and **Estonia** reported a lack of experience in relation to family tracing due to the low number of cases, while in **Croatia** family tracing had only become an issue with the migration crisis. In **Poland**, the Association for Legal Intervention noted that the family tracing procedure did not work in practice as the competent authorities lacked the necessary resources for its successful implementation. In **Portugal** the Portuguese Refugee Council allegedly undertook family tracing on its own initiative in cooperation with the Red Cross, as the authorities were not doing it on their own accord.

Information was lacking as regards the average length of the procedure. This could range from a few days (e.g. if the family members were residing in the Member State) to several months. In general, the length of the procedure varied on a case-by-case basis.

Several Member States referred to the **measures taken to safeguard confidentiality** (IE, LV, MT, SE, SI). **Latvia** stated that formal cooperation networks with third countries would not be used to trace the relatives of a person who had been granted international protection status, as these could endanger family members. In the case of **Malta**, IOM was responsible for maintaining confidentiality during the tracing procedure. In **Sweden** confidentiality was regulated in the Public Access to Information and Secrecy Act, which provided that before disclosing any information or taking any action in a specific case, the SMA and the social assistance centres had to ensure that their actions would not cause any harm to the people involved.<sup>358</sup> **France** did not use databases in order to maintain confidentiality. In **Ireland** confidentiality was globally included in codes of ethics for social workers. **Slovenia** noted that concepts such as ‘the best interests of the child’ or ‘threat to the life and integrity of the minor’ were further explained in guidelines for staff.

A number of Member States outlined what the consequences of a successful family tracing procedure would be (BE, CY, FR, IE, MT, NL, SE). In most cases, successful family tracing would mean that the process to reunite the minor with their family would be launched, with the minor being repatriated to a third country if necessary. If the process to trace the family was unsuccessful the minor would remain in the Member State. For the case of **Malta**, it was noted that if the tracing was successful, the best outcome would be the reunification of the family in an EU country. If not, the minors would remain under the care order. DNA testing was conducted in order to prevent abuse. In **Sweden**, if a parent who was a citizen of a country outside the EU wanted to move to Sweden to live with an unmarried child under the age of 18, the parent was required to have a residence permit. Once the child turned 18 years of age, the SMA could grant a residence permit to the parent under certain conditions.

### 3.27.3 Changes in Member States’ practices since the Recast QD in 2013

It appears that in a number of Member States the legal framework was already compliant with the obligations established by Article 31 of the Recast QD before the deadline for transposition in 2013 (CZ, HU, IT, LT, LV, RO, SE).

In two Member States the best interests of the child was not reflected in national legislation as required under Article 31(5) (BG, LT).

**Germany** introduced a new mechanism for placing UAMs, in November 2015 (see above).

### 3.27.4 Examples of good application

Examples of good application of Article 31 include the following:

- The swift appointment of a specialised guardian within the responsible state authorities (e.g. MT), the organisations designated to this effect (e.g. NL) or by resorting to pools of registered guardians (e.g. BE, HR, SI).
- The provision of adequate training to guardians so that these are in a position to ensure that the needs of the child are met and to support them throughout the relevant procedures.
- The definition of a broad mandate for guardians, covering a range of areas such as accommodation, legal representation, health and education (e.g. BE, SE).
- Linked to the above, the maintenance of continuity of guardianship throughout the various relevant procedures involving the UAM.
- The limitation of the number of UAMs a guardian could represent in order to ensure sufficient availability.

<sup>358</sup> Public Access to Information and Secrecy Act (2009:400).

- The establishment of structured and systematic procedures to regularly monitor and assess the performance of the guardianship duties (e.g. IT, LV, MT, PT, SE), and the involvement of UAMs in such assessments (e.g. FR, HU, IT, LT, MT, PT, SE, SK).
- The involvement of UAMs in the development of their care plan and in decisions concerning their placement to the extent permitted by the child's age and degree of maturity (e.g. IE).
- The integration of vulnerability considerations in the decision-making process concerning the placement of UAMs (e.g. EL, MT).
- The maintenance of family unity by keeping siblings together as long as this is in the child's best interests (e.g. BE, CY, EE, EL, FR, HR, HU, IT, LT, LV, MT, NL, PL, SI, SK).
- The operationalisation of family tracing procedures by defining the necessary action protocols and entering into cooperation arrangements with relevant organisations, if necessary.
- The establishment of mechanisms to safeguard confidentiality in family tracing procedures (e.g. IE, LV, MT, SE, SI).

### 3.27.5 Possible application issues

The following practices can be considered as being incompliant, not properly implemented and/or not 'within the spirit' of the Directive:

- The failure by some Member States to ensure the representation of UAMs within a reasonable period of time, as was allegedly the case in **Bulgaria, Greece and Italy**.
- The appointment of non-qualified guardians, as reported for the cases of **Croatia and Poland**. This may go against the child's best interests and fail to comply with Article 31(6) providing that those working with UAMs will have had and continue to receive appropriate training.
- The failure to undertake a systematic assessment of the performance of guardianship duties, as reported for **Cyprus, Greece, Luxembourg, Poland and Romania**.
- The failure to implement family tracing procedures, which may place the Member States concerned in breach of Article 31(5).
- The failure to transpose the requirement to take the best interests of the child into consideration into family tracing procedures, as reported for **Bulgaria and Lithuania**.

### 3.27.6 Recommendations

Based on the above findings, the following recommendations can be put forward:

- The European Commission should investigate whether the alleged lack of effective representation and guardianship arrangements in a number of Member States is in breach of the Recast QD and, if so, remind these Member States of their legal obligations to ensure such representation.
- Supporting the Member States in the provision of appropriate care for beneficiaries of international protection who are UAMs should continue to be prioritised in the allocation of EU funding.
- While taking into consideration the need for flexibility to devise representation arrangements that fit into diverse national systems, and within the limitations imposed by its mandate, EASO should continue to encourage Member States to adopt strong guardianship systems as a prerequisite to handling cases of UAMs. Within the framework of the activities of its expert Network on Children, established in 2014, EASO could further develop specific products on asylum for guardians and legal representatives in particular by describing what should be, as a minimum, the scope of guardianship functions taking into account the 1994 UNHCR Guidelines



on the Protection and Care of Refugee Children.<sup>359</sup> EASO could also organise training activities and develop best practice on representation and guardianship specifically in the area of asylum. EASO should also encourage Member States to make use of its upcoming series of specific tools on Best Interests Assessment.

- The European Commission should continue to support Member States in mutual assistance in family tracing in countries where one Member State has established functioning networks for this purpose, as a follow-up of the measures undertaken under the Action Plan on Unaccompanied Minors (2010–2014).<sup>360</sup>
- EASO should facilitate the development of a common approach to family tracing by developing best practice guidelines in this area, such as its upcoming Practical Guide on Family Tracing. EASO should also continue supporting Member States as regards the implementation of family tracing procedures through the provision of training. The possibility of establishing an information exchange mechanism among the Member States to facilitate family tracing should be explored.

### 3.27.7 Benchmarks for measuring the implementation of Article 31

Whether or not the minor could express a preference for/propose a guardian in the Member States:	
Yes	IT, MT
No	No information
Whether or not there were limitations to the guardian's mandate:	
Yes	PL, RO, SI, SK
No	BE, CY, CZ, DE, EE, HR, HU, IE, IT, LT, LV, NL, SE
Whether or not there were oversight mechanisms in place to monitor the performance of guardianship functions:	
Yes	BE, CY, EE, FR, HR, IE, IT, LV, MT, NL, PT, SE, SI, SK
No	FR, HU, IT, LT, MT, PT, SE, SK
Whether or not the minors were involved in the evaluation of guardians in the Member States:	
Yes	FR, HU, IT, LT, MT, PT, SE, SK
No	IE, SI
Whether or not there were specific reception arrangements for minors in the Member States:	
Yes	DE, EL, IT, MT, NL, SI
No	
Whether or not there were specific family tracing procedures in place:	
Yes	AT, DE, EL, IE, IT, LU, MT, NL, RO, SE, SI
No	PT*

\* Family tracing procedures were not initiated by the authorities but *ex officio* by an NGO

<sup>359</sup> UNHCR, Refugee Children: Guidelines on Protection and Care, 1994, available at: <http://www.refworld.org/docid/3ae6b3470.html> [accessed 5 May 2016]

<sup>360</sup> Communication from the Commission to the European Parliament and the Council - Action Plan on Unaccompanied Minors 2010 – 2014, COM (2010) 213 final, 6.5.2010, p. 11.

## 3.28 Access to accommodation – Article 32

### 3.28.1 Background on access to accommodation

Article 32(1) of the Recast QD lays an obligation 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. This provision mirrors Article 31 of Directive 2004/83. Article 32(2) introduced a new requirement for the Member States to implement policies aimed at preventing discrimination, including within the private housing sector, and at ensuring equal opportunities for beneficiaries of international protection regarding access to accommodation. This provision allows Member States to have in place national practices of dispersal of beneficiaries of international protection.

In its ruling on the *Kamberaj v IPES (Italy)* case,<sup>361</sup> the CJEU ruled that EU law precluded national or regional legislation which treated third-country nationals who are long-term residents differently from EU citizens with regard to the allocation of funds for housing benefit. The Court therefore recognised access to housing benefit as a ‘core benefit’ for the purposes of Article 11(4) of the LTR Directive. In this regard, the EU acknowledged a right to equal treatment for persons entitled to housing benefit intended to ensure a ‘decent existence’ for anyone who did not have the resources to maintain such a standard themselves.<sup>362</sup>

The following evaluation questions were assessed:

*What is the number of beneficiaries of international protection accessing accommodation?*

*Who are the stakeholders involved in granting beneficiaries of international protection access to accommodation?*

*Are the conditions for granting access to accommodation the same as the conditions applied for legally residing third-country nationals? Are the conditions different for refugees and beneficiaries of subsidiary protection?*

*Is specific support (e.g. special housing, assistance with finding accommodation, acting as guarantor for rental contracts, providing deposits, etc.) provided to beneficiaries of international protection? What are the requirements to receive such support?*

*In average, how long does it take for beneficiaries of international protection to have access to stable accommodation from the day their status is recognised/granted?*

*What are the administrative and practical obstacles to accessing accommodation?*

*Is there evidence of any discrimination with regard to access to accommodation?*

*Do Member States make use of dispersal mechanisms for the distribution of beneficiaries across their territory? Please describe the procedure and the grounds for the application of the mechanism.*

### 3.28.2 Findings for Article 32

#### **Summary of main findings**

The main findings in relation to Article 32 can be summarised as follows:

- Eight Member States granted beneficiaries of international protection a right to access accommodation under the same conditions as nationals.

<sup>361</sup> CJEU, Case C-571/10 *Servet Kamberaj v Istituto per l'Edilizia sociale della Provincia autonoma di Bolzano, Giunta della Provincia autonoma di Bolzano, Provincia autonoma di Bolzano*, 24 April 2012.

<sup>362</sup> See CJEU, Press release following the ruling in *Kamberaj v IPES (Italy)* on the rights of third-country nationals to housing benefits in the EU, 24 April 2012.

- Nine Member States offered some form of tailored assistance to beneficiaries of international protection in order to facilitate access to accommodation. Such assistance included the provision of housing and financial assistance. A combination of both ‘in-kind’ and ‘in-cash’ measures was available in some Member States.
- High rental prices, 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.
- Five Member States had some form of dispersal policy in place, against 12 Member States which had no such measures in place. Three Member States were considering the introduction of dispersal measures.

### Statistical information

Five Member States provided statistical information on access to accommodation by beneficiaries of international protection. In **Croatia**, 12 persons granted international protection and their family members had access to accommodation financed from the state budget in 2014. In the **Czech Republic**, 401 persons received a financial contribution for housing from the state integration programme or the social assistance system in 2015. It was noted, however, that this was not the total number of beneficiaries assisted in accessing accommodation as support was furnished through various means, including by providing housing in-kind at the integration asylum centre. In **Romania**, 918 persons with a form of protection benefited from accommodation in the General Inspectorate for Immigration centres and 87 received reimbursement for their accommodation expenses in private homes. **Sweden** provided data on the median number of days which it took from the granting of a residence permit to the assignment of accommodation by the Swedish Public Employment Service (PES): 82 days in 2011, 117 in 2012, 126 in 2013, 151 in 2014 and 154 in 2015 (until June). In **Slovenia**, 91 beneficiaries of international protection received compensation for housing at a private address, whereas seven were accommodated in the integration houses. No beneficiaries of international protection had access to social housing,

### Stakeholders involved in the provision of housing

The **stakeholders** involved in granting beneficiaries of international protection access to accommodation included the state authorities responsible for refugee-related or housing matters (BG, CZ, EE, EL, FI, PL, RO, SE), the municipalities (CZ, DE, FI, FR, IT, PL, RO, SE), NGOs (BG, CZ, FR, LV, PL, SI, SK), social services (HR, PL), the reception centres (CZ, EL, MT), integration counsellors (SI) and UNHCR (BG).<sup>363</sup>

In the **Czech Republic**, for instance, the Refugee Facility Administration (a state organisation within the Ministry of Interior) was responsible for ensuring the accommodation of beneficiaries of international protection in integration asylum centres. In addition, the providers of integration services, such as NGOs, churches and municipalities, could also offer accommodation to beneficiaries, with the Ministry of Interior paying a financial contribution to them. In **Greece**, social services could request a place in an accommodation centre on behalf of beneficiaries of international protection. Requests were lodged before the centre’s management body, which assessed them taking into account the terms of the statute of the centre, all the other submitted applications and the number of available places. The procedure was the same for beneficiaries of international protection and for Greek citizens who lacked shelter. In **Romania**, the responsible authorities involved in granting beneficiaries of international protection access to accommodation were the General Inspectorate for Immigration and the local authorities, which were in charge of managing the social accommodation facilities and could provide social housing. In **Slovakia**, the Slovak Catholic Charity, an NGO implementing integration measures, provided assistance to beneficiaries and ensured that they had

<sup>363</sup> Information regarding all EU Member States bound by Directive 2011/95/EU or 2004/83/EC are reflected regarding Article 32, with the exception of ES and LT where no information could be collected for reasons explained in Section 2 of this report.

a place to live the moment they were granted protection. The organisation's activities were monitored by the state Migration Office.

### **Conditions for accessing accommodation**

As regards the **conditions for granting access to accommodation**, nine Member States' stakeholders indicated that beneficiaries of international protection had a right to access accommodation in the same conditions as nationals (BE, DE, 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 equivalent conditions applied to refugees and beneficiaries of subsidiary protection with regard to accessing accommodation (BG, EE, FI, HR, SE). In **Austria** both refugees and beneficiaries of subsidiary protection held, in principle, the same rights in the area of accommodation. However, according to UNHCR, in practice there were significant disparities between the two statuses concerning access to social housing.<sup>364</sup> These were linked to the different durations of the residence permits of beneficiaries: unlimited, in the case of refugees, and initially limited to one year with the possibility of a two-year extension in the case of subsidiary protection beneficiaries. While there were variations across the *Länder*, the limited right to residence of beneficiaries of subsidiary protection generally meant that they could not meet the conditions necessary to access housing subsidies or social housing.<sup>365</sup> Beneficiaries of subsidiary protection were instead entitled to basic welfare support (which included accommodation) for as long as they were in need of this kind of assistance.<sup>366</sup>

### **Availability of tailored support**

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). Such assistance included the provision of accommodation in reception centres (BG, LU, MT, RO, SI) or social

In **Poland**, the stakeholders involved in granting beneficiaries of international protection access to accommodation at the general level included: the Office for Foreigners, which was required to place beneficiaries in a centre for foreigners or offer an option to live outside the centre by granting an allowance; the Family Assistance Centre, which offered the support of social workers to help beneficiaries rent a flat; and NGOs, which also supported beneficiaries in renting properties.

At the local level, support to access accommodation was granted through the District Offices' Housing Departments, under the coordination of the Office for Housing Policy of the City Council, which provided assistance regarding municipal and social apartments; and the District Family Assistance Centre, which assisted beneficiaries in accessing protected/sheltered housing and in finding an apartment on the free market.

housing (HR, RO), financial assistance in covering rental costs (CZ, HR, LV, RO, SI), financial guarantees (LV) and assistance by public services or NGOs in finding accommodation (CZ, LV, SE). The time limits for the support provided varied among Member States, e.g. up to three years from the moment the status was granted in **Slovenia**, two in **Croatia** and one in **Malta**, with a possibility of extension for those who were particularly vulnerable on a case-by-case basis.

In **Belgium**, the beneficiaries of international protection who resided in a reception centre when the status was granted could remain in the centre for two additional months after recognition in order to find accommodation. According to the NGO Vluchtelingenwerk Brussels, the increasing pressure to find places in accommodation centres could lead to this

<sup>364</sup> UNHCR, 'Subsidiär-schutzberechtigte in Österreich', February 2015, pp. 26-8.

<sup>365</sup> Frey, V. 'Recht auf Wohnen? Der Zugang von MigrantInnen und ethnischen - Minderheiten zu öffentlichem Wohnraum in Österreich, 2011, pp. 36-7, quoted in Koppenberg, S. 'Integration of beneficiaries of international protection and holders of humanitarian residence titles into the labour market - Policies and Measures in Austria', IOM, December 2015, pp. 67.

<sup>366</sup> Koppenberg, S. 'Integration of beneficiaries of international protection and holders of humanitarian residence titles into the labour market - Policies and Measures in Austria', IOM, December 2015, pp. 67.

two-month period not being extended in the future, irrespective of whether the person had found accommodation or not, thus leaving refugees homeless. In **Bulgaria** most refugees and beneficiaries of subsidiary protection resided in one of the six reception facilities run by the State Agency for Refugees (SAR). Beneficiaries of international protection could stay in the reception centre for six months or even longer if they did not find suitable accommodation. While hygienic conditions in these centres were very poor, there were almost no beneficiaries of international protection renting private accommodation as they generally chose to leave **Bulgaria** and move to other European countries.

In **Malta** accommodation is offered for one year 'in-kind', a period that could be extended for vulnerable persons. **Romania** also offered accommodation in the General Inspectorate for Immigration open centres at 50% of the cost. According to the Jesuit Refugee Council (JRC), however, such support was only offered to vulnerable beneficiaries who were not able to work. Assistance could also be accessed through projects financed with EU funding which helped beneficiaries find accommodation and pay rent and maintenance costs. **Slovenia** also combined the provision of housing in-kind with in-cash support measures. For one year following recognition beneficiaries of international protection could be accommodated in an integration house or in another accommodation facility, and then for two additional years they could be provided with financial assistance for private accommodation by the Ministry of Interior. **Croatia** provided beneficiaries of international protection with financial support for accommodation for two years after the status was granted provided that they did not possess adequate financial resources or other belongings and presented a request for housing before the competent social assistance centre. **Slovakia** also provided assistance in the form of financial support aimed at covering the costs of accommodation and basic needs during the first six months after recognition, a period which could be extended depending upon the number of family members and the existence of special needs. In addition, beneficiaries of international protection received a one-time allowance of 1.5 times the minimum living wage immediately after the protection was granted.

In seven Member States there was no tailored assistance for beneficiaries of international protection concerning access to accommodation (CY, DE, EE, EL, FI, FR, IT, PL). Among these Member States, **Finland** noted that the Ministry of the Environment was developing measures to support the housing of beneficiaries of international protection which included the provision of special housing and of assistance with finding accommodation, the acting as guarantor for rental contracts and the provision of deposits. In addition, in order to encourage beneficiaries to live elsewhere than in the capital, assistance in the form of deposits was being provided only in areas outside the Helsinki metropolitan area.

Generally, in this group of Member States beneficiaries of international protection could receive certain forms of support under the same conditions as nationals. For example, in **Cyprus** those beneficiaries of international protection who received a Guaranteed Minimum Income allowance were entitled to a subsidy of EUR 154 for housing rent. Similarly, in **France**, beneficiaries of international protection had access to the general social integration system available for nationals that encompassed a number of options: direct access to social housing with social support, accommodation in social housing with an operator taking care of the lease, access to private accommodation with a transferable lease, accommodation in social residences, and emergency accommodation. In the case of **Greece**, UNHCR noted that there were no specific facilities for social housing or any alternative forms of support available for international protection beneficiaries. In practice this meant that, in cases of homelessness, beneficiaries of international protection competed with nationals and other legal residents for the limited resources that local authorities could provide. In **Germany**, the provision of accommodation was part of the normal social assistance scheme. Needs for accommodation and heating were provided for within the global amount of social assistance granted to the person, as long as these were reasonable. The assessment of which costs were reasonable depended on the local authority's guidelines/reference values or byelaws.

Among those Member States who generally offered no targeted support, a few, limited smaller-scale initiatives existed, for instance at the local level. This was the case in **Poland**, where several stakeholders (the Warsaw Family Assistance Centre, UNHCR and the Association for Legal

Intervention) raised the example of the city of Warsaw, where five city-owned apartments were offered annually for refugees and beneficiaries of subsidiary protection in a project financed through European funding. Availability was however limited compared to demand, as on average there were around 80 requests. In **Italy**, the organisation managing reception centres, the Casa della Solidarietà, noted that there were specific projects under the System for the Protection of Asylum Seekers and Refugees where access to housing was facilitated by the municipality acting as a guarantor and providing a contribution to pay the rent.

The **length of time taken** for beneficiaries of international protection to access accommodation varied across the Member States which provided data: this was around one month in **Estonia**, more than three months in **Cyprus** and from three months to one year in **Croatia**. In **Sweden** the delay was estimated at five to six months, although it was noted that this was likely to further increase due to the high number of asylum applications. In **Finland** the time taken to access accommodation varied greatly across the country, ranging from one to three weeks in the areas where there were sufficient rental houses available on the market and possibly reaching several years in the capital's area. In **Poland** it took around six to seven years to access social housing in Warsaw due to the long waiting lists.

### **Administrative and practical obstacles**

Two Member States reported administrative obstacles which hindered access to housing by international protection beneficiaries (CY, EL). In **Cyprus** these concerned delays in the payment allowances. In **Greece** the procedure to provide housing in accommodation centres to those in need was not uniform, nor was it monitored by a specific authority or institution and such a lack of clear procedural standards negatively affected the provision of housing services. The main **practical obstacles** mentioned for beneficiaries of international protection to access accommodation were the high rental prices on the open market, in particular in those areas of the country with more economic opportunities (FI, LU, LV, PL, SE), the limited availability of social housing (EE, EL, FI, IT, PL, PT) and the reluctance of locals to rent houses to beneficiaries of international protection of certain nationalities (EE, HR, PL).

Practical and administrative obstacles sometimes occurred simultaneously. For example, in the case of **Poland**, the Association for Legal Intervention referred to two reports on the housing situation of beneficiaries of international protection which highlighted the following obstacles: the low level of economic integration of refugees; discrimination on the part of landlords who were reluctant to rent their flats to foreigners; the insufficient supply of affordable housing and municipal and social housing; the various criteria applicable across different municipalities to access social housing; and the lack of the necessary documentation (e.g. a rental contract signed by the landlord) to apply to the municipality for housing support, which resulted in the lack of examination of the application.<sup>367</sup> These obstacles allegedly led beneficiaries of international protection who had completed their IPI and failed to become independent within one year trying to move to other European Member States.

### **Discrimination in access to housing**

The issue of discrimination in access to accommodation was raised by five Member States (FI, MT, PL, RO, SI, SK). In **Malta** a study by the National Commission for the Promotion of Equality (NCPE) on access to housing uncovered discriminatory practices by property owners.<sup>368</sup> To help overcome such difficulties, staff in the AWAS helped asylum seekers with phone calls and to deal directly with

<sup>367</sup> Stowarzyszenie Interwencji Prawnej, A. Chrzanowska, I. Czerniejewska, "Mieszkamy tutaj, bo nie mamy innego wyjścia. Raport z monitoringu warunków mieszkaniowych uchodźców w Polsce" ("We live here, because we have no other choice... Report from the monitoring of housing conditions of refugees in Poland"), Analizy, raporty, ekspertyzy Nr 2/2015, 55, accessible in Polish at: <http://bit.ly/1Lq2Hie>. - See more at: <https://bit.ly/2sABMkI> [last accessed on 20 March 2016]; Fundacja Instytut Spraw Publicznych, Czyj jest ten kawałek podłogi? Wyniki badań dyskryminacji uchodźców w dostępie do mieszkań, <https://bit.ly/2FKCy6C> [last accessed on 20 March 2016].

<sup>368</sup> M. Fsadni and M. Pisani, Immigrant and Ethnic Minority Groups and Housing in Malta - A Research Study, December 2012.

In **Finland**, the Ministry of Employment and the Economy was in charge of dispersing refugees to different locations in the country. The state compensated the initial costs incurred by the municipalities in receiving refugees for the first three or four years. In order to get these costs reimbursed, the municipalities were required to sign a contract with the regional authority of the ministry (ELY Centre).

The Ministry was trying to advocate this system to ensure that beneficiaries of international protection would get accommodation and the services they needed, such as training and assistance in finding employment. At the time when the interviews were conducted, in the fourth quarter of 2015, 80 municipalities had this sort of contract for receiving approximately 1,500 refugees. The state authorities considered this amount insufficient, in view of the fact that over 10,000 beneficiaries would need housing in 2016. In general the municipalities were agreeing to host small groups (around 20 people on average), as the big cities did not possess the housing required and the small cities feared that there would be a lack of employment opportunities available, which would result in a burden to the local economy.

property owners. Reluctance on the part of owners to rent their properties to beneficiaries of international protection from certain nationalities was also observed in **Poland**. The above-mentioned reports on the housing situation of refugees in **Poland** also evidenced that beneficiaries of international protection in particular were seen as a group with smaller chances of finding a job than other representatives of the local community and that women refugees had less chances of finding housing than men. In **Romania** the local authorities had sometimes given preference to nationals in the provision of social housing, which is in breach of national legislation that grants beneficiaries of international protection access to accommodation under the same conditions as nationals. In **Slovenia**, PIC, the legal information centre for NGOs, indicated that both direct and indirect discrimination existed. Very often priority in accessing social housing was given to Slovenian nationals (directly discriminatory) or persons who had been living in the area for a long time (indirectly discriminatory, as generally this benefited nationals).

While detailed information was not available, it was acknowledged that discrimination existed in the private sector in **Finland**. Concerning the public sector, it was reported that Finnish nationals complained that the refugees overtook them in the waiting lists for community housing.

### **Use of dispersal mechanisms**

In 12 Member States dispersal mechanisms were not in use (BE, CY, CZ, EE, EL, FR, HR, IT, LU, LV, MT, SI) compared to six Member States where such mechanisms were in place (BG, FI, PT, RO, SE, SK). In **Bulgaria**, there were no dispersal mechanisms *per se* but beneficiaries of international protection were distributed across the country depending on where there was space available at reception centres and where the facilities were most suitable to house certain groups (e.g. UAMs, vulnerable persons). Similarly, in **Slovakia**, beneficiaries of international protection were distributed according to the availability of housing. In **Romania** beneficiaries of international protection could in principle choose to live anywhere in **Romania**, although they could be required to stay in a specific place (from which they could be transferred if needed) if they went through the integration programme. The same policy applied in **Portugal**.

In addition, the use of dispersal mechanisms was under consideration in three Member States (BE, LV, SE). For instance, in **Sweden** the government was developing a new legal act that would require all municipalities to receive newly arrived beneficiaries of international protection. The legislation was expected to come into force at the latest in July 2016 and the design of the dispersal mechanism was yet to be defined.

### **3.28.3 Changes in Member States' practices since the Recast QD in 2013**

In recent years a number of Member States have introduced changes to their legislation in relation to access to housing for beneficiaries of international protection (BG, IT, LT, LV). In **Bulgaria** the requirement of Article 32(2) for Member States to implement policies aimed at preventing discrimination and ensuring equal opportunities for beneficiaries of international protection regarding access to accommodation was introduced through an amendment to the Asylum and Refugee Act which came into force on 16 October 2015. In **Lithuania** this requirement was introduced through an amendment to Article 1 of the Law on the state support to acquire or to rent the accommodation (SBRA (XII-1215)), which has been applied since 1 January 2015, and to Article 51 of the Law on equal opportunities of women and men (LEOWM (VIII-947)), which entered into force on 23 July 2014. In some Member States the legislation was changed to provide for equal rights for refugees

and beneficiaries of subsidiary protection (CZ, HU) while in **Italy** the transposition process resulted in the establishment of a right to housing for international protection beneficiaries on equal grounds as citizens.

**Latvia** reported that it had enhanced the support available in the area of housing through the adoption of a new action plan. On the specific issue of discrimination, however, the number of beneficiaries of international protection was so low that the public authorities had not seen the need to introduce any specific measures. Two other Member States (EL, SE) had also failed to implement Article 32(2) into their national legislation.

Some Member States had also introduced or were considering the introduction of changes to their policies in relation to access to accommodation by beneficiaries of international protection (see e.g. BE, FI, SE above in relation to dispersal measures). **Greece** had foreseen specific actions aimed at providing housing to beneficiaries of international protection under the EU co-financed projects in the framework programme of the ESF for the period 2014–2020. There were plans to launch rent subsidy actions in order to meet the specific needs of beneficiaries of international protection and free places in the accommodation centres for asylum seekers. **Italy** planned the establishment of a table of national coordination, under the authority of the Ministry of Interior, which would be in charge of developing a biannual National Plan, identifying lines of action to promote the integration of beneficiaries of international protection, including as regards access to housing as well as the fight against discrimination.

### 3.28.4 Examples of good application

Examples of good application of Article 31 include the following:

- The provision of access to housing to beneficiaries of international protection under the same conditions as nationals. According to ECRE, such an approach is consistent with the Long-Term Residence Directive which enables long-term residents including refugees and subsidiary protection beneficiaries to access housing on an equal basis with nationals.<sup>369</sup>
- The provision of tailored support to facilitate access to housing by beneficiaries of international protection (as in BE, BG, CZ, HR, LU, LV, RO, SI). This is consistent with Recital 41 providing that in order to enhance the effective exercise of the rights and benefits, laid down in this Directive, 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.

### 3.28.5 Possible application issues

The following practices can be considered as being incompliant, not properly implemented and/or not ‘within the spirit’ of the Directive:

- In view of the CJEU jurisprudence in the *Kamberaj v IPES (Italy)* case, any restrictions applied to beneficiaries of international protection in relation to access to housing for example in **Austria**, where beneficiaries of subsidiary protection are *de facto* treated differently than refugees.
- The possible failure by some Member States to implement the new requirement of Article 32(2) as regards the fight against discrimination and equal opportunities for beneficiaries of international protection in relation to access to housing, either in law or in practice.

### 3.28.6 Recommendations

- Based on the above findings, the following recommendations can be put forward: The European Commission may consider amending Article 32(2) to remove the reference to national practices

<sup>369</sup> ECRE, Information Note on the 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), p. 16.



on the dispersal of beneficiaries of international protection, as this relates to Article 33 on freedom of movement rather than to Article 32 on access to accommodation. The requirement for Member States to endeavour to implement policies aimed at preventing discrimination against beneficiaries of international protection and at ensuring equal opportunities regarding access to accommodation should be maintained, however.

- In light of the CJEU jurisprudence in the *Kamberaj v IPES (Italy)* case, the European Commission may consider amending Recital 45 to explicitly include accommodation under the notion of ‘core benefits’.
- The European Commission should remind those Member States, in which issues have been identified, of their obligation to implement policies aimed at preventing discrimination of beneficiaries of international protection and at ensuring equal opportunities with other third-country nationals legally residing in their territories regarding access to accommodation.
- The European Commission should continue to support the Member States in implementing policies and approaches to promote access to housing by beneficiaries of international protection through the relevant European funds.

### 3.28.7 Benchmarks for measuring the implementation of Article 32

Whether or not the Member States offered access to housing to beneficiaries of international protection under the same conditions as legally residing third-country nationals or nationals:	
Yes, as nationals	BE, DE, EE, EL, FR, HR, IT, PL, RO
Yes, as third-country nationals	SK
No	No information
Whether or not the Member States provided specific assistance to beneficiaries of international protection in order to facilitate access to accommodation:	
Yes	BE, BG, CZ, HR, LU, LV, RO, SI
No	CY, DE, EE, EL, FI, FR, IT, PL
Whether or not a distinction was made between refugees and beneficiaries of SP in relation to access to accommodation:	
Yes	AT
No	All MS, except for AT
Whether or not Member States had in place dispersal mechanisms:	
Yes	BG, FI, PT, RO, SE, SK
No	BE, CY, CZ, EE, EL, FR, HR, IT, LU, LV, MT, SI

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

### 3.29.1 Background on freedom of movement

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. Article 33 introduced no changes to the wording of Article 32 of Directive 2004/83.

The CJEU has interpreted Article 33 in conjunction with Article 29 on social welfare in the *Alo and Osso* joined cases.<sup>370</sup> The judgment held, firstly, that Article 33 of the Recast QD should be interpreted in light of Article 26 of the 1951 Refugee Convention, which guarantees the right to freedom of movement as including not only the right to move freely in the territory of the Member State but also

<sup>370</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.

the right of refugees to choose their place of residence. Therefore, the residence condition established in German law constituted a restriction of freedom of movement contrary to Article 33, notwithstanding the fact that the beneficiary was able to move freely within the territory of **Germany**, and could temporarily stay outside the designated place of residence.<sup>371</sup> Secondly, the CJEU found that Articles 29 and 33 of the Recast QD precluded the imposition of a residence condition to beneficiaries of subsidiary protection for the purpose of appropriate distribution of social assistance burdens where the rules did not impose this measure on refugees, legally resident third-country nationals or nationals.<sup>372</sup> Thirdly, the ruling held that Article 33 did not preclude a residence condition such as the one established in German law for the objective of facilitating integration if persons granted subsidiary protection were not in an objectively comparable situation to other legally resident third-country nationals. This could be the case if the latter were only eligible for welfare benefits after a certain period of residence, by which it could be assumed that they were sufficiently integrated, a matter which was left for the referring German court to determine.<sup>373</sup>

The following evaluation questions were assessed:

*Are the conditions and restrictions in relation to the free movement of beneficiaries of international protection on the territory of Member States the same as those applying to legally residing third-country nationals?*

*Is there evidence of discrimination with regard to the free movement of beneficiaries of international protection on the territory of Member States?*

*What are the main (practical/administrative) obstacles encountered by beneficiaries of international protection who want to move within the territory of the Member States?*

### 3.29.2 Findings for Article 33

#### **Summary of main findings**

The main findings in relation to Article 33 can be summarised as follows:

- In nearly all the Member States there were no restrictions to the free movement of beneficiaries of international protection.
- There was no evidence of discrimination in relation to free movement in any of the reporting Member States.

#### **Restrictions to free movement within the territory**

Fifteen Member States **did not apply any restrictions and conditions to the free movement of beneficiaries of international protection** (AT, CZ, EE, EL, FI, FR, HR, IE, LU, LV, PL, PT, SE, SI and SK).<sup>374</sup> In **Cyprus** beneficiaries of international protection could move freely in the areas under the control of the Republic of Cyprus, but were not permitted to move to the areas under Turkish occupation, a restriction which did not apply to legally residing third-country nationals. In addition, beneficiaries of international protection were required to always inform the authorities if they changed their address. **Italy's** immigration law stipulated that foreigners could be prohibited from staying in towns or locations that affect the military defence of the state, subject to the provisions in the military laws.<sup>375</sup> This prohibition would be communicated to foreigners by the local public security authorities or by means of public notices, and foreigners violating the ban could be removed

<sup>371</sup> Ibid, para 40.

<sup>372</sup> Ibid, para 50.

<sup>373</sup> Ibid, para 64.

<sup>374</sup> Information regarding all EU Member States bound by Directive 2011/95/EU or 2004/83/EC are reflected regarding Article 33, with the exception of BG, ES, LT, MT, and NL, where no information could be collected for reasons explained in Section 2 of this report.

<sup>375</sup> Article 6 Testo Unico sull'Immigrazione.

by the police.<sup>376</sup> **Belgium** noted that the conditions with regard to free movement of beneficiaries of international protection within the territory of the Member States differed from those applying to legally residing third-country nationals but provided no further details about such divergences.

In **Germany**, restrictions on free movement within the territory were almost exclusively based on the residence conditions dictated on the basis of section 12(2) of the Residence Act. This provided for the possibility to impose such conditions when a residence permit was issued or extended.<sup>377</sup> The German Federal Administrative Court ruled in January 2008 that geographic restrictions imposed on recognised refugees that were based on fiscal arguments violated Article 26 in conjunction with Article 23 of the 1951 Convention.<sup>378</sup> This was also the Court that presented a reference for a preliminary ruling in the *Alo and Osso* joint cases. In view of the CJEU ruling on those cases, there were discussions in **Germany** about restricting the freedom of movement of beneficiaries of international protection on the grounds that geographical restrictions were allowed as long as they facilitated integration to a larger extent than for other third-country nationals.

No evidence of discrimination was observed in most Member States with regard to free movement (AT, BE, CZ, EE, EL, FI, FR, HR, IE, IT, LU, PL, RO, SE, SI and SK). No obstacles to free movement within the territory were reported in the vast majority of the Member States (CZ, EL, FI, FR, HR, IE, IT, PL, RO, SE, SI and SK). This was also the case in **Belgium** if beneficiaries of international protection held the necessary documents. Possible obstacles existed in **Portugal** in relation to accessing social assistance, the provision of which was tied to residence in a specific municipality (see section 3.25 on Article 29 above).

### 3.29.3 Examples of good application

No specific examples of good application could be identified, but nearly all Member States appear to be in full compliance with the Recast QD in relation to the granting of free movement rights to beneficiaries of international protection.

### 3.29.4 Possible application issues

In light of the CJEU ruling in *Alo and Osso*, possible application issues may relate to the application, under national law, of residence conditions for refugees and/or beneficiaries of subsidiary protection that differ from those applicable to other legally residing third-country nationals, unless this restrictions are duly justified on the grounds that both groups (beneficiaries of international protection and third-country nationals) are not in an objectively comparable situation. The residence condition imposed by **Germany** on subsidiary protection beneficiaries, as well as the requirements set in **Finland** and **Portugal** for beneficiaries of international protection in order to access social assistance, may constitute examples of practices presenting applications problems.

### 3.29.5 Recommendations

- Based on the above findings, the following recommendations can be put forward: The European Commission should examine whether the residence conditions imposed by certain Member States constitute an infringement of the Recast QD, in particular in light of the CJEU case law in joined cases *Alo and Osso*. In the *Alo and Osso* cases, the CJEU interpreted Article 33 in conjunction with Article 29 on social welfare and concluded the following:
  - Firstly, Article 33 of the Recast QD should be interpreted in light of Article 26 of the 1951 Refugee Convention, which guarantees the right to freedom of movement as including not only the right to move freely in the territory of the Member State but also the right of refugees to choose their place of residence. Therefore, the residence condition established in

<sup>376</sup> Ibid.

<sup>377</sup> This provision read: 'The visa and the residence permit may be issued and extended subject to conditions. Conditions, in particular geographic restrictions, may also be imposed subsequently on visa and residence permits'

<sup>378</sup> German Federal Administrative Court, Judgment of 15 January 2008, No. 1 C 17.07.

German law constituted a restriction of freedom of movement contrary to Article 33, notwithstanding the fact that the beneficiary was able to move freely within the territory of **Germany**, and could temporarily stay outside the designated place of residence.<sup>379</sup>

- Secondly, Articles 29 and 33 of the Recast QD precluded the imposition of a residence condition to beneficiaries of subsidiary protection for the purpose of appropriate distribution of social assistance burdens where the rules did not impose this measure on refugees, legally resident third-country nationals or nationals.<sup>380</sup>
- Thirdly, Article 33 did not preclude a residence condition such as the one established in German law for the objective of facilitating integration if persons granted subsidiary protection were not in an objectively comparable situation to other legally resident third-country nationals. This could be the case if the latter were only eligible for social assistance benefits after a certain period of residence, by which time it could be assumed that they were sufficiently integrated, a matter which was left for the referring German court to determine.<sup>381</sup>

Thus, any restrictions imposed by the Member States on the free movement of beneficiaries of refugee/subsidiary protection status should be duly justified on the grounds that these are not in an objectively comparable situation with legally residing third-country nationals or nationals of the Member States as regards the objectives pursued by national law.

### 3.29.6 Benchmarks for measuring the implementation of Article 33

Whether or not the Member States restricted the freedom of movement of beneficiaries of international protection within their territories:	
Yes, in law and in practice	DE
Yes, in practice	FI, PT
No	AT, CZ, EE, EL, FR, HR, IE, LU, LV, PL, SE, SI and SK

## 3.30 Access to integration facilities – Article 34

### 3.30.1 Background on integration facilities

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. This Article should be read in conjunction with Recital 47 stipulating that the specific needs and particular situation of beneficiaries of international protection should be taken into account, as far as possible, in the integration programmes provided to them.

In this regard, it is generally acknowledged in the literature that, whilst refugees and beneficiaries of subsidiary protection are in certain respects in a similar situation to other immigrants, they also face particular challenges related to their past experiences of flight and to the loss of protection from their own State.<sup>382</sup> Refugees often suffer from psychological distress and are in need of specialised care, counselling and specific health services. Prolonged asylum procedures and detention can also have a negative impact on the person’s ability to integrate. In addition, refugees may not be able to provide the requisite documentation to certify their qualifications, levels of experience or skills. These various factors place beneficiaries of international protection in a disadvantaged position, compared

<sup>379</sup> Kreis Warendorf v Ibrahim Alo & Amira Osso v Region Hannover, C-443/14 and C-444/14, para 40.

<sup>380</sup> Ibid, para 50.

<sup>381</sup> Ibid, para 64.

<sup>382</sup> See for example the OECD Study “Making integration work”, January 2016; UNHCR “Refugee integration and the use of Indicators: evidence from Central Europe”, December 2013, etc.

to other migrants, in relation to their integration in the host society, hence calling for the establishment of particular support measures.

The following evaluation questions were assessed:

*What is the number of refugees and subsidiary protection beneficiaries taking part in the identified programmes and, if available, the 'success rate'?*

*Who are the actors responsible for ensuring access to 'appropriate' integration programmes for beneficiaries of international protection?*

*What are the main integration programmes available to the 'appropriate' integration programmes for beneficiaries of international protection? Are they different from integration programmes for other legally residing third-country nationals?*

*What is the procedure for 'assigning' beneficiaries of international protection to 'appropriate' programmes?*

*To what extent have Member States put in place preconditions for accessing integration programmes? How do they assist beneficiaries of international protection to meet these conditions?*

*How are the specific needs of beneficiaries of international protection taken into account?*

*To what extent are integration benchmarks (including participation in activities/achieving certain standards) conditional for accessing other benefits and rights under the Recast QD?*

### 3.30.2 Findings for Article 34

#### Summary of main findings

- Integration is an intersectional issue in which multiple government departments and other stakeholders are involved.
- There was no evidence of difference 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 that had specific integration programmes for beneficiaries of international protection in place; 2) Member States that had generic integration programmes for third-country nationals in place and gave beneficiaries of international protection access to them; 3) Member States that had no integration programmes in place at national level, although local or initiatives taken by non-State actors were implemented.
- Some Member States had in place comprehensive integration programmes offering a range of support in various areas such as language training, civic and cultural orientation, accommodation and employment, whereas others had only implemented limited integration measures.
- 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.

#### Statistical information

Five Member States provided data on the number of refugees and beneficiaries of subsidiary protection taking part in integration programmes (EL, HR, RO, SE, SI). **Croatia** reported that in 2014 four beneficiaries had been assisted by the first social service (competent for informing, recognising and carrying out an initial needs assessment), while 15 beneficiaries had benefited from the counselling services of the competent social assistance centre. In **Greece**, 45 beneficiaries had attended integration programmes in 2015. **Romania** provided data on the number of beneficiaries of international protection registered in integration programmes in 2012 (177 persons), 2013 (246), 2014 (269) and the first half year of 2015 (226). **Sweden** elaborated on the results achieved through

integration measures. In 2013, 26% of those taking part in the introduction programme had a job (subsidised or un-subsidised) or were enrolled in education 90 days after the end of the programme, a proportion which had raised by three percentage points in 2014 (to 29%). From January to July 2015 50,000 persons took part in the introduction programme, also with a success rate of 29% in accessing employment or education within 90 days of the end of the programme. Finally, in **Slovenia** 70 persons had been included in the integration programme (including a language course, learning assistance, employment assistance, among other measures). The year was not specified.

### **Authorities responsible for integration in the Member States**

Integration is an **intersectional issue** involving various governmental and non-governmental stakeholders. In the governmental domain, the allocation of competencies and responsibilities for the integration of beneficiaries of international protection varied across the Member States, including Ministries of Interior, Employment, Social Affairs, Health and Foreign Affairs, and also involving third parties. The following are some selected examples of how the governance of integration policies is organised at the national level.<sup>383</sup>

In **Austria** the main actor overseeing the integration process was the Federal Ministry of Europe, Integration and Foreign Affairs (*Bundesministerium für Europa, Integration und Äußeres* – BMEIA), but integration was regarded as a cross-cutting issue that also concerned all other ministries, the federal states and the social partners. All relevant actors met regularly in an inter-ministerial working group to discuss the general aims and direction of integration policies. In 2010 this working group developed the National Action Plan for integration (NAPI) which enshrined this multidisciplinary approach and defined seven fields of action: language and education, work and employment, rule of law and values, intercultural dialogue, health and social issues, sports and leisure, as well as housing and the regional dimension of integration.

In **Croatia** the government departments engaged in the design and implementation of integration policies for beneficiaries of international protection including the Ministries of Education, Social Welfare, Health and Interior, under the coordination of the Government Office for Human Rights and Rights of National Minorities. The Ministry of Social Policy and Youth coordinated the actions of the social welfare centres, each of which had a contact person for issues concerning beneficiaries of international protection (specifically in relation to access to accommodation). The Ministry of Education was responsible for the implementation of courses on the Croatian language, history and culture, to which attendance of beneficiaries of international protection was required by law. In April 2013 a Permanent Committee for the Integration of Foreigners into Croatian Society was established. Under the framework of the Committee, a working group consisting of representatives of different ministries, NGOs and the Institute for Migration and Ethnic Studies drafted an Action Plan on Integration for the period 2013–2015.

In **Italy** integration policy competencies were shared between the Ministry of Interior and the Ministry of Labour, with the former being responsible for language integration and the latter for the socioeconomic aspects of integration. The transposition of the Recast QD had led to the elaboration of a plan for the integration of beneficiaries of international protection (at the time of writing under elaboration). Within the framework of the development of the plan, a table of national coordination was created encompassing all the relevant stakeholders in the field.

In **Malta** integration measures were overseen by the Ministry for Social Dialogue, Consumer Affairs and Civil Liberties (MSDC). Representatives of migrants' communities were invited to participate in the Forum of Migration Affairs; however, issues discussed in the forum were generally not related to beneficiaries of international protection but to other categories of third-country nationals. In **Romania** the General Inspectorate for Immigration was the state institution responsible for coordinating the implementation of integration-related measures. Other institutions involved in this

<sup>383</sup> Information regarding all EU Member States bound by Directive 2011/95/EU or 2004/83/EC are reflected regarding Article 34, with the exception of ES, LV and NL, where no information could be collected for reasons explained in Section 2 of this report.

area were the Ministry of Health, the Ministry of Employment and the Ministry of Education. In **Sweden** the Ministry of Employment was responsible for the introduction of activities in the domain of access to employment, the Ministry of Education dealt with specific integration measures in schools for newly arrived pupils and the municipalities were responsible for Swedish for migrants and civic orientation courses. Additional programmes (e.g. guides for refugees) were also available through NGOs, with funding from the municipalities.

### **Availability of integration programmes in the Member States**

No differences were reported concerning the availability of integration facilities for refugees/beneficiaries of subsidiary protection in the Member States. Concerning the availability of integration programmes, **three groups of Member States** could be distinguished:

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);
3. Member States which had no integration programmes in place (BG, EL, HR, IE, IT) at national level, although local or initiatives taken by non-State actors were implemented.

Among the **Member States in the first group**, **Austria** offered a comprehensive package of support measures under the scope of the 50 Action Points Plan for the Integration of Persons Entitled to Asylum or subsidiary protection, adopted in 2015. The aim was to promote self-reliance by focusing on the acquisition of German language skills, actions to facilitate access to employment and civic orientation.<sup>384</sup> **Sweden** represented the most developed example of a Member State having an individualised approach to the integration of beneficiaries of international protection. Each beneficiary was assessed by the Public Employment Service (PES) and the municipality of residence to ascertain what his/her needs were and how these could be best addressed through relevant integration activities. On the basis of this assessment, an individual integration plan was developed.

In **Slovenia** each beneficiary of international protection was assigned a counsellor who ensured access to the most suitable integration measures. According to the International Protection Act, a person granted international protection had the right to participate in the integration programme for three years following the acquisition of the status. During the implementation of the personal integration plan, beneficiaries were entitled to participate in language courses and courses on Slovenian history, culture and constitutional order.<sup>385</sup> Integration programmes in the **Czech Republic** entailed the provision of assistance in the person's daily life, e.g. in accessing social assistance, as well as language courses and support in finding employment and accommodation. The integration measures targeted at beneficiaries of international protection were different and wider compared to the integration programmes addressed to other legally residing third-country nationals.

In **Malta** once asylum applicants were granted international protection they were entitled to the rights under the Refugees Act.<sup>386</sup> Integration programmes encompassed actions on health, education,

In **Sweden**, the 2010 Introduction Act had introduced changes to the legal and policy framework in relation to integration of beneficiaries of international protection. The Introduction Act specified that every beneficiary of international protection should have an individual introduction plan. As a result, each beneficiary is assessed by the PES and the relevant municipality to assess their needs and specify how these are to be addressed through relevant training/ learning/integration activities. In order to be able to participate in it, beneficiaries have to be able to undertake work activities, thus meeting certain age and health requirements. In practice, most are able to undertake the plan. The specific needs of beneficiaries are addressed by the municipalities through general measures (e.g. the health system and rehabilitation services, as required).

<sup>384</sup> See Federal Ministry of European Integration and Foreign Affairs of the Republic of Austria, '50 points towards successful integration', available at: <https://bit.ly/2TZIk85> [last accessed on 3 March 2016].

<sup>385</sup> International Protection Act, Article 99.

<sup>386</sup> Malta: Act XX of 2000, Refugee Act [Malta], 1 October 2001.

social security and housing. The rights of beneficiaries of international protection differed from those of legally residing third-country nationals. For example, the latter were expected to cover school fees while refugees were not. In **Poland** beneficiaries of international protection also received specific assistance. District family assistance centres implemented the IPI, which were carried out within one year of beneficiaries being granted protection. The benefits offered consisted of cash (some PLN 1,200, around EUR 280) to cover the costs of their stay in Poland as well as courses to learn Polish. Beneficiaries of international protection were entitled to work during the programme as IPI was not subject to income criteria.

Whilst **Member States in the second group** did not offer tailored support to beneficiaries of international protection, their specific needs could still be addressed within the framework of general integration measures. For example, in **Finland** integration courses were adjusted to take into consideration the modest level of education of certain refugee groups. In **France**, beneficiaries of international protection were required to sign a reception and integration contract with the French Office for Immigration and Integration (*Office Français de l'Immigration et de l'Intégration*), as was also required for other third-country nationals. However, some targeted support was offered to beneficiaries of international protection in relation to access to employment and housing which went beyond the assistance available for other third-country nationals.<sup>387</sup>

Finally, in the **third group of Member States** limited integration measures, such as language training courses, were sometimes available e.g. through NGOs, but these did not amount to fully-fledged integration programmes. A case in point was **Ireland**, where integration programmes were available for resettled refugees but not for beneficiaries of international protection. In the case of **Greece**, UNHCR reported that there were no state integration facilities or integration programme for beneficiaries of international protection. Limited support measures were available however through programmes under the ESF and the former European Refugee Fund. Similarly, the Portuguese Refugee Council indicated that in **Portugal** there was not a specific integration programme provided for beneficiaries of international protection by the state authorities besides language training, which was offered to all third-country nationals. It was also noted that this training was difficult to access outside the Lisbon area.

### **Access to integration facilities**

Member States had **various methods in place to ensure that beneficiaries of international protection had access to integration measures**, including the provision of information at the moment status was granted (RO), the creation of 'welcome desks' at the local level to ensure that beneficiaries were informed about available integration programmes (AT), the designation of a counsellor (SI) or the performance of an individual assessment (SE).

As regards the application of preconditions to benefit from integration programmes, three Member States (HR, PL, RO) required beneficiaries to formally apply for support. In **Croatia**, according to the Social Welfare Act, beneficiaries of international protection were entitled to the same rights in the social assistance system as Croatian citizens residing in **Croatia**. Therefore there were no special or extra preconditions for accessing services besides those prescribed by law. A beneficiary of international protection who submitted a request to the competent social assistance centre would be provided an introduction to all the rights and eligibility criteria. In **Poland**, according to the Association for Legal Intervention, the requirements for obtaining support comprised presenting an application for such assistance, taking Polish language lessons and not being arrested or convicted in relation to a serious crime. In order to receive integration support in **Romania**, beneficiaries of international protection were required to submit a request to the General Inspectorate for Immigration within one month of obtaining international protection. Beneficiaries were informed of the availability of integration measures the moment they were granted protection. Those belonging to a vulnerable

<sup>387</sup> Point de contact français du Réseau européen des migrations, 'Quatrième étude ciblée 2015 : L'intégration des bénéficiaires de la protection internationale sur le marché du travail : politiques et bonnes pratiques', January 2016.



group were able to access the programme after the ordinary application period had expired. No preconditions applied besides the time limit.

Reported difficulties for beneficiaries of international protection to access integration measures included the long waiting lists (BE), the unavailability of services across the whole territory (PT) and challenges for the authorities to reach out to those not in education or employment, in particular children over 15 years who were no longer required to attend school and women staying at home (AT).

### **Personal integration targets**

**Personal integration targets** – whereby a beneficiary had to meet certain integration standards in order to qualify for other forms of support – were in place in six Member States, (AT, BE, DE, FI, PL and SK), while **Austria** and **Romania** were considering the introduction of such (additional) measures. For example, in **Belgium** fines could be imposed on those who failed to reach an adequate level after completing integration training courses, while in **Finland** the lack of active participation in integration activities meant that the unemployment benefit could be cut by 10%. In **Poland**, beneficiaries of international protection were expected to take language lessons and ought not to be arrested or convicted in connection with a serious crime in order to continue receiving integration support (see above). With regard to attendance to Slovak language classes, **Slovakia** had a ‘sanctioning system’ in place which meant that in cases where the beneficiary missed over 25% of the classes without justifying the absence, they stopped being eligible for financial and in-kind support. In **Germany**, the beneficiary attended the course under a special integration agreement between the beneficiary of international protection and the competent authority (section 44a), there could be sanctions for failure to attend the course or to pass the final test.

In **Austria** adult beneficiaries in unemployment programmes were required to take German classes in order to be able to continue attending the programmes on integration into the labour market. In addition, the possibility of making language classes obligatory for those not trying to access employment was being discussed. **Romania** planned to introduce legislative changes to make available special financial to help beneficiaries to pass the integration programme, which would be attested by the means of a certificate. Beneficiaries could already get a 50% discount on their rent if they were in possession of such a certificate.

### **3.30.3 Changes in Member States’ practices since the Recast QD in 2013**

A number of Member States have changed their national legislation and/or practices to implement the new requirements of the Recast QD concerning access to integration facilities. In **Hungary** the provisions relevant to integration facilities were added to the Act LXXX of 2007 on asylum in 2013. Similarly, the Asylum and Refugees Act was amended in 2015 in **Bulgaria** to this effect. The **Czech Republic** also introduced modifications to its state integration programme. In **Italy**, access to integration facilities was open to both refugees and beneficiaries of subsidiary protection before the adoption of the Recast QD. In addition, with the transposition of the Directive into national law a new provision was introduced, stating that the integration needs of beneficiaries of international protection were considered, promoting each appropriate action to overcome the disadvantage determined by the loss of the protection of the country of origin and to remove obstacles that in fact prevented their full integration.<sup>388</sup> However, it was noted that national practice had not really changed because the integration facilities available to beneficiaries of international protection were no different from those accessible to other third-country nationals. In **Lithuania** the requirements concerning integration facilities specified under Article 34 of the Recast QD were introduced in

<sup>388</sup> Transposition into national law was conducted through the adoption of Legislative Decree 4 March 2014, n. 18, which amended Legislative Decree 19 November 2007, n. 251, implementing Directive 2004/83/EC. The official version of Legislative Decree 18/2014 can be found at: <https://bit.ly/2j4TqHR> [last accessed on 18 March 2016].

national law in 2015,<sup>389</sup> and are also reflected in the national integration programmes. In **Germany**, the entitlement to attend the integration course for beneficiaries of subsidiary protection was only established in the course of the transposition of the Recast QD; before, the possibility to participate was optional and subject to free places on the course.

Other Member States have also recently introduced modifications to their national integration policies (e.g. AT), but it is unclear whether this was a direct consequence of the adoption of the Recast QD or whether these adjustments responded to changing national needs, for example within the context of the refugee crisis or due to increased general migration inflows.

Three Member States stated indicated no changes had been needed in order to implement Article 34, as national practices were already compliant with the requirements of the Recast QD before 2013 (FI, RO, SE).

### 3.30.4 Examples of good application

- Given that the TFEU does not confer legal competence upon the EU for regulation of the integration of third-country nationals legally residing in the Member States, the European Commission should encourage Member States to introduce national integration programmes that are tailored to address the specific needs of beneficiaries of international protection;
- While leaving sufficient flexibility for the Member States to adjust integration policies and programmes to their national needs, the Recast QD could also be amended to state what kinds of measures should be included as a minimum, or to include a non-exhaustive list of measures in terms of, for example, language training, civic and cultural orientation, accommodation and integration into the labour. Alternatively, EASO could develop best practice guidelines on the content of integration programmes, drawing on the examples of good application practice identified in the Member States;
- The European Commission should continue to support the implementation of national integration programmes for beneficiaries of international protection through the provision of funding under the relevant funding instruments.

### 3.30.5 Possible application issues

- The unavailability of integration programmes or their insufficient tailoring to the needs of beneficiaries of international protection in a number of Member States. Member States which do not have integration programmes in place may not be in compliance with the Recast QD.
- The broad divergence in the content of Member States' integration measures, with some Member States having comprehensive integration programmes in place while others offer very limited support.

### 3.30.6 Recommendations

- Based on the above findings, the following recommendations can be put forward: The phrasing of Article 34 could be changed to make it compulsory for Member States' integration programmes to be tailored to address the specific needs of beneficiaries of international protection;
- While leaving sufficient flexibility for the Member States to adjust integration policies and programmes to their national needs, the Recast QD could also be amended to state what kinds of measures should be included as a minimum, or to include a non-exhaustive list of measures. Alternatively, guidance on the content of integration programmes could be provided;

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<sup>389</sup> Through Article. 107, 108, 109 and 110 of the amended Law on the Legal Status of Aliens, No IX-2206 (referred as LSA (IX-2206), that came into force on 1st September 2015.

- The European Commission should continue to support the implementation of national integration programmes for beneficiaries of international protection through the provision of funding under the relevant funding instruments.

### 3.30.7 Benchmarks for measuring the implementation of Article 34

Whether or not the Member States had integration programmes in place:	
Yes, specific for beneficiaries of international protection	AT, CZ, LT, MT, PL, RO, SE, SI
Yes, general for all third-country nationals	BE, CY, DE, FI, FR, SK
No	BG, EL, HR, IE, IT
Whether or not the Member States had integration benchmarks in place:	
Yes	AT, BE, DE, FI, PL, SK
No	All the other Member States

## 3.31 Repatriation – Article 35

### 3.31.1 Background on repatriation

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. Article 35 introduced no changes to the old Article 34 on repatriation.

The following evaluation questions were assessed:

<i>What is the number of beneficiaries of international protection who have made use of repatriation assistance?</i>
<i>What are the different repatriation options available in the Member States?</i>
<i>Is support and assistance provided to beneficiaries of international protection who wish to return?</i>
<i>What are the main obstacles (administrative or practical) to repatriation of beneficiaries of international protection?</i>

### 3.31.2 Findings for Article 35

#### **Summary of main findings**

The main findings in relation to Article 35 can be summarised as follows:

- 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. In general, the support available included, among others, counselling as well as financial assistance to cover travel costs and to reintegrate into the country of repatriation. Most programmes were implemented by IOM.
- When mentioned, practical obstacles to repatriation were generally linked to difficulties in obtaining the requisite travel documents, to the lack of cooperation on the part of the third country concerned or to deficient reintegration conditions in the country of origin.

### Statistical information

Only four Member States provided statistical data on the number of beneficiaries of international protection who had made use of repatriation assistance (BG, HR, SI, RO).<sup>390</sup> In **Bulgaria** there had been three cases of beneficiaries of international protection receiving repatriation assistance since 2013. As for **Romania**, in the period 2012–2015, 28 persons with a form of protection benefited from repatriation services. There had been no cases of refugees and beneficiaries of subsidiary protection receiving repatriation assistance in **Croatia** and **Slovenia**. **Latvia** observed that a high proportion of beneficiaries had been granted citizenship and hence their eventual return to their countries of origin could not be monitored. In general, it appeared that there were not many cases of holders of refugee and subsidiary protection status wishing to be repatriated.

### Repatriation support

In **Italy**, AVR(R) support included counselling, the provision of transportation to the country of destination and pocket money. Beneficiaries could also obtain support to find a job, receive education and training, and access accommodation.

In the **Netherlands**, IOM supports AVR(R) through the REAN (Return and Emigration of Aliens from the **Netherlands**) project. The assistance provided under REAN encompasses the provision of information, assistance during departure at Schiphol airport and if applicable during transit and arrival, an airline ticket to the airport nearest their end destination, remuneration of the costs for travel documents and a financial contribution to help during the first period after leaving the **Netherlands**. Reintegration grants are only provided to migrants who had been in the asylum procedure, not to other third-country nationals.

**Malta's** AVR(R) packages were tailored to the specific needs of the beneficiary requesting assistance. The amount of cash granted ranged from EUR 1,000 to EUR 4,000 depending on the results of an individual assessment.

In **Romania** beneficiaries received an allowance (in cash) and could be helped to set up a small business in their country of origin.

**Sweden** offered an allowance to cover reasonable travel costs, on the condition that the person lacked the means to pay for them and could demonstrate that they would be accepted in the country of destination. In addition, a beneficiary of international protection who chose to return (to the country of origin or to another country) could also benefit from an allowance in cash of up to SEK 10,000 (around EUR 1,080) for each adult and SEK 5,000 (approximately EUR 540) for each child under the age of 18. In total, a family could receive a maximum of SEK 40,000 (approximately EUR 4,300) in cash.

Repatriation options in the Member States included (assisted) voluntary returns, possibly accompanied by reintegration support, and forced returns (IT, MT, RO, SE, SI).

A majority of the Member States offered Assisted Voluntary Return and/or Reintegration (AVR(R)) support to beneficiaries of international protection wishing to repatriate (BG, CY, CZ, EL, IT, MT, NL, PL, RO, SE, SI, SK), generally under their broader AVR(R) programmes for third-country nationals. The support provided entailed various forms of in-kind/in-cash assistance.

In most Member States (BG, CZ, DE, EE, EL, IE, IT, MT, NL, PL, PT, SI, SK) IOM was the service provider implementing their AVR(R) programmes.

Seven Member States had no AVR(R) programmes in place from which beneficiaries of international protection could obtain repatriation support (AT, DE, HR, IE, LU, LV, PT). From these, **Ireland** and **Portugal** required that beneficiaries who wished to repatriate renounced their status, a practice which was also reported for four additional Member States (CZ, EL, PL, SE). In **Poland** the Association for Legal Intervention noted that beneficiaries of subsidiary protection who no longer wished to use that protection could benefit from AVR(R). The fact that most beneficiaries of international protection came from neighbouring countries (Russia and to some extent Ukraine) was highlighted, noting that transport was usually within the range of the financial capabilities of the people returning, thus making state support unnecessary. In **Portugal** IOM required that their status had ceased before beneficiaries of international protection could be eligible for repatriation, which was at times challenging due to the time required to conduct the cessation procedure. In **Sweden**, in cases of repatriation the SMA would withdraw the beneficiary's residence permit. There were no time limits, however, as to when a person could lodge a new asylum application in Sweden, provided there were grounds. In **Germany**, beneficiaries of international protection who wished to return to their country of origin could apply to the programmes available for all third-country nationals wishing to return. The programme essentially

<sup>390</sup> Information regarding all EU Member States bound by Directive 2011/95/EU or 2004/83/EC are reflected regarding Article 35, with the exception of ES, FR, LT where no information could be collected for reasons explained in Section 2 of this report

provided for travel costs and travel subsistence and, for some specific countries, also for short-term reintegration assistance. More flexible and ambitious return assistance programmes were implemented by the different *Länder*, so the available return options depended to some extent also on the place of residence.

### **Obstacles to repatriation**

The main obstacles to repatriation of beneficiaries of international protection concerned the following: the difficulty obtaining the requisite travel documents (mentioned by BG, CZ, EL, IT, MT, NL, RO, SK), the lack of adequate conditions for repatriation in the country of origin (CY, CZ, FI, RO) and a lack of cooperation on the part of the third country concerned (CY, CZ, IT). Financial difficulties (NL) and a lack of knowledge about AVR(R) schemes (IT) were also considered a factor.

### **3.31.3 Examples of good application**

Most Member States offer some kind of repatriation support to beneficiaries of international protection, as foreseen under Article 33 of the Recast QD. In this regard comprehensive and coherent Assisted Return ‘packages’ or programmes spanning the different phases of the return process, and including reintegration assistance, may be considered an example of good application, as they improve the sustainability of returns.

### **3.31.4 Possible application issues**

Given the discretion left to the Member States by Article 35 in the provision of assistance to beneficiaries of international protection who wish to be repatriated, no issues could be observed in relation to the application of this provision. Notably, there seem to be different procedures in place in the Member States in relation to the cessation of the status when beneficiaries of international protection choose to go back to their countries of origin.

### **3.31.5 Recommendations**

- Based on the above findings, the following recommendations can be put forward: EASO could develop guidance to clarify what the consequences of repatriation are for the status of beneficiaries of international protection, including as regards the applicable procedures. According to Article 11(1)(c), a third-country national or stateless person ceases to be a refugee if he or she 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. However, there are various procedures in place in the Member States in relation to the cessation of the status when beneficiaries of international protection choose to go back to their countries of origin, with examples of Member States following a cessation procedure, while others seemingly not doing so.

This guidance should be in line with Article 44(1)–(4) of the Recast APD, establishing a number of procedural rules for the withdrawal of international protection (for instance in terms of the provision of information and the issuance of a decision in writing), unless the Member State has provided in national legislation that international protection will lapse where the beneficiary of international protection has unequivocally renounced his or her recognition as such (see Article 41(5) of the Recast APD).

- The European Commission should encourage those Member States which currently do not offer repatriation assistance to beneficiaries of international protection under their national AVR(R) schemes to do so in the future through the provision of support within the context of the relevant EU funding instruments.
- Alternatively, Article 35 could be amended by replacing the current optional clause with a requirement that Member States shall offer repatriation assistance to refugees and beneficiaries of subsidiary protection.

**3.31.6 Benchmarks for measuring the implementation of Article 35**

<b>Whether or not the Member States offered incentives to encourage repatriation of beneficiaries of international protection:</b>	
Yes	BG, CY, CZ, EL, IT, MT, NL, PL, RO, SE, SI, SK
No	AT, DE, HR, IE, LU, LV, PT



# ANNEXES

## Annex 1 Stakeholder consultation questionnaires

### A1.1 Questionnaire for national authorities

#### Introduction

ICF International is currently undertaking a **study on the evaluation of the application of the recast Qualification 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 on behalf of Directorate General Migration and Home Affairs of the European Commission.

The aim of the study is to examine the practical application of **Directive 2011/95/EU** (Recast QD), which refers to the way in which the Member States have implemented each of the Directive's articles in terms of organisational set-up and operational approach. The practical application of a Directive requires different 'types' of implementation, which ranges from the introduction and further elaboration of new concepts and definitions to the establishment of new or the revision of existing practices, or even the establishment of new operational units and/or departments. In addition, the Recast QD not only affected authorities directly involved in the asylum procedure, but required a much wider group of stakeholders to introduce changes, ranging from NGOs to public employment services, healthcare agencies, etc.

The study will need to undertake a static analysis of the situation in 2015, as well as a dynamic analysis, to compare the situation in 2015 with the situation in 2013. It will cover all Member States which are applying the Directive (i.e. all Member States except Denmark, Ireland and the United Kingdom). In Ireland and the United Kingdom, the study will identify the relevant elements of the national legal framework as covered by Directive 2004/83/EC and identify, analyse and assess the evolution and main achievements, using the same approach as outlined for the other Member States.

ICF International has been commissioned by the European Commission to:

- Examine how and to what extent Member States have **implemented the common standards** and to **identify shortcomings**;
- Examine whether the Recast Qualification Directive has **changed the situation** in the Member States when compared to 2013 and whether it has led to **greater convergence** at EU level;
- **Identify shortcomings** which may justify possible amendments to improve the effectiveness of (part of) the Directive.

The purpose of the consultation is to collect information from all EU Member States bound by the

If you have any questions with regard to the study, please do not hesitate to contact: Julia Behrens at [julia.behrens@icfi.com](mailto:julia.behrens@icfi.com)

#### Contact details and information

Interviewee details
<b>Name:</b>
<b>Name of organisation:</b>
<b>Position in department:</b>
<b>Contact telephone:</b>
<b>E-mail address:</b>



Article	Background and key considerations	Topic and questions	Answer
<b>Qualification</b>			
<b>1. Sequence of the examination of an application</b> Article 2(d) and (f)	<p>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.</p>	1.1. How is it ensured that the procedure is truly single, e.g.: <ul style="list-style-type: none"> <li>- Does a single unit assess both statuses?</li> <li>- Does the same case handler follow the applicant from start to end?</li> <li>- Any other measures to ensure the single procedure?</li> </ul>	
Forward looking	<p>Articles 2(d) and (f) refer to the need to establish that persons in order to be granted international protection status, need to have a well-founded fear of persecution or of the real risk of suffering serious harm, should they return to their country of origin. The definition of refugee, as well as the definition of the subsidiary protection beneficiary, is forward-looking, meaning that the issue is not whether the claimant had good reasons to fear persecution in the past, but whether, at the time the claim is being assessed, the claimant has good grounds for fearing persecution <u>in the future</u>.</p>	1.2. How does your Member State ensure that the concepts of “well-founded fear of persecution” or of the “real risk of suffering serious harm” are forward looking in practice?	
<b>2. Assessment of the facts and circumstances</b> Article 4(1) and (3)	<p>Article 4(1) states that “Member States may consider it the duty of the applicant to submit as soon as possible all the elements needed to substantiate the application for international protection”. Yet, the Member State should assess the relevant elements of the application in cooperation with the applicant – which thus requires the competent authority to, in a sense ‘co-investigate’ such elements.</p>	2.1 How has the Member State ‘allocated / distributed’ the burden of proof in practice? Where has the Member State de facto placed most ‘burden’, on the participant or on the Member State itself?  2.2 How does the allocation of the burden takes account of the fact that very often applicants are unable to support their statements by documentary or other proof (closely linked to article 4(5))?  2.3. Is it possible to reject an application solely based on a lack of evidence provided by the applicant? If so, how has the Member State discharged itself from having to cooperate with the	

Article	Background and key considerations	Topic and questions	Answer
<b>Qualification</b>			
		<p>applicant in establishing the factual circumstances which may constitute evidence supporting the application?</p> <p>2.4. Has the Member State developed a concept similar to giving the applicant 'the benefit of the doubt'?</p>	
Substantiation of applications 'as soon as possible' – Article 4(1)	This provision requires that the applicant submits "as soon as possible" all elements to substantiate her/his application.	2.5 How does the Member States assess whether the applicant submitted all elements need to substantiate the application 'as soon as possible'?	
Evidence required to substantiate the application – Article 4(2)	<p>Article 4(2) lists the statements and type of documentation which can be used to substantiate the application.</p> <p>The evaluation should examine what evidence or documentation is required by the Member State, whether applicants are well informed of these requirements and what standards of proof are used by the Member State to consider an application 'sufficiently substantiated'</p>	<p>2.6. What evidence is required by the Member State?</p> <p>2.7. Does the inability of the applicant to provide some or all documents affect the assessment of the application (e.g. is the applicant held accountable for the lack of documents)?</p>	

Article	Background and key considerations	Topic and questions	Answer
<b>Qualification</b>			
Assessment on an individual basis Article 4(3)	<p>Article 4(3) requires Member States to examine and take decisions on applications on an individual basis. This means that both the individual and contextual situation of the applicant have to be taken into account.</p> <p>The evaluation should examine how Member States have ensured that in practice applications are assessed on an individual basis against the relevant COI (Country of Origin Information). The evaluation should also verify whether all other elements of Article 4(3) are taken into account and if any additional elements have been added.</p>	<p>2.8. How does the Member State identify COI and how does it take the COI into account in its assessment and decision? (Art 4(3)(a))</p> <p>2.9. How does the Member State ensure that the applicant's individual circumstances are taken into account in the procedure? (Art 4(3)(b),(c))</p> <p>2.10. Does the MS check whether the activities of the applicant since leaving the CO were engaged in for the sole or main purpose of creating the necessary conditions for applying for international protection? (Art 4(3)(d))</p> <p>2.11. Does the Member State check whether the applicant can avail him/herself of the protection of another country where s/he could assert citizenship? (Art 4(3)(e))</p>	
Previous persecution or serious harm (Article 4(4))	<p>Article 4(4) provides that, if the applicant has been previously persecuted or has suffered previous serious harm, this is to be considered a serious indication of the applicant's risk of persecution or serious harm in the future.</p> <p>The evaluation should examine how the assessment of the application takes account of previous persecution or serious harm and whether this can result in a rebuttable presumption of continued risk, including the evidence needed for the authorities to rebut it.</p>	<p>2.12. How is the existence of previous persecution or serious harm, or of threats thereof, assessed in the Member State?</p> <p>2.13. Can the assessment result in the presumption that there is no continued risk and can this hence contribute to the decision to reject the application?</p>	

Article	Background and key considerations	Topic and questions	Answer
<b>Qualification</b>			
<p>Exceptions to the duty to substantiate the application with documentation or other evidence Article 4(5)</p>	<p>Article 4(5) sets out the circumstances in which the applicant is not required to substantiate his or her application, in line with Article 4(1) and (2).</p> <p>The evaluation should examine how Member States assess in practice all the aspects listed in this Article and whether such assessment is always carried out on an individual basis.</p>	<p>2.14. Are the following concepts clearly defined:</p> <ul style="list-style-type: none"> <li>- Genuine effort (Art. 4(5)(a))</li> <li>- Satisfactory explanation concerning missing information or other elements (Art. 4(5)(b))</li> <li>- Coherent and plausible statements Art. 4(5)(c)</li> <li>- Application at earliest possible time Art. 4(5)(d))</li> <li>- General credibility of the applicant? Art. 4(5)(e)</li> </ul> <p>2.15. How does the Member State match the applicant's statements with specific and general (objective) information available to the competent authorities?</p>	
<p><b>3. International protection needs arising sur place</b> Article 5</p>	<p>Article 5 provides that the need for international protection can arise 'sur place', i.e. on account of events which took place since a person has left his or her country of origin and due to activities in which this person engaged after his or her departure too. The person may thus have arrived in a Member State applying for / having been granted a different status (e.g. a humanitarian status).</p> <p>An EMN Ad-Hoc query from 2010<sup>391</sup>, concerning the same provisions in the Directive prior to the recast, found that most Member States integrate such applicants in the 'standard' asylum procedure and hence assess their needs on the same basis as other applicants. However, several Member States at least considered the possibility that asylum applicants could</p>	<p>3.1. As part of the asylum procedure, do Member States have a separate procedure to assess international protection needs arising 'sur place'?</p> <p>3.2 If your Member State applies a different level of scrutiny on sur place applications, how does the Member State ensure that the Geneva Convention is still applied as a minimum standard?</p>	

<sup>391</sup> Ad-Hoc Query 228 on Réfugié sur Place

Article	Background and key considerations	Topic and questions	Answer
<b>Qualification</b>			
	<p>through their activities, be creating intentionally the ‘sur place elements’ and some, such as Belgium and Germany, thus applied a higher level of scrutiny on these applications. In 2010, the scale of ‘sur place’ applications was overall considered to be low to non-existent and most cases, at the time, appeared to be treated in subsequent applications.</p>		
<p><b>4. Actors of persecution or serious harm</b> Article 6</p>	<p>Article 6 defines the actors who can subject an individual to persecution or serious harm. Article 6(c) refers to non-State actors (which may comprise, for example, clans, tribes, criminal groups, etc.) if the State and parties or organisations controlling (part of) the State are unable or unwilling to provide protection.</p> <p>The evaluation will review the methods used in practice to identify the actors, in particular the non-State actors, and to assess the ‘unwillingness’ or ‘inability’ of the actors mentioned in Article 6(a) and (b) to provide protection.</p>	<p>4.1. Is the definition of actors, in particular ‘non-state actors’ under Art. 6 of the Directive clarified by the Member State and if yes, how?</p>	
<p><b>5. Actors of protection</b> Article 7(1) – Definition of the actors</p>	<p>Article 7 foresees that protection against persecution or serious harm can only be provided by the state or parties and organisations, including international organisations, controlling the State or a substantial part of the territory of the State. Protection against persecution or serious harm must be effective and of a non-temporary nature and the actors in question should be able and willing to offer protection. This is generally provided when those actors take reasonable steps to prevent the persecution or suffering of serious harm, e.g. by operating an effective legal system for the detection, prosecution and punishment of acts</p>	<p>5.1. What are the criteria for the Member State to assess whether parties or organisations controlling the State are willing and able to offer protection?</p> <p>5.2. Regarding non-state organisations, does the Member State provide for a list of ‘reliable’ organisations?</p>	

Article	Background and key considerations	Topic and questions	Answer
<b>Qualification</b>			
	<p>constituting persecution or serious harm, and when the applicant has access to such protection.</p> <p>The evaluation should examine how Member States identify actors of protection and assess that they afford a sufficient and effective level of protection, in particular how it can be ensured that non-State actors, who are unlikely to be held accountable under international law, are able to provide protection which is not limited in duration and scope.</p>		
<p>Article 7(2) and (3) – Assessment of the protection</p>		<p>5.3. Does the Member State take into account the laws and regulations of the country of origin and the manner how they are applied? If so, how does the Member State assess the application?</p> <p>5.4. How does the Member State verify that the individual applicant has access to such protection in reality?</p> <p>5.5. Does the Member State apply a due diligence test (i.e. focusing on whether the state or non-state actors have reasonably taken steps to protect)? Does it also examine the quality of the protection provided? If so, what are the criteria for such ‘quality tests’?</p> <p>5.6. What criteria are applied to define ‘reasonable steps’ ensuring an effective and non-temporary protection from persecution or suffering of serious harm?</p>	

Article	Background and key considerations	Topic and questions	Answer
<b>Qualification</b>			
		<p>5.7. What criteria/definition does the Member State apply to define whether the actors are operating an effective legal system for the detection, prosecution and punishment of persecution? In case of a non-state actor, how is the influence of such an actor on the legal system assessed?</p> <p>5.8. Do you have examples of cases where the application was rejected on the basis that protection was granted in the country of origin? If so, can you specify?</p>	
<p><b>6. Internal protection</b> Article 8</p>	<p>Article 8 allows Member States to determine that an applicant is not in need of international protection if in a part of the country of origin he/she has no well-founded fear of being persecuted or is not at real risk of suffering serious harm and if he or she can safely and legally travel to and gain admittance to that part of the country and can reasonably be expected to settle there.</p> <p>Article 8(2) determines that 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, Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant. To that end, Member States shall ensure that precise and up-to-date</p>	<p>6.1. Does the Member State assess the internal protection:</p> <ul style="list-style-type: none"> <li>i) As part of the status determination, thus being linked to the well-founded fear?</li> <li>ii) After status determination and not linked to the well-founded fear?</li> </ul> <p>6.2. How does the MS determine whether a region of the country of origin can be considered as safe?</p> <p>6.3. Are the individual's personal circumstances considered with regard to general living conditions in the region?</p> <p>6.4. How does the Member State assess whether the applicant can travel, gain admittance and settle in that part of the country?</p> <p>6.5. When an internal protection alternative may be available, does the Member State assess the</p>	

Article	Background and key considerations	Topic and questions	Answer
<b>Qualification</b>			
	<p>information is obtained from relevant sources, such as the UNHCR and EASO.</p> <p>The evaluation should present a comprehensive overview of the way Member States assess how an IPA is applied in practice.</p>	<p>relevant elements of the application in cooperation with the applicant, as laid down in Art. 4(1) of the Directive?</p>	



Article	Background and key considerations	Topic and questions	Answer
<b>Qualification</b>			
<p><b>7. Acts of persecution</b> Article 9</p>	<p>Article 9 sets out which acts are considered as acts of persecution within the meaning of the Geneva Convention. It also requires a nexus between reasons for the persecution and the act of persecution.</p> <p>The evaluation should provide an overview of how Member States assess acts of persecution.</p>	<p>7.1. How does the Member State assess the seriousness of an act as referred to in Article 9(1)?</p> <p>a) Is there a definition of the threshold for “sufficient seriousness” (paragraph a)?</p> <p>b) Are there “measures” that do not constitute violations of human rights that could qualify as acts of persecution as long as they affect an individual in a similar manner (paragraph b)?</p> <p>c) How does the Member State evaluate that an individual is affected “in a similar manner” by “an accumulation of various measures” (paragraph b)?</p> <p>7.2. Does the Member State consider all acts specified in Article 9(2) as acts of persecution? Does it recognise additional acts as acts of persecution?</p> <p>7.3. How does the Member State establish the connection between the reasons for persecution and the acts of persecution?</p> <p>7.4. Does the Member State assess the connection between the reasons for persecution and the absence of protection against acts of persecution?</p>	
<p><b>8. Reasons for persecution</b> Article 10</p>	<p>Article 10, in line with the 1951 Refugee Convention, provides that persons qualify for refugee status where they have a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or their membership to a particular social group. This last ground is defined, in Article 10(1)(d), by reference to</p>	<p>8.1. Can the assessment of the reasons be influenced by considerations such as the possibility for the applicant to behave ‘discreetly’ in the country of origin to avoid persecution?</p>	

Article	Background and key considerations	Topic and questions	Answer
<b>Qualification</b>			
	<p>two criteria: that the members of this group share an innate characteristic or one that is so fundamental to identity or conscience that cannot reasonably be changed (the “protected characteristics” test) and that they are perceived by society as a distinct group (the “social perception” test).</p> <p>The evaluation should examine how Member States interpret in practice each reason set out in Article 10 and in particular how the criteria for membership of a particular social group are applied.</p>	<p>8.2. Does the Member State use the criteria set in Article 10(1)(d) in order to define a “particular social group”?</p>	
<p><b>9. Serious harm</b> Article 15(a) – Death penalty or execution</p>	<p>Article 15 sets out the common standards for the qualification of subsidiary protection, which is closely modelled upon Article 3 ECHR and the jurisprudence of the ECtHR. Member States have to grant subsidiary protection to a third country national or a stateless person who faces a real risk of serious harm. Serious harm consists of:</p> <ul style="list-style-type: none"> <li>- The death penalty or execution (Article 15 (a));</li> <li>- Torture or inhuman degrading treatment or punishment;</li> </ul> <p>or</p> <ul style="list-style-type: none"> <li>- Serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict.</li> </ul> <p>The evaluation should examine the types of cases covered by the grounds listed in Article 15 and whether the notion also allows the inclusion of other human rights violations.</p>	<p>9.1. Does the Member States assess the risk of death penalty or execution individually or generally?</p> <p>9.2. Where the Member State only assesses the general existence of the death penalty for certain offences, does the Member State also assess the likelihood of the death penalty being imposed in the individual case?</p>	

Article	Background and key considerations	Topic and questions	Answer
<b>Qualification</b>			
Article 15(b) – Torture, inhuman or degrading treatment or punishment		<p>9.3. How does the Member State assess the risk of torture? And how is it ensured that this information is constantly updated and unbiased?</p> <p>9.4. How does the Member State assess the risk of inhuman and degrading treatment or punishment? Is the ECtHR jurisprudence based on Article 3 ECHR used in the assessment?</p> <p>9.5. Does the Member State define a minimum level of seriousness? Does the risk have to continuously exist for a certain period of time?</p> <p>9.6. How does the Member State assess the circumstances of the case?</p>	
Article 15(c) – Serious and individual threat by reason of indiscriminate violence		<p>9.11. How does the Member State assess serious and individual threat?</p> <p>9.12. How does the Member State assess indiscriminate violence in situations of international or internal armed conflict?</p> <p>9.13. What elements are taken into account to assess the level of violence?</p> <p>9.14. How does the Member State interpret the link between serious and individual threat with situational indiscriminate violence?</p>	

Article	Background and key considerations	Topic and questions	Answer
<b>Qualification</b>			
		<p>9.15. Does the Member State ensure that the “individual” nature of the threat does not lead to an additional threshold and higher burden of proof?</p> <p>9.16. Does the Member State have a narrow or broad understanding of international or internal armed conflict?</p>	
<p><b>10. Cessation</b> Articles 11 and 16</p>	<p>Articles 11 and 16 respectively set out the conditions for ceasing the refugee or subsidiary protection status granted. The Recast introduced an important exception to cessation for “compelling reasons arising out of previous persecution” and the Articles were overall considered to be more in line with the Refugee Convention and general humanitarian principles.</p>	<p>10.1. What triggers the application of the cessation provisions? Is the start of a review linked to UNHCR recommendations on cessation and UNHCR country of origin guidance?</p> <p>10.2. What information is used to assess whether a third-country national is still eligible for international protection?</p> <p>10.3. How does the Member State assess the change of circumstances? Does the Member State apply a ‘grace period’ to ensure that the changes are indeed non-temporary?</p> <p>10.4. How does the Member State assess the “compelling reasons”?</p>	

Article	Background and key considerations	Topic and questions	Answer
<b>Qualification</b>			
<p><b>11. Exclusion</b> Articles 12 and 17</p>	<p>Articles 12 and 17 respectively set out the conditions excluding a third-country national from being a refugee or beneficiary of subsidiary protection.</p> <p>Article 1D of the Geneva Convention provides that This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance. When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention.</p> <p><b>Existence of another form of protection</b> With regard to Article 12(1)(a), the UNHCR clarified that the Article served to maintain the specific status of certain Palestinian refugees and to ensure the continuity of their international protection, not to exclude them (hence no separate assessment needed of their well-founded fear, etc. The CJEU interpreted restrictively the clause of exclusion of Art. 12(1)(a), clarifying that a person is considered as receiving protection or assistance from an agency of the United Nations other than UNHCR only when that person has actually availed himself of that protection or assistance. In case the person has not availed of the protection or this protection ceases for any reason s/he is <i>ipso facto</i></p>	<p>11.1. How does the Member State determine that a person falls within the scope of Article 12(1)(a)?</p> <p>11.2. How does the Member State check the <i>present character</i> of the protection? Does it check whether the person has actually availed himself of that protection or assistance?</p> <p>11.3. What are the consequences if the type protection defined under Article 12(1)(a) ceases to exist?</p> <p>11.4. How does the Member State determine whether assistance has ceased?</p>	

Article	Background and key considerations	Topic and questions	Answer
<b>Qualification</b>			
	entitled to benefit of the QD. <sup>392</sup>		

<sup>392</sup> Judgment of the CJEU of 17 June 2010 on case C-31/09 and following judgement on case C-364/11.

Article	Background and key considerations	Topic and questions	Answer
<b>Qualification</b>			
Equivalent rights and obligations	<p>Article 12(1)(b) refers to exclusion when a refugee is granted, by the competent authority of the country in which s/he has taken up residence, the same or equivalent rights and obligations as those granted to nationals of that country.</p> <p>The evaluation should review how Member States determine whether the rights and obligations are 'equivalent' to those of nationals of that Member State.</p>	<p>11.5. What triggers the application of Article 12(1)(b)?</p> <p>11.6. Do you apply an exclusion clause with respect to an applicant who is recognised by the competent authorities of the country in which s/he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country; or rights and obligations equivalent to those?</p>	
Exclusion for not qualifying for international protection	<p>Article 12(2) and Article 17(1) set out respectively the grounds for excluding third-country nationals from respectively refugee status or subsidiary protection. Both articles relate to crimes against peace, war crimes, crimes against humanity, serious crimes and acts contrary to the purpose of the UN purposes and principles, as set out in Articles 1 and 2 of its Charter. Article 12(2) specifies that serious crimes are non-political are commitment outside the country of refuge prior to the person's admission as a refugee and further specifies that particularly cruel crimes, even with a political objective, can be classified as a serious non-political crime. Article 17(1) on the other hand also allows for the exclusion of third-country nationals who</p>	<p>11.7. Does the Member States define the concepts related to the exclusion grounds?</p> <p>11.8. How does the Member State verify the application of the grounds for exclusion?</p> <p>11.9. Before applying this provision (Article 12(2)) does the Member State assess first whether there is a well-founded fear of persecution if the person returns to his/her country?</p>	

Article	Background and key considerations	Topic and questions	Answer
<b>Qualification</b>			
	constitute a danger to the community or to the security of a Member State.		
<b>12. Granting refugee or subsidiary protection status</b> Articles 13 and 18	<p>Articles 13 and 18 set out that Member States shall grant respectively refugee status or subsidiary protection to third-country nationals who meet the requirements and conditions as set out in respectively Chapters II and III and Chapters IV and V.</p> <p>The evaluation should examine whether Member States retain any discretion in recognising persons when the conditions are met.</p>	12.1. What are the key drivers of the divergences in the ratio accepted / rejected third-country applicants from the same country of origin?	



Article	Background and key considerations	Topic and questions	Answer
<b>Qualification</b>			
<p><b>13. Revocation, ending or refusal to renew refugee or subsidiary protection status</b> Burden of proof and margin of discretion - Articles 14(2) and (3) and 19(2) and (4)</p>	<p>The provisions in Articles 14(2) and (3) and 19(2) and (4) set out the conditions for Member States to revoke, end or refuse to renew respectively the refugee and subsidiary protection status. The grounds for this include cessation of the status (Articles 11 and 16), exclusion (Articles 12 and 17), misrepresentation or omission of facts, danger to security and conviction by final judgement.</p> <p>According to the Articles, it is mostly up to the Member State to demonstrate that the conditions have been met and that the person concerned no longer qualifies (or had never qualified) for the status, and this on an individual basis.</p> <p>The CJEU interpreted the conditions under which the refugee status ceased to exist and the obligations of Member States to verify that some circumstances had occurred before proceeding with revocation.</p> <p>The evaluation should examine how the burden of proof is allocated in practice, especially taking into account the 'general' burden of proof placed on the applicant, in accordance with Article 4(1).</p>	<p>13.1. In practice, is the person subject of the revocation, ending or refusal to renew allowed / expected to contradict the evidence of the competent authority?</p> <p>13.2. To what extent do the competent authorities have any margin of discretion with regard to maintaining the status or ending, revoking, refusing the renewal of it, if one or more grounds are demonstrated to have been met?</p> <p>13.3. What is the procedure/mechanism to review whether the status should be revoked, ended or refused?</p>	

Article	Background and key considerations	Topic and questions	Answer
<b>Qualification</b>			
Revocation of/refusal to grant status to a refugee	<p>Articles 14(4)-(6) set out that Member States may revoke, end or refuse to renew the status granted to a refugee if the latter is regarded as a danger to national security or if s/he has been convicted by a final judgement of a particularly serious crime and that these reasons can also be invoked for not granting a status, should a decision still be outstanding. Where 14(4) and (5) apply, the persons are entitled to certain rights (including the right to appeal, to education, to not being penalised or expelled and the principle of non-refoulement) of the Refugee Convention according to Article 14(6).</p> <p>The evaluation should examine whether and how the Member States apply the provisions in practice and how they respect the Geneva Convention and the specific rights listed in Article 14(6).</p>	<p>13.4. How does the Member State ensure that the Refugee Convention is overall respected and the specific rights of Article 14(6) granted when applying Article 14?</p> <p>13.5. What are the procedures and mechanisms in place to make decisions on the basis of Articles 14(4) and 14(5) (see also above)?</p>	

Article	Topic and questions	Answer
<b>Content</b>		
<p><b>1. General rules</b> Articles 20(1) and (2) – Content of international protection</p>	<p>1.1.a) What are the rights granted to: - Refugees? - SP beneficiaries?</p> <p>b) Are they different?</p> <p>1.2. If yes, are the rights granted to SP beneficiaries restricted? Why?</p> <p>1.3. Does the Member State use any specific ‘tests’, criteria and/or thresholds to establish which rights and benefits could be granted to the status?</p>	
<p>Articles 20(3) and (4) – Specific situation of vulnerable persons</p>	<p>1.4. Does the Member State conduct ‘individual evaluations’ to assess whether a person has special needs or do the competent authorities rely on the evaluation made in the asylum procedure?</p> <p>1.5. What is the competent authority to undertake this evaluation?</p> <p>1.6. Does the Member State use any specific tests, criteria and/or thresholds to assess the existence of special needs? Is the list of vulnerable persons presented in Art. 20(3) considered as an exhaustive list?</p> <p>1.7. Who is informed of the outcome of the evaluation? Are the rights/treatment granted tailored to the individual situation?</p>	
<p><b>2. Protection from refoulement</b> Article 21</p>	<p>2.1. To what extent do Member States refoule refugees – whether formally recognised or not - if s/he is considered a danger to the Member States security?</p>	

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<b>Content</b>		
	<p>2.2. To what extent do Member States refoule refugees – whether formally recognised or not – if s/he is considered a danger to the community after having been convicted of serious crime?</p> <p>2.3. Article 21(2)(b), Are the two criteria assessed separately?            - Having been convicted            - Constituting a danger assessed separately?            If yes, is the same authority responsible for this assessment? Does the final judgement on the two criteria constitute an irrefutable presumption?</p> <p>2.4. How does the Member State assess the seriousness of the danger? Does it use any specific test, criteria and/or thresholds?</p> <p>2.5. Does relevant national case law exist on the application of this article?</p>	
<p><b>3. Information</b> Article 22</p>	<p>3.1. How do the national authority guarantee the right to access to information on the rights and obligations relating to the status granting?</p> <p>3.2. What type of information is provided to those granted asylum (content)?</p> <p>3.3. Is the information provided in a language that is understandable for the person granted asylum?</p> <p>3.4. How is the information delivered (e.g. face-to-face, hotlines, helpdesks, etc.)? By whom?</p>	
<p><b>4. Maintaining family unit</b> Article 23(2)</p>	<p>4.1. Does the Member State apply the definition of family member listed in Article 2(j) exhaustively?</p>	

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	<p>4.2. Are there any specific conditions around the beneficiary of international protection and the number of family members who can derive rights from his/her status?</p> <p>4.3. Are there more favourable provisions than those of the Directive in national legislations?</p> <p>4.4. How does the Member State assess the existence of family relations?</p> <p>4.5. In practice, what obstacles do you face when it comes to establishing the existence of family relations?</p> <p>4.6. In practice, what obstacles arise when it comes to ensuring that family members are granted the same rights and benefits as the beneficiary of IP?</p>	
Establishing family links with minor children	<p>4.7. How does the Member State establish the family link with minor children?</p> <p>4.8. What type of evidentiary requirements are requested from family members (e.g. adoption papers, marriage certificates)?</p> <p>4.9. Does the Member State use any specific 'tests', criteria and/or thresholds to assess the assess family relations (e.g. DNA test age assessments, testimonies from other applicants)?</p>	
Other close relatives Article 23(5)	4.10. Does the Member State extend the application of Article 23 to other close relatives?	
<b>5. Residence permits</b> Article 24	5.1. Which authorities are involved in the residence permit procedures, including for family members of beneficiaries of international protection?	

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	<p>5.2. What is the average length of the procedure?</p> <p>5.3. Are there different procedures and rules applied to issuing, renewing and ending residence permits of family members of beneficiaries of international protection? If yes, what are the main consequences of these differences?</p> <p>5.4. What are the rights and benefits associated with the issuing of residence permits?</p> <p>5.5. What are the consequences for the status, rights and benefits of the beneficiary of international protection of the following situations:            - Residence permit not issued/renewed?            - Residence permit revoked?<sup>393</sup></p> <p>5.6. What compelling reasons of national security and public order are generally invoked by the Member State?</p> <p>5.7. What is the definition of “danger”, “national security and public order” as well as the threshold for measuring the “danger”?</p>	

<sup>393</sup> CJEU, C-373/13, *H. T. v Land Baden-Württemberg*, 24 June 2015.

Article	Topic and questions	Answer
<b>Content</b>		
<p><b>6. Travel document</b> Article 25</p>	<p>6.1. What are the authorities involved in the travel document issuance procedures in the Member State?</p> <p>6.2. What are the conditions and (documentary and other) requirements for obtaining the travel document in the Member States?</p> <p>6.3. What is the average length of the procedure?</p> <p>6.4. What type of document is issued by your Member State? Are there any differences between the travel documents issued for refugees and for beneficiaries of SP?</p> <p>6.5. In practice, what can affect the beneficiary's ability to exercise his/her rights to travel? - Limitations implied by the travel document? - Different requirements in the Member State? Etc</p> <p>6.6. How does the Member State assess whether and when beneficiaries of subsidiary protection are able to obtain a national passport?</p> <p>6.7. What type of compelling reasons of national security and public order to not issue a travel document are generally invoked by Member States?</p> <p>6.8. What is the definition of "danger", "national security and public order" as well as the threshold for measuring the "danger"?</p>	
<p><b>7. Access to employment</b> Article 26</p>	<p>7.1. What type of administrative conditions and requirements to access the labour market (e.g. a work permit and related administrative procedures) are requested by Member States?</p> <p>7.2. Are there any practical obstacles in relation to access to employment (e.g. need to obtain a work permit, knowledge of national language, etc.)?</p>	

Article	Topic and questions	Answer
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Article 26 (1)	<p>7.3 Are beneficiaries of international protection authorised to engage in employed or self-employed activities subject to the rules generally applicable to the profession and to the public service? When does this authorisation enter into force?</p> <p>7.4. Are the requirements for beneficiaries of international protection more stringent than for nationals?</p> <p>7.5. In practice can this be a major obstacle to accessing employment?</p>	
Article 26(2)	<p>7.6. Are activities such as employment-related education opportunities for adults, vocational training (including training courses, counselling services afforded by employment offices, etc...) offered to beneficiaries of international protection, under equivalent conditions as nationals?</p> <p>7.7. How does the Member State ensure full access to the activities listed above?</p> <p>7.8. Are there wider programmes for migrants or other disadvantaged groups to facilitate access to employment? How are they funded?</p> <p>7.9. Which are the main practical obstacles hindering access to employment and VET related services in the Member States for beneficiaries of international protection?</p>	
Article 26(3)	In comparison with nationals, did MS create more favourable conditions to take into account the special needs of refugees and SP beneficiaries?	
Article 26(4)	<p>7.10. Do national legal provisions concerning remuneration, access to social security systems and other conditions of employment apply to beneficiaries of international protection?</p> <p>7.11. In practice, are there obstacles to the application of these provisions to beneficiaries of international protection?</p>	



Article	Topic and questions	Answer
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	7.12. What are the review mechanisms in place in case of discrimination between nationals and beneficiaries of international protection? Is there any relevant case law?	
<b>8. Access to education</b> Article 27	8.1. Who is involved in providing access to education to minors and adult beneficiaries of international protection in the Member States?  8.2. What are the conditions and requirements for adults to access education in the MS? Do the same conditions apply to beneficiaries of international protection as to TCN legally residing in the MS?  8.3. What are the conditions and requirements for children to access education in the MS? Do the same conditions apply to beneficiaries of international protection as to nationals?  8.4. Is additional support available for children and adult beneficiaries of international protection? Is it part of wider programmes for migrants or other disadvantaged groups?	
<b>9. Access to procedures for recognition of qualifications</b> Article 28	9.1. Are the recognition procedures and mechanisms in place in the Member State accessible to beneficiaries of international protection?  9.2. Is additional support available specifically for beneficiaries of international protection (or as part of wider programmes for migrants or other disadvantaged groups)?  9.3. In practice, what are the obstacles to the formal recognition of qualifications for beneficiaries of international protection?	

Article	Topic and questions	Answer
<b>Content</b>		
Article 28(2) - Full access to schemes	<p>9.4. Are there schemes in the Member State in relation to the assessment, validation and accreditation of skills and competences when documentary evidence of qualifications cannot be provided?</p> <p>9.5. Are these schemes accessible to beneficiaries of international protection?</p> <p>9.6. What are the costs associated with these schemes? Is financial support offered by the Member State?</p>	
<p><b>10. Social welfare</b> Article 29</p>	<p>10.1. What are the entitlements granted to beneficiaries of international protection and the conditions for accessing social assistance?</p> <p>10.2. What authorities/ stakeholders are involved in the granting of social assistance to beneficiaries of international protection?</p> <p>10.3. What is the procedure for the Member State to assess what constitutes “necessary social assistance”?</p> <p>10.4. Do beneficiaries of international protection receive specific necessary social assistance? Is there any evidence of any discrimination with regard to access to social assistance?</p> <p>10.5. In practice, are there obstacles to the provision of social assistance to the beneficiaries of international protection?</p> <p>10.6. Have there been cases where the Member State limited social assistance granted to beneficiaries of international protection to core benefits? Why?</p> <p>10.7. What constitutes core benefits? Are they provided at the same level and under the same eligibility conditions as nationals?</p>	

Article	Topic and questions	Answer
<b>Content</b>		
<p><b>11. Healthcare</b> Article 30</p>	<p>11.1. Are the conditions for beneficiaries of international protections to access healthcare the same as those set for nationals?</p> <p>11.2. Is there evidence of any discrimination with regard to the provision of healthcare to beneficiaries of international protection?</p> <p>11.3. Are there any administrative obstacles to the provision of healthcare to beneficiaries of international protection?</p> <p>11.4. Are there any practical obstacles to the provision of healthcare to beneficiaries of international protection?</p> <p>11.5. Do Member States provide any specific forms of healthcare to beneficiaries with special needs, including treatment of mental disorders, trauma related to torture, rape, exploitation and other forms of abuse and degrading treatment, etc.? If so, what are the main specific forms of healthcare provided?</p> <p>11.6. How are the special needs assessed in the context of access to healthcare?</p> <p>11.7. What authorities/stakeholders are involved in the provision of specific forms of healthcare?</p>	
<p><b>12. Unaccompanied minors</b> Article 31</p>	<p>12.1. Who are the main stakeholders responsible for appointing guardians for UAMs?</p> <p>12.2. What is the procedure to appoint a guardian? What are the conditions for appointment? Is there continuity of guardianship?</p> <p>12.3. Who is typically appointed as guardian in practice (legal guardians, organisations, other appropriated representations, etc.)?</p>	

Article	Topic and questions	Answer
<b>Content</b>		
	12.4. What is the mandate of the guardian? Are there limitations as to the areas in which the UAM can be represented (e.g. with regard to healthcare, education, etc.)?	
Article 31(2) and (6)	12.5. Are oversight mechanisms of guardianships and guardians in place in the Member States? Please describe the procedure and its frequency. Are UAMs involved in the assessment?	
Article 31(4)	12.6. What is the procedure for placing UAMs? Who are the actors involved?  12.7. What are the criteria for placing UAMs? Do Member States always keep siblings together? Do exceptions occur? If so, what are the main reasons and how often does this happen in practice?	
Article 31(5)	12.8. Who are the responsible authorities for family tracing?  12.9. What is the procedure for family tracing? Is family tracing a continuation of tracing that already started during the asylum procedure? How long does it last in average?  12.10. How is confidentiality ensured if family members are still living in the country of origin?  12.11. What are the consequences of a successful tracing procedure? Unsuccessful procedure?	

Article	Topic and questions	Answer
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<p><b>13. Access to accommodation</b> Article 32</p>	<p>13.1. What are the stakeholders involved in granting beneficiaries of international protection access to accommodation?</p> <p>13.2. Are the conditions for granting access to accommodation the same as the conditions applied for legally residing TCN? Are the conditions different for refugees and beneficiaries of SP?</p> <p>13.3. Is specific support (e.g. special housing, assistance with finding accommodation, acting as guarantor for rental contracts, providing deposits, etc.) provided to beneficiaries of international protection? What are the requirements to receive such support?</p> <p>13.4. In average, how long does it take for beneficiaries of international protection to have access to stable accommodation from the day their status is recognised/granted?</p> <p>13.5. What are the administrative and practical obstacles to accessing accommodation?</p>	
Article 32(2)	<p>13.6. What are the specific support measures in place in the Member States to facilitate access to accommodation of beneficiaries of international protection?</p> <p>13.7. Is there evidence of any discrimination with regard to access to accommodation?</p> <p><b>Please note that these may already have been identified as part of support programmes above under Article 32(1).</b></p> <p>13.8. Do Member States make use of dispersal mechanisms for the distribution of beneficiaries across their territory? Please describe the procedure and the grounds for the application of the mechanism.</p>	

Article	Topic and questions	Answer
<b>Content</b>		
<p><b>14. Freedom of movement within the MS</b> Article 33</p>	<p>14.1. Are the conditions and restrictions in relation to the free movement of beneficiaries of international protection on the territory of Member States the same as those applying to legally residing TCN?</p> <p>14.2. Is there evidence of discrimination with regard to the free movement of beneficiaries of international protection on the territory of Member States?</p> <p>14.3. What are the main (practical/administrative) obstacles encountered by beneficiaries of international protection who want to move within the territory of the Member States?</p>	
<p><b>15 Access to integration facilities</b> Article 34</p>	<p>15.1. Who are the actors responsible for ensuring access to “appropriate” integration programmes for beneficiaries of international protection?</p> <p>15.2. What are the main integration programmes available to the “appropriate” integration programmes for beneficiaries of international protection? Are they different from integration programmes for other legally residing TCN?</p> <p>15.3. What is the procedure for “assigning” beneficiaries of international protection to “appropriate” programmes?</p> <p>15.4. To what extent Member States have put in place pre-conditions for accessing integration programmes? How do they assist beneficiaries of international protection to meet these conditions?</p> <p>15.5. How are the specific needs of beneficiaries of international protection taken into account?</p> <p>15.6. To what extent are integration benchmarks (including participation in activities / achieving certain standards) are conditional for accessing other benefits and rights under the QD?</p>	

Article	Topic and questions	Answer
<b>Content</b>		
<b>16. Repatriation</b> Article 35	<p>16.1. What are the different repatriation options available in the Member States?</p> <p>16.2. Is support and assistance provided to beneficiaries of international protection who wish to return?</p> <p>16.3. Are there differences in the support and assistance provided depending on the type of repatriation option chosen?</p> <p>16.4. What are the main obstacles (administrative or practical) to repatriation of beneficiaries of international protection?</p>	

## A1.2 Questionnaire for national NGOs<sup>394</sup>

Article	Background and key considerations	Topic and questions
<b>Qualification</b>		
<b>1. Article 2</b> Forward looking	Articles 2(d) and (f) refer to the need to establish that persons in order to be granted international protection status, need to have a well-founded fear of persecution or of the real risk of suffering serious harm, should they return to their country of origin. The definition of refugee, as well as the definition of the subsidiary protection beneficiary, is forward-looking, meaning that the issue is not whether the claimant had good reasons to fear	<p>1.1. Do you know whether your Member State ensures that the concepts of “well-founded fear of persecution” or of the “real risk of suffering serious harm” are forward looking in practice?</p> <p>1.2. Are you aware of any issues with the assessment of these concepts by the competent authorities in your Member State?</p>

<sup>394</sup> Slightly adjusted questionnaires were used for national lawyers and judges.

Article	Background and key considerations	Topic and questions
	<p>persecution in the past, but whether, at the time the claim is being assessed, the claimant has good grounds for fearing persecution <u>in the future</u>.</p>	
<p><b>2. Assessment of the facts and circumstances</b> Article 4(1) and (3)</p>	<p>Article 4(1) states that “Member States may consider it the duty of the applicant to submit as soon as possible all the elements needed to substantiate the application for international protection”. Yet, the Member State should assess the relevant elements of the application in cooperation with the applicant – which thus requires the competent authority to, in a sense ‘co-investigate’ such elements.</p>	<p>2.1 In practice, has your Member State placed the burden of proof on the participant or on the Member State?</p> <p>2.2 Does the allocation of the burden take account of the fact that, very often, applicants are unable to support their statements by documentary or other proof?</p> <p>2.3. Are you aware of cases where an application was rejected solely based on a lack of evidence s/he provided? If so, how did the Member State discharge itself from having to cooperate with the applicant in establishing the factual circumstances which may constitute evidence supporting the application?</p> <p>2.4. Has your Member State developed a concept similar to giving the applicant ‘the benefit of the doubt’?</p>
<p>Substantiation of applications ‘as soon as possible – Article 4(1)</p>	<p>This provision requires that the applicant submits “as soon as possible” all elements to substantiate her/his application.</p>	<p>2.5 Are you aware of any issues with your Member State’s assessment of the need for the applicant to substantiate his/her application ‘as soon as possible’? Can evidence be added before the decision on the application is made?</p>
<p>Evidence required to substantiate the application – Article 4(2)</p>	<p>Article 4(2) lists the statements and type of documentation which can be used to substantiate the application.</p> <p>The evaluation should examine what evidence or documentation is required by the Member State, whether applicants are well informed of these requirements and what standards of proof are used by the Member State to consider an application ‘sufficiently substantiated’</p>	<p>2.6. Does the inability of the applicant to provide some or all documents affect the assessment of the application (e.g. is the applicant held accountable for the lack of documents)?</p>



Article	Background and key considerations	Topic and questions
<p>Assessment on an individual basis Article 4(3)</p>	<p>Article 4(3) requires Member States to examine and take decisions on applications on an individual basis. This means that both the individual and contextual situation of the applicant have to be taken into account.</p> <p>The evaluation should examine how Member States have ensured that in practice applications are assessed on an individual basis against the relevant COI (Country of Origin Information). The evaluation should also verify whether all other elements of Article 4(3) are taken into account and if any additional elements have been added.</p>	<p>2.7. What are your views on the competent authority's identification and use of COI in its assessment and decision?</p> <p>2.8. How do the authorities ensure that the applicant's individual circumstances are taken into account in the procedure?</p>
<p>Previous persecution or serious harm (Article 4(4))</p>	<p>Article 4(4) provides that, if the applicant has been previously persecuted or has suffered previous serious harm, this is to be considered a serious indication of the applicant's risk of persecution or serious harm in the future.</p> <p>The evaluation should examine how the assessment of the application takes account of previous persecution or serious harm and whether this can result in a rebuttable presumption of continued risk, including the evidence needed for the authorities to rebut it.</p>	<p>2.9. Are you aware of any issues with the assessment of previous persecution or serious harm, or of threats thereof in your Member State?</p> <p>2.10. Can the assessment result in the presumption that there is no continued risk and can this hence contribute to the decision to reject the application?</p>
<p>Exceptions to the duty to substantiate the application with documentation</p>	<p>Article 4(5) sets out the circumstances in which the applicant is not required to substantiate his or her application, in line with Article 4(1) and (2).</p>	<p>2.11. Do you think the following concepts are clearly defined in your Member State:</p> <ul style="list-style-type: none"> <li>- Genuine effort? (Art. 4(5)(a))</li> <li>- Satisfactory explanation concerning missing information or other elements? (Art. 4(5)(b))</li> <li>- Coherent and plausible statements Art. 4(5)(c)</li> <li>- Application at earliest possible time Art. 4(5)(d))</li> </ul>

Article	Background and key considerations	Topic and questions
<p>or other evidence Article 4(5)</p>	<p>The evaluation should examine how Member States assess in practice all the aspects listed in this Article and whether such assessment is always carried out on an individual basis.</p>	<p>- General credibility of the applicant? Art. 4(5)(e))  2.12. How does the competent authority match the applicant's statements with the specific and general (objective) information available?</p>
<p><b>3. International protection needs arising sur place</b> Article 5</p>	<p>Article 5 provides that the need for international protection can arise 'sur place', i.e. on account of events which took place since a person has left his or her country of origin and due to activities in which this person engaged after his or her departure too. The person may thus have arrived in a Member State applying for / having been granted a different status (e.g. a humanitarian status).</p> <p>An EMN Ad-Hoc query from 2010<sup>395</sup>, concerning the same provisions in the Directive prior to the recast, found that most Member States integrate such applicants in the 'standard' asylum procedure and hence assess their needs on the same basis as other applicants. However, several Member States at least considered the possibility that asylum applicants could through their activities, be creating intentionally the 'sur place elements' and some, such as Belgium and Germany, thus applied a higher level of scrutiny on these applications. In 2010, the scale of 'sur place' applications was overall considered to be low to non-existent and</p>	<p>3.1 If your Member State applies a different level of scrutiny on applications based on international protection needs arising "sur place", how is it ensured that the Geneva Convention is still applied as a minimum standard?</p>

<sup>395</sup> Ad-Hoc Query 228 on Réfugié sur Place

Article	Background and key considerations	Topic and questions
	<p>most cases, at the time, appeared to be treated in subsequent applications.</p>	
<p><b>4. Actors of persecution or serious harm</b> Article 6</p>	<p>Article 6 defines the actors who can subject an individual to persecution or serious harm. Article 6(c) refers to non-State actors (which may comprise, for example, clans, tribes, criminal groups, etc.) if the State and parties or organisations controlling (part of) the State are unable or unwilling to provide protection.</p> <p>The evaluation will review the methods used in practice to identify the actors, in particular the non-State actors, and to assess the ‘unwillingness’ or ‘inability’ of the actors mentioned in Article 6(a) and (b) to provide protection.</p>	<p>4.1. Are you aware of any issues arising in practice with the definition of actors, in particular ‘non-state actors’ under Art. 6 of the Directive, used by the authorities when assessing an application?</p>
<p><b>5. Actors of protection</b> Article 7</p>	<p>Article 7 foresees that protection against persecution or serious harm can only be provided by the state or parties and organisations, including international organisations, controlling the State or a substantial part of the territory of the State. Protection against persecution or serious harm must be effective and of a non-temporary nature and the actors in question should be able and willing to offer protection. This is generally provided when those actors take reasonable steps to prevent the persecution or suffering of serious harm, e.g. by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and when</p>	<p>5.1. Are you aware of any issues created by your Member State’s assessment of the protection provided by State or non-State actors under Article 7(1)?</p>

Article	Background and key considerations	Topic and questions
	<p>the applicant has access to such protection.</p> <p>The evaluation should examine how Member States identify actors of protection and assess that they afford a sufficient and effective level of protection, in particular how it can be ensured that non-State actors, who are unlikely to be held accountable under international law, are able to provide protection which is not limited in duration and scope.</p>	
<p><b>6. Internal protection</b> Article 8</p>	<p>Article 8 allows Member States to determine that an applicant is not in need of international protection if in a part of the country of origin he/she has no well-founded fear of being persecuted or is not at real risk of suffering serious harm and if he or she can safely and legally travel to and gain admittance to that part of the country and can reasonably be expected to settle there.</p> <p>Article 8(2) determines that 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, Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the</p>	<p>6.1. Are the individual's personal circumstances considered with regard to general living conditions in the region?</p> <p>6.2. When an internal protection alternative may be available, does the Member State assess the relevant elements of the application in cooperation with the applicant, as laid down in Art. 4(1) of the Directive?</p>

Article	Background and key considerations	Topic and questions
	<p>personal circumstances of the applicant. To that end, Member States shall ensure that precise and up-to-date information is obtained from relevant sources, such as the UNHCR and EASO.</p> <p>The evaluation should present a comprehensive overview of the way Member States assess how an IPA is applied in practice.</p>	
<p><b>7. Acts of persecution</b> Article 9</p>	<p>Article 9 sets out which acts are considered as acts of persecution within the meaning of the Geneva Convention. It also requires a nexus between reasons for the persecution and the act of persecution.</p> <p>The evaluation should provide an overview of how Member States assess acts of persecution.</p>	<p>7.1. What are your views on your Member State’s assessment of the seriousness of an act as referred to in Article 9(1)?</p> <p>7.2. Does your Member State have a narrow definition of the acts considered as acts of persecution according to Article 9(2)?</p>
<p><b>8. Reasons for persecution</b> Article 10</p>	<p>Article 10, in line with the 1951 Refugee Convention, provides that persons qualify for refugee status where they have a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or their membership to a particular social group. This last ground is defined, in Article 10(1)(d), by reference to two criteria: that the members of this group share an innate characteristic or one that is so fundamental to identity or conscience that cannot reasonably be changed (the “protected characteristics” test) and that they are perceived by society as a</p>	<p>8.1. Can the assessment of the reasons for persecution be influenced by considerations such as the possibility for the applicant to behave ‘discreetly’ in the country of origin to avoid persecution?</p> <p>8.2. What are your views on your Member State’s definition of a “particular social group”?</p>

Article	Background and key considerations	Topic and questions
	<p>distinct group (the “social perception” test).</p> <p>The evaluation should examine how Member States interpret in practice each reason set out in Article 10 and in particular how the criteria for membership of a particular social group are applied.</p>	
<p><b>9. Serious harm</b> Article 15(a) – Death penalty or execution</p>	<p>Article 15 sets out the common standards for the qualification of subsidiary protection, which is closely modelled upon Article 3 ECHR and the jurisprudence of the ECtHR. Member States have to grant subsidiary protection to a third country national or a stateless person who faces a real risk of serious harm. Serious harm consists of:</p> <ul style="list-style-type: none"> <li>- The death penalty or execution (Article 15 (a));</li> <li>- Torture or inhuman degrading treatment or punishment; or</li> <li>- Serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict.</li> </ul> <p>The evaluation should examine the types of cases covered by the grounds listed in Article 15 and whether the notion also allows the inclusion of other human rights violations.</p>	<p>9.1. What are your views on your Member State’s assessment of the risk of death penalty or execution?</p>
<p>Article 15(b) – Torture,</p>		<p>9.2. What are your views on your Member State’s assessment of the risk of torture, inhuman or degrading treatment?</p>

Article	Background and key considerations	Topic and questions
inhuman or degrading treatment or punishment		
Article 15(c) – Serious and individual threat by reason of indiscriminate violence		<p>9.3. What are your views on your Member State's assessment of the existence of a serious and individual threat?</p> <p>9.4. Does your Member State have a narrow or broad understanding of international or internal armed conflict?</p> <p>9.5. Does your Member State ensure that the "individual" nature of the threat does not lead to an additional threshold and higher burden of proof?</p>
<p><b>10. Granting refugee or subsidiary protection status</b> Articles 13 and 18</p>	<p>Articles 13 and 18 set out that Member States shall grant respectively refugee status or subsidiary protection to third-country nationals who meet the requirements and conditions as set out in respectively Chapters II and III and Chapters IV and V.</p> <p>The evaluation should examine whether Member States retain any discretion in recognising persons when the conditions are met.</p>	<p>10.1. What are the key drivers of the divergences in the ratio accepted / rejected third-country applicants from the same country of origin?</p> <p>10.2. What do you think of the level of discretion left to Member States when it comes to granting refugee or subsidiary protection status?</p>
<p><b>11. General questions</b></p>		<p>11.1. Are you aware of any particular issues regarding the application of the following provisions of the Directive in your Member State:</p> <ul style="list-style-type: none"> <li>- Cessation of the status?</li> <li>- Exclusion from the status?</li> <li>- Revocation, ending of or refusal to renew the status?</li> </ul>
<p><b>Content</b></p>		
<p><b>1. General rules</b> Articles 20(1) and (2) – Content of international protection</p>		<p>1.1.a) In your Member States, what are the rights granted to:</p> <ul style="list-style-type: none"> <li>- Refugees?</li> <li>- SP beneficiaries?</li> </ul> <p>b) Are they different? If yes, are the rights granted to SP beneficiaries restricted? Why?</p>

Article	Background and key considerations	Topic and questions
		1.2. Does the Member State use any specific 'tests', criteria and/or thresholds to establish which rights and benefits could be granted to the status?
Articles 20(3) and (4) – Specific situation of vulnerable persons		1.3. Are you aware of any issues with the situation of vulnerable persons, in particular the assessment of whether a person has special needs?
<b>2. Protection from refoulement</b> Article 21		2.1. Are you aware of cases of <i>refoulement</i> from your Member States? If so, why? Was the person considered a danger to the Member State's security? Was s/he considered a danger to the community after having been convicted of serious crime?  2.2. Does relevant national case law exist on the application of this article?
<b>3. Information</b> Article 22		3.1. How does the national authority guarantee the access to information on the rights and obligations attached to the international protection?  3.2. Are you aware of any issues hindering access to information once the person is granted international protection status (content, language, format...)
<b>4. Maintaining family unit</b> Article 23(2)		4.1. What are your views on the definition of family member applied by your Member State's authorities?  4.2. Are family members of the beneficiary of international protection who do not individually qualify for such protections entitled to claim the benefits guaranteed by the Directive? (i.e. Residence permit, Travel document, Access to employment, Access to education, Access to procedures for recognition of qualifications, Social welfare, Healthcare, guarantees for unaccompanied minors, Access to accommodation, Freedom of movement within the Member State, Access to integration facilities, Repatriation) If so, what are the conditions?  4.3. In practice, what are the obstacles when it comes to establishing the existence of family relations?
Establishing family links with minor children		4.4. Does your Member State use any specific 'tests', criteria and/or thresholds to assess the assess family relations (e.g. DNA test age assessments, testimonies from other applicants), especially when it comes to family links with minor children?
<b>5. Residence permits</b> Article 24		5.1. On average, is the length of the procedure to obtain a residence permit reasonable?



Article	Background and key considerations	Topic and questions
		<p>5.2. Are there different procedures and rules applied to issuing, renewing and ending residence permits of family members of beneficiaries of international protection? If yes, what are the main consequences of these differences?</p> <p>5.3. What are the rights and benefits associated with the issuing of residence permits?</p> <p>5.4. What are the consequences for the status, rights and benefits of the beneficiary of international protection of the following situations:            - Residence permit not issued/renewed?            - Residence permit revoked?<sup>396</sup></p> <p>5.5. What compelling reasons of national security and public order are generally invoked by the Member State?</p>
<p><b>6. Travel document</b> Article 25</p>		<p>6.1. What are the conditions and (documentary and other) requirements for obtaining the travel document in the Member States?</p> <p>6.2. On average, is the length of the procedure to obtain a travel document reasonable?</p> <p>6.3. What type of document is issued by your Member State? Are there any differences between the travel documents issued for refugees and for beneficiaries of SP?</p> <p>6.4. In practice, what can affect the beneficiary's ability to exercise his/her rights to travel?            - Limitations implied by the travel document?            - Different requirements in the Member State? Etc</p> <p>6.5. How does the Member State assess whether and when beneficiaries of subsidiary protection are able to obtain a national passport?</p> <p>6.6. What type of compelling reasons of national security and public order to not issue a travel document are generally invoked by Member States?</p>
<p><b>7. Access to employment</b> Article 26</p>		<p>7.1. What type of administrative conditions and requirements to access the labour market (e.g. a work permit and related administrative procedures) are requested by Member States?</p> <p>7.2. Are there any practical obstacles in relation to access to employment (e.g. need to obtain a work permit, knowledge of national language, etc.)?</p>

<sup>396</sup> CJEU, C-373/13, *H. T. v Land Baden-Württemberg*, 24 June 2015.

Article	Background and key considerations	Topic and questions
Article 26 (1)		<p>7.3 When does the authorisation to access employment enter into force?</p> <p>7.4. Are the requirements for beneficiaries of international protection more stringent than for nationals?</p> <p>7.5. In practice can this be a major obstacle to accessing employment?</p>
Article 26(2)		<p>7.6. Are activities such as employment-related education opportunities for adults, vocational training (including training courses, counselling services afforded by employment offices, etc...) offered to beneficiaries of international protection, under equivalent conditions as nationals?</p> <p>7.7. How does the Member State ensure full access to the activities listed above? Is this access facilitated for beneficiaries of international protection?</p> <p>7.8. Are there wider programmes for migrants or other disadvantaged groups to facilitate access to employment? How are they funded?</p> <p>7.9. Which are the main practical obstacles hindering access to employment and VET related services in the Member States for beneficiaries of international protection?</p>
Article 26(4)		<p>7.10. Do national legal provisions concerning remuneration, access to social security systems and other conditions of employment apply to beneficiaries of international protection?</p> <p>7.11. In practice, are there obstacles to the application of these provisions to beneficiaries of international protection?</p> <p>7.12. What are the review mechanisms in place in case of discrimination between nationals and beneficiaries of international protection? Is there any relevant case law?</p>
<p><b>8. Access to education</b> Article 27</p>		<p>8.1. Who is involved in providing access to education to minors and adult beneficiaries of international protection in the Member States?</p> <p>8.2. What are the conditions and requirements for adults to access education in the MS? Do the same conditions apply to beneficiaries of international protection as to TCN legally residing in the MS?</p> <p>8.3. What are the conditions and requirements for children to access education in the MS? Do the same conditions apply to beneficiaries of international protection as to nationals?</p>

Article	Background and key considerations	Topic and questions
		8.4. Is additional support available for children and adult beneficiaries of international protection? Is it part of wider programmes for migrants or other disadvantaged groups?
<b>9. Access to procedures for recognition of qualifications</b> Article 28		9.1. Are the recognition procedures and mechanisms in place in the Member State accessible to beneficiaries of international protection?  9.2. Is additional support available specifically for beneficiaries of international protection (or as part of wider programmes for migrants or other disadvantaged groups)?  9.3. In practice, what are the obstacles to the formal recognition of qualifications for beneficiaries of international protection?
Article 28(2) - Full access to schemes		9.4. Are there schemes in the Member State in relation to the assessment, validation and accreditation of skills and competences when documentary evidence of qualifications cannot be provided?  9.5. Are these schemes accessible to beneficiaries of international protection?  9.6. Is financial support offered by the Member State?
<b>10. Social welfare</b> Article 29		10.1. Are you aware of any issues with your Member State's assessment of what constitutes "necessary social assistance"?  10.2. Do beneficiaries of international protection receive specific necessary social assistance? Is there any evidence of any discrimination with regard to access to social assistance?  10.3. In practice, are there obstacles to the provision of social assistance to the beneficiaries of international protection?  10.4. Have there been cases where the Member State limited social assistance granted to beneficiaries of international protection to core benefits? Why?  10.5. What constitutes core benefits? Are they provided at the same level and under the same eligibility conditions as nationals?

Article	Background and key considerations	Topic and questions
<b>11. Healthcare</b> Article 30		<p>11.1. Is there evidence of any discrimination with regard to the provision of healthcare to beneficiaries of international protection, in comparison with nationals?</p> <p>11.2. Are there any administrative or practical obstacles to the provision of healthcare to beneficiaries of international protection?</p> <p>11.3. Do you know whether your Member State provides any specific forms of healthcare to beneficiaries with special needs, including treatment of mental disorders, trauma related to torture, rape, exploitation and other forms of abuse and degrading treatment, etc.? If so, what are the main specific forms of healthcare provided?</p> <p>11.4. How are the special needs assessed in the context of access to healthcare?</p>
<b>12. Unaccompanied minors</b> Article 31		<p>12.1. What are your views on the procedure to appoint a guardian?</p> <p>12.2. Who is typically appointed as guardian in practice (legal guardians, organisations, other appropriated representations, etc.)?</p> <p>12.3. Are there limitations as to the areas in which the UAM can be represented (e.g. with regard to healthcare, education, etc.)?</p>
Article 31(2) and (6)		<p>12.4. Do you know if oversight mechanisms of guardianships and guardians are in place in the Member States? Are UAMs involved in the assessment?</p>
Article 31(4)		<p>12.5. What are your views on the procedure for placing UAMs? Are you aware of cases where siblings are not kept together? If so, what are the reasons for this decision?</p>
Article 31(5)		<p>12.6. What are your views on the procedure for family tracing in your Member State?</p> <p>12.7. How is confidentiality ensured if family members are still living in the country of origin?</p>
<b>13. Access to accommodation</b> Article 32		<p>13.1. Are the conditions for granting access to accommodation the same as the conditions applied for legally residing third-country nationals? Are the conditions different for refugees and beneficiaries of SP?</p> <p>13.2. Is specific support (e.g. special housing, assistance with finding accommodation, acting as guarantor for rental contracts, providing deposits, etc.) provided to beneficiaries of international protection? What are the requirements to receive such support?</p> <p>13.3. In average, how long does it take for beneficiaries of international protection to have access to stable accommodation from the day their status is recognised/granted?</p>

Article	Background and key considerations	Topic and questions
		13.4. What are the administrative and practical obstacles to accessing accommodation?
Article 32(2)		13.5. Do Member States make use of dispersal mechanisms for the distribution of beneficiaries across their territory? If so, what are your views on such mechanism?
<b>14. Freedom of movement within the MS</b> Article 33		14.1. Are the conditions and restrictions in relation to the free movement of beneficiaries of international protection on the territory of Member States the same as those applying to legally residing third-country nationals?  14.2. Is there evidence of discrimination with regard to the free movement of beneficiaries of international protection on the territory of Member States?  14.3. What are the main (practical/administrative) obstacles encountered by beneficiaries of international protection who want to move within the territory of the Member States?
<b>15 Access to integration facilities</b> Article 34		15.1. What are your views on the main integration programmes available to beneficiaries of international protection? Are they different from integration programmes for other legally residing third-country nationals?  15.2. Are you aware of any requirements in place in your Member States for accessing integration programmes? Do beneficiaries of international protection receive any support to fulfil them?  15.3. How are the specific needs of beneficiaries of international protection taken into account?
<b>16. Repatriation</b> Article 35		16.1. Is support and assistance provided to beneficiaries of international protection who wish to return?  16.2. To your knowledge, what are the main obstacles (administrative or practical) to repatriation of beneficiaries of international protection?

### A1.3 Questionnaire on quantitative information

Article	Indicator needed	Answer (Time Frame: 2012-2015)
<b>International protection needs arising sur place</b> Article 5	<ul style="list-style-type: none"> <li>■ Scale of 'sur place' applications also as a share of the total number of applications</li> </ul>	
<b>Actors of protection</b> Article 7	<ul style="list-style-type: none"> <li>■ Number of applications rejected on the basis of Article 7 of the Directive since the adoption of the Recast Directive</li> </ul>	
<b>Internal protection</b> Article 8	<ul style="list-style-type: none"> <li>■ Number of cases where the Member State denied protection on the basis of Article 8 of the Directive</li> </ul>	
<b>Acts of persecution</b> Article 9	<ul style="list-style-type: none"> <li>■ Quantitative information regarding acts of persecution: <i>i.e. Data on each act of persecution invoked per status granted...</i></li> </ul>	
<b>Reasons for persecution</b> Article 10	<ul style="list-style-type: none"> <li>■ Quantitative information on reasons for persecution (<i>i.e. data on the reasons invoked per status granted...</i>)</li> </ul>	
<b>Serious harm</b> Article 15	<ul style="list-style-type: none"> <li>■ Number of cases where the Member State has granted subsidiary protection, per ground listed in Article 15</li> </ul>	
<b>Cessation</b> Articles 11 and 16	<ul style="list-style-type: none"> <li>■ Number of cessation procedures started, by status granted</li> <li>■ Number of 'confirmed' cessations and those stopped for compelling reasons, by status granted</li> <li>■ Number of cessations as a share of the total number of persons with a refugee or subsidiary protection status</li> </ul>	
<b>Exclusion</b> Articles 12 and 17	<ul style="list-style-type: none"> <li>■ Number of persons falling under the scope of Article 12(1)a)</li> <li>■ Number of persons falling under the scope of Article 12(1)b)</li> <li>■ Number of exclusions by type of status and by ground</li> </ul>	

<p><b>Granting refugee or subsidiary protection status</b> Articles 13 and 18</p>	<ul style="list-style-type: none"> <li>■ Number of persons granted refugee status or subsidiary protection, by country of origin</li> </ul>	
<p><b>Revocation, ending or refusal to renew refugee or subsidiary protection status</b> Burden of proof and margin of discretion - Articles 14(2) and (3) and 19(2) and (4)</p>	<ul style="list-style-type: none"> <li>■ Number of refugee and SP statuses revoked, ended and/or refused for renewal, by ground (i.e. cessation, exclusion, misrepresentation or omission of facts, danger to security, conviction by final judgement)</li> </ul>	
<p><b>Revocation of/refusal to grant status to a refugee</b></p>	<ul style="list-style-type: none"> <li>■ Numbers of persons whose status is revoked, ended and/or refused for renewal on the basis of Articles 14(4) and 14(5)</li> </ul>	
<p><b>Protection from refoulement</b> Article 21</p>	<ul style="list-style-type: none"> <li>■ Number of on third-country nationals who have been deported / extradited (including EAW) / returned in spite of being recognised as refugees by another Member State, a third country or the UNHCR</li> <li>■ Number of exceptions made by the Member States to the principle of non-refoulement, by ground</li> </ul>	
<p><b>Information</b> Article 22</p>	<ul style="list-style-type: none"> <li>■ Number of beneficiaries of international protection receiving information on their rights and obligations, out of total number of recipients of IP status</li> </ul>	
<p><b>Maintaining family unity</b> Article 23(2)</p>	<ul style="list-style-type: none"> <li>■ Number of family members who do not qualify for international protection but who receive a residence permit based on the status of the 'main, beneficiary</li> </ul>	
<p><b>Residence permit</b> Article 24</p>	<ul style="list-style-type: none"> <li>■ Number of residence permits issued for beneficiaries of international protection (on the total number of permits issued/renewed)</li> <li>■ Number of instances in which Member States decide not to issue or renew a residence permit for these reasons (on the total number of residence permits issued / renewed)</li> </ul>	
<p><b>Travel documents</b> Article 25</p>	<ul style="list-style-type: none"> <li>■ Number of travel documents issued and renewed for beneficiaries of IP</li> </ul>	

	<ul style="list-style-type: none"> <li>Number of instances in which the Member State decides not to issue or renew a travel document for the reasons stated in the article (out of the total number of travel documents issued/renewed)</li> </ul>	
<b>Access to employment</b> Article 26	<ul style="list-style-type: none"> <li>Number of beneficiaries of international protection in employment / undertaking self-employed activities (as a share of the total number of beneficiaries of international protection and as a share of total population)</li> <li>Number of beneficiaries making use of the employment-related opportunities (on the total number of beneficiaries)</li> <li>Identification of complaints, administrative and judicial cases related to application of the law in force in the Member State concerning remuneration, access to social security systems and other conditions of employment.</li> </ul>	
<b>Access to education</b> Article 27	<ul style="list-style-type: none"> <li>Share of adult beneficiaries accessing education (as a share of the total number of beneficiaries of international protection and as a share of total population);</li> <li>Share of minor beneficiaries accessing education (as a share of the total number of minors (beneficiaries of IP) and as a share of total population)</li> </ul>	
<b>Access to procedures for recognition of qualifications</b> Article 28	<ul style="list-style-type: none"> <li>Number of beneficiaries of international protection requiring recognition of diplomas, certificates and other evidence of formal qualifications and number/proportion of recognitions</li> <li>Number of beneficiaries of international protection having to access schemes to assess, validate and accredit skills, competences and prior learning</li> </ul>	
<b>Social welfare</b> Article 29	<ul style="list-style-type: none"> <li>Number of beneficiaries of international protection receiving social assistance</li> </ul>	
<b>Healthcare</b> Article 30	<ul style="list-style-type: none"> <li>Number of beneficiaries of international protection accessing healthcare; number of people benefiting from specific forms of healthcare (on the total number of beneficiaries of international protection)</li> </ul>	
<b>Unaccompanied minors</b> Article 31	<ul style="list-style-type: none"> <li>Number of UAMs</li> <li>Number of available guardians</li> <li>Number assessments undertaken</li> <li>Number of guardians undertaking training</li> <li>Number of decisions for placing siblings together (out of overall number of placement decisions taken)</li> <li>Number of family tracings undertaken</li> <li>Share of UAMs whose family members are successfully traced</li> </ul>	
<b>Access to accommodation</b> Article 32	<ul style="list-style-type: none"> <li>Number of beneficiaries of international protection accessing accommodation</li> </ul>	





<b>Access to integration facilities</b> Article 34	<ul style="list-style-type: none"><li>■ Number of refugees and SP beneficiaries taking part in the identified programmes and, if available, the 'success rate'</li></ul>	
<b>Repatriation</b> Article 35	<ul style="list-style-type: none"><li>■ Number of beneficiaries of international protection who have made use of repatriation assistance</li></ul>	

## Annex 2 Bibliography

### A2.1 Literature and policy documents

AIDA Asylum Information Database, *Annual Report 2014/2015: Common asylum system at a turning point: Refugees caught in Europe's solidarity crisis*, 2015

Auditus, Jesuit Refugee Service Malta, Special Procedural Guarantees in Malta, in *AIDA Asylum Information Database*, online publication, 2015

Contact Committee "Qualification Directive" (2011/95/EU), Replies from Member States regarding the transposition and implementation in practice of Articles 6, 7, 10, 11, 12, 14, 16, 17 and 19 of the Qualification Directive, unpublished draft, 27 March 2015

EASO, "The Implementation of Article 15(c) QD in EU Member States", 2015

Eaton J., "The Internal Protection Alternative Under European Union Law: Examining the Recast Qualification Directive", *International Journal of Refugee Law*, Oxford University Press, Oxford, 2012, Vol. 24 No. 4 pp. 765–792

ECRE, *Comments on the European Commission Proposal to recast the Qualification Directive*, Brussels, online publication, 2010

ECRE, *Information Note on the Directive 2011/95/EU*, Brussels, online publication, 2013

ECRE, *The Impact of the EU Qualification Directive on International Protection*, Brussels, online publication, 2008

European Migration Network – European Commission, Ad-Hoc Queries, accessible on the EMN website:

2016.1028 - The application of Sovereignty Clause in Dublin procedure

2016.1027 - Support provided to asylum seekers

2016.1026 - Changes in migration policy in situation of mass migration

2016.1024 - The Member States' policies to handle the influx of asylum seekers

2016.2023 - Systems of support persons for beneficiaries of international protection

2016.2022 - Iraqi Kurdish population in Europe

2016.2019 - Use of biometrics to reveal false identity

2016.2018 - Obstacles to return in connection with the implementation of Directive 2008/115/EC (the Return Directive)

2016.2017 - Residence permits for foreign investors

2016.1016 - The recognition of academic and professional qualification of beneficiaries of international protection

2016.1014 - The submission of application for temporary residence permit

2016.1013 - The period of validity of residence permits granted to third country nationals

2016.1012 - Entry and residence of third country nationals in the framework of investment

2016.1011 - Right of residence provided for TCNs to whom international protection application has been rejected

2015.1010 - The common practice followed by the Member States regarding the sequence of controls performed by the customs and police authorities at the authorized exit BCPs

2015.745 - Palestinians from Lebanon

- 2014.582 - Implementation of Article 36 of the Directive 2013/32/EU
- 2013.522 - Rights of recognised refugees to travel
- 2013.489 - Article 29 of the Qualification Directive (2011/95/EU)
- 2012.378 - Practice followed with regards to Palestinian Asylum Seekers from Gaza
- 2011.331 - Council Directive 2004/38/EC
- 2010.285 - Amount of public allowance to asylum applicants
- 2010.263 - Alien's passport issued by Latvia
- 2009.152 - Consulting body on migration and asylum
- 2008.081 - Article 31(3) of the Council Directive 2005/85/EC
- 2008.080 - Articles 7 (1) & 2(c) of the Council Directive 2005/85/EC
- 2014.617 - Uniform International Protection Status
- 2013.489 - Article 29 of the Qualification Directive
- 2010.228 - Réfugié sur Place
- 2009.158 - Residence Permit for Persons under the International Protection

European Refugee Fund of the European Commission: *Actors of protection and the application of the internal protection alternative*, European comparative report, Comparative Report, online publication, 2014

Errera R., "Cessation and Assessment of New Circumstances: a Comment on Abdulla, CJEU, 2 March 2010", *International Journal of Refugee Law*, Oxford University Press, Oxford, 2011, Vol. 23 No. 3 pp. 521–537

European Parliament DG Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs, *Gender Related Asylum Claims in Europe*, Brussels, online publication, 2012

European Parliament DG Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs, *Enhancing the Common European Asylum System and Alternatives to Dublin*, Brussels, online publication, 2015

FRA – European Union Agency for Fundamental Rights, *Guardianship systems for children deprived of parental care in the European Union With a particular focus on their role in responding to child trafficking*, Luxembourg: Publications Office of the European Union, 2015

Fsadni M. and Pisani M. , *Immigrant and Ethnic Minority Groups and Housing in Malta - A Research Study*, December 2012

Garlick M., "Protection in the EU for people fleeing indiscriminate violence in armed conflict: Article 15(c) of the EU Qualification Directive", in Volker Turk, Cornelis Wouters and Alice Edwards (eds), *In Flight from Conflict and Violence: UNHCR's Consultations on Refugee Status and Other Forms of International Protection*, United Nations High Commissioner for Refugees, Cambridge University Press, Cambridge, 2015 (forthcoming)

Juss S. S., Harvey C., *Contemporary Issues in Refugee Law*, Edward Elgar Publishing, 2013

Kosar D., "Inclusion before Exclusion or Vice Versa: What the Qualification Directive and the Court of Justice Do (Not) Say", *International Journal of Refugee Law*, Oxford University Press, Oxford, 2013, Vol. 25 No. 1 pp. 87–119

Ní Ghráinne B., "The Internal Protection Alternative Inquiry and Human Rights Considerations – Irrelevant or Indispensable?", *International Journal of Refugee Law*, Oxford University Press, Oxford, 2015, Vol. 27, No. 1, 29–51

OECD, “How will the refugee surge affect the European economy?”, *Migration Policy Debates*, OECD publication, n°8, 2015

O’Sullivan M., “Acting the Part: Can Non-State Entities Provide Protection Under International Refugee Law?”, *International Journal of Refugee Law* Vol. 24 No. 1, Oxford University Press, Oxford, 2012, pp. 85–110

Peers S., Moreno-Lax V., Garlick M., Guild E., *EU Immigration and Asylum Law (Text and Commentary)*, Brill | Nijhoff, 2015

UNHCR, *Asylum in the European Union: a Study of the Implementation of the Qualification Directive*, Geneva, 2007

UNHCR, *Comments on the European Commission’s proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted (COM(2009)551)*, 2010

UNHCR, *Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 2002, HCR/GIP/02/01

UNHCR, *Guidelines on International Protection No. 2: “Membership of a Particular Social Group” Within the Context of Article 1A (2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 2002, HCR/GIP/02/02

UNHCR *Guidelines on International Protection No. 3: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Geneva Convention*, 2003

UNHCR, *Guidelines on International Protection No. 6: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees*, 28 April 2004, HCR/GIP/04/06

UNHCR, *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, 2012, HCR/GIP/12/01

UNHCR *Guidelines on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees*, 2009

UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, 2011, HCR/1P/4/ENG/REV. 3

UNHCR, *Note on Travel Documents for Refugees*, EC/SCP/10, 1978

UNHCR, *Safe at Last? Law and Practice in Selected EU Member States with Respect to Asylum-Seekers Fleeing Indiscriminate Violence*, Geneva, 2011

UNHCR, *Statement on religious persecution and the interpretation of Article 9(1) of the EU Qualification Directive*, Geneva, 2011

Hathaway J.C., *International Refugee Law: The Michigan Guidelines on Nexus to a Convention Ground*, Michigan Journal of International Law, Vol. 23, No. 2, 2002

## A2.2 Case Law

Court of Justice of the European Union (CJEU)

Case law on the Qualification Directive 2004/83:

CJEU, A (C-148/13), B (C-149/13) and C (C-150/13) v Staatssecretaris van Veiligheid en Justitie, 2 December 2014

CJEU, Aboubacar Diakité v. Commissaire général aux réfugiés et aux apatrides, C-285/12, Reference from Conseil d'État (Belgium) of 7 June 2012

CJEU, Andre Lawrence Shepherd v Bundesrepublik Deutschland, C-472/13, 26 February 2015

CJEU, Aydin Salahadin Abdulla, Kamil Hasan, Ahmed Adem, Hamrin Mosa Rashi & Dier Jamal v Bundesrepublik Deutschland, Joined cases C-175/08, C-176/08, C-178/08, C0179/08m 2 March 2010

CJEU, Bundesrepublik Deutschland v. Y (C-71/11), Z (C-99/11), C-71/11 and C-99/11, 5 September 2012

CJEU, Bundesrepublik Deutschland v B and D, Joined Cases C-57/09 and C-101/09, 9 November 2010

CJEU, Centre public d'action sociale d'Ottignies-Louvain-La-Neuve v Moussa Abdida, C-562/13, 18 December 2014

CJEU, Criminal proceedings against Mohammad Ferroz Qurbani, C-481/13, 7 July 2014.

CJEU, H. N. v Minister for Justice, Equality and Law Reform and Others, C-604/12, 8 May 2014

CJEU, H. T. v Land Baden-Württemberg, C-373/13, 24 June 2015

CJEU, M. M. v Minister for Justice, Equality and Law Reform, Ireland and Attorney General, C-277/11, 22 November 2012

CJEU, Meki Elgafaji and Noor Elgafaji v. Staatssecretaris van Justitie, C-465/07, Judgment of 17 February 2009

CJEU, Mohamed M'Bodj v Conseil des ministres, C-542/13, Reference from Cour constitutionnelle (Belgium) of 17 October 2013

CJEU, Mostafa Abed El Karem El Kott and Others v Bevándorlási és Állampolgársági Hivatal, C-364/11, 19 December 2012

CJEU, Nawras Bolbol v Bevándorlási és Állampolgársági Hivatal, C-31/09, 17 June 2010

CJEU, X, Y, Z v Minister voor Immigratie en Asiel, C 199/12 - C 201/12, 7 November 2013

European Court of Human Rights (ECtHR) :

ECtHR, Ahmed v. Austria, No. 25964/94, Judgment of 17 December 1996c

ECtHR, Bader and Kanbor v. Sweden, No. 13284/04, Judgment of 8 November 2005

ECtHR, D. v. the United Kingdom, No. 30240/96, Judgment of 2 May 1997

ECtHR, Hilal v. the United Kingdom, No. 45276/99, Judgment of 6 March 2001

ECtHR, H.L.R. v. France, No. 24573/94, Judgment [GC] of 29 April 1997

ECtHR, Ireland v. the United Kingdom, No. 5310/71, Judgment (Plenary) of 18 January 1978

ECtHR, Kaboulov v. Ukraine, No. 41015/04, Judgment of 19 November 2009

ECtHR, Raninen v. Finland, No. 20972/92, Judgment of 16 December 199

ECtHR, R.C. v Sweden Application No. 41827/07, 9 March 2010

ECtHR, Salah Sheekh v. the Netherlands, No. 1948/04, Judgment of 11 January 2007

ECtHR, Selmouni v. France, No. 25803/94, Judgment [GC] of 28 July 1999

ECtHR, *Sufi and Elmi v. United Kingdom*, Nos. 8319/07 and 11449/07, 28 June 2011

## A2.3 Legislation

Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms

Directive 2003/109/EC of the Council of 25 November 2003 concerning the status of third-country nationals who are long term residents

Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011 amending Council Directive 2003/109/EC to extend its scope to beneficiaries of international protection

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)

UN General Assembly, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: resolution / adopted by the General Assembly, 10 December 1984, A/RES/39/46*

UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189

## Annex 3 Case studies

### A3.1 Case study 1- Grounds for rejecting applications for international protection and Member States' practice to grant refugee or subsidiary protection status (Articles 13 and 18)

#### A3.1.1 Introduction

##### A3.1.1.1 Aim of the case study

The overall aim of this case study was to explore the reasons behind diverging practices across Member States regarding rejection rates and differences in the type of statuses granted (refugee or subsidiary protection) to applicants from the same country of origin. Evidence presented in the Final Report of the Evaluation of the application of the recast Qualification Directive (Evaluation report) suggested that divergences in the outcome of applications might have been due to different implementation and interpretation of the Articles which set out the grounds for granting and rejecting applications for international protection statuses.

##### A3.1.1.2 Content of the case study

This case study complements the analysis presented in the Evaluation report by providing information and examples with regard to:<sup>397</sup>

- Member States' differing practices regarding the assessment of applications for international protection from a given country of origin, and their potential impact on **rejection rates**. In particular, this case study focused on Member States' application of certain Articles of the Recast QD that, due to their optional nature or to their discretionary wording, could give rise to different transpositions or interpretations by national determining authorities and/or by national courts.

<sup>397</sup> The information included in this case study was collected through additional desk research as well as information provided by EASO and ECRE.

The case study also analysed Member States' practices regarding their assessment of COI and of the credibility of applications for international protection.

- Member States' differing practices regarding the **type of status** granted to applicants for international protection from a given country of origin. The influence of factors such as tradition, economic considerations, or contextual circumstances were analysed.

As the review of the implementation of the Asylum Procedure Directive (including accelerated procedures and safe countries of origin)<sup>398</sup> is not within the scope of this study, only those factors for potential divergences in Member States' practices that were linked to the implementation of the Recast QD were analysed as part of this case study.

Table 1.1 presents a selection of examples highlighting the divergences that could be observed in rejection rates and types of protection granted to applicants in first instance from four of the most common countries of origin in the EU in 2015. The examples were selected on the basis of the difference between their rejection rates, the types of statuses they granted to applicants from the country of origin concerned, and the EU average, as well as the number of applications they received from the country of origin concerned in 2015.<sup>399</sup>

**Table A3.1 Examples of divergences in rejection rates and types of protection granted in first instance for selected countries of origin in EU Member States in 2015**

Afghanistan				
Member State	Positive decisions (% total applications)	Rejection decisions (% total applications)	Refugee status (% positive decisions)	Subsidiary protection (% positive decisions)
<b>EU 28</b>	<b>67%</b>	<b>33%</b>	<b>43%</b>	<b>44%</b>
AT	78%	22%	59%	41%
BG	5%	90%	0%	100%
DE	73%	27%	60%	11%
IT	96%	4%	9%	87%
SE	48%	52%	35%	23%
UK	36%	64%	76%	0%
Eritrea				
<b>EU 28</b>	<b>90%</b>	<b>10%</b>	<b>77%</b>	<b>22%</b>
DE	97%	3%	96%	4%
DK	97%	3%	94%	6%
FR	52%	48%	100%	0%
NL	98%	2%	1%	98%
SE	97%	3%	97%	3%
UK	47%	53%	87%	3%
Iraq				
<b>EU 28</b>	<b>86%</b>	<b>14%</b>	<b>89%</b>	<b>10%</b>

<sup>398</sup> Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection.

<sup>399</sup> The statistics analysed as part of this case study were about first instance decisions, due to the fact that they covered a larger and more representative sample of decisions. However, the grounds for divergences between decisions taken as the result of an appeal of the first instance decision were also considered and analysed where relevant.

BE	69%	31%	65%	35%
DE	98%	2%	98%	2%
FR	98%	2%	97%	3%
SE	37%	64%	53%	17%
UK	21%	79%	70%	5%
<b>Somalia</b>				
<b>EU 28</b>	<b>63%</b>	<b>37%</b>	<b>48%</b>	<b>47%</b>
AT	91%	9%	57%	42%
DE	54%	46%	54%	33%
FR	20%	80%	39%	61%
IT	93%	7%	18%	79%
SE	56%	44%	79%	16%

Source: Eurostat

In the case of applications from Syria, more convergence was observed regarding recognition and recognition rates as a large majority of Member States granted some kind of protection to Syrians in 2015 (between 86% of positive decisions in the UK to 100% in CY, EL, FI, IE, LT, LV, PL, SI and SK). On average, 97% of Syrians were granted a form of international protection in the EU in 2015. However, in the same year, much lower recognition rates were observed in Hungary (59% of 270 applications) Italy (57% of 580 applications), and Romania (59% of 565 applications). However, important differences were noted regarding the type of status granted to Syrian applicants. Across the EU, 83% of applicants from Syria were granted asylum while 17% received subsidiary protection. Nevertheless, subsidiary protection was granted to a majority of Syrians in Member States such as Cyprus (98%), Hungary (88%), Spain (98%) and Sweden (10%).

Such divergences had likewise encouraged secondary movements,<sup>400</sup> and was flagged as a priority for action, both by the Dutch presidency of the European Union,<sup>401</sup> Member States as a whole<sup>402</sup> and by the European Commission.<sup>403</sup>

### A3.1.1.3 Practices identified and examined as part of the case study

#### Selection of Member States

The Member States and countries of origin analysed in the sections below were selected on the basis of the number of applications from each country of origin in the particular Member State examined. In order to make sure that the sample analysed was representative, Member States receiving few applications and countries of origin from which few applications originated were not considered.

Criteria used for the selection were:

- Member States that showed a substantial difference between rejection rates of applications from the same country of origin as the EU average rejection rate; or

<sup>400</sup> European Commission, Communication to the European Parliament and the Council, *Towards a reform of the Common European Asylum System and Enhancing Legal Avenues to Europe*, COM(2016)197 final, 6 April 2016, p. 5.

<sup>401</sup> See: <http://www.eur.nl/fsw/english/newsdetails/article/81216-netherlands-to-take-initiative-to-obtain-more-harmonisation-in-asylum-recognition-rates/>

<sup>402</sup> Justice and Home Affairs Council, 3461<sup>st</sup> meeting, Doc 8065/16, Conclusions of 21 April 2016, <http://www.consilium.europa.eu/en/meetings/jha/2016/04/21/>

<sup>403</sup> European Commission, Communication on the reform of the CEAS, *op. cit.*



- Member States where differences were observed between the types of protection statuses granted to applicants from the same country of origin compared to the status granted on EU average;
- Member States that showed clear differences in their approach to the assessment of claims for international protection compared to practices of most Member States, e.g. COI used, interpretation of various Articles of the Directive etc.

Due to the impossibility to access decisions taken by determining authorities for confidentiality reasons, and the absence of statistical data on the grounds invoked for positive or rejection decisions, the practices identified and described in the following sections could not always be linked back to a particular Member State. In the context of this case study, the following practices were identified and further examined with regard to the differences between rejection rates across Member States:

- **Elaboration and use of COI about a given country of origin:** The case study analysed the consequence of the recent adoption of COI reports on Eritrea in Denmark and the United Kingdom that diverged from the COI generally used across the EU;
- **Divergent transposition, interpretation and application of provisions of the Recast QD:** The case study examined different interpretations of provisions of the Directive such as Article 8 (Internal protection) and Article 15(c) (Serious harm in case of serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict). It analysed the particular case of divergences observed in the interpretation of Article 15(c) by national courts in Belgium.

When it comes to the divergences between statuses granted for applicants from a given country of origin across Member States, the following practices were examined:

- **Economic considerations** invoked in Austria to grant refugee status to Syrian applicants in first instance decisions in order to avoid an excessive number of challenges of decisions to grant subsidiary protection;
- **Resort to humanitarian statuses** over international protection statuses foreseen in the Recast QD by Italy for applications by certain countries of origin;
- **Divergent interpretation and application of provisions of the Recast QD**, in particular Article 10 (Reasons for Persecution) across Member States.

### A3.1.2 Grounds for rejecting applications for international protection

This section presents the main divergences observed in the grounds invoked by Member States in order to reject applications for international protection.

#### A3.1.2.1 Elaboration and use of COI

The lack of harmonisation of practices to collect and analyse COI across Member States highlighted under section 3.3 of the Evaluation report could lead to different COI being used in order to assess international protection claims from one Member State to another. However, while more harmonisation of country reports used by national determining authorities could limit the risk of divergence, it appeared that COI was not necessarily the only reason behind divergent recognition rates as most Member States used the same sources of information. The issue also lied in *how* such information was interpreted and applied.<sup>404</sup>

However, exceptions were identified where the COI collected and used by national authorities was not reflecting the situation in the country of origin, which could potentially lead to a drop in recognition rates for applicants from this particular country of origin. For instance, in November 2014, a fact

<sup>404</sup> Interview with EASO official, held on 4 May 2016.

finding mission delegation commissioned by the Danish Immigration Service (*Udlændingestyrelsen* - DIS) produced a COI report based on its observations on the situation in Eritrea.<sup>405</sup> The report was published in English on the DIS' website, and suggested that the Eritrean government was carrying out reforms that would allow Eritrean asylum seekers to be safely returned to the country. These conclusions diverged from the general position adopted by EU governments and NGOs on the situation in the country. Following its publication, UNHCR voiced concerns about the methodology used to produce the report, denouncing references to an unspecified "UN agency", unused notes from meetings with UNHCR in Addis Ababa and Shire (Ethiopia), the use of speculative statements by some of the interviewees, the lack of direct quotes from informants in favour of summaries, the selective use of information, and the absence of reflection on the reliability of specific sources of information.<sup>406</sup> The report was also qualified as "deeply flawed" by Human Rights Watch immediately after its publication.<sup>407</sup> As a consequence of these reactions and other criticisms,<sup>408</sup> including by one of the sources of the report, the DIS admitted doubts about the content of the report and while the report was not officially withdrawn, its conclusions were not used as reference for policy in Denmark. Ultimately, it did not actually lead to a significant change in recognition rates of Eritrean applicants. However, in March 2015, the UK Home Office published two country information and guidance reports on Eritrea,<sup>409</sup> which also raised criticisms, one of which being that an entire section of the report was solely based on the DIS' fact finding mission report, without acknowledging the controversy surrounding its publication nor the fact that the Danish authorities had distanced themselves from the report. Other criticisms were also expressed regarding the methodology used.<sup>410</sup> In the first quarter of 2015, 23% of decisions on Eritreans in the UK were negative, while in the second quarter of the year, after the publication of the Home Office reports, this figure increased to 67%.<sup>411</sup> A comparison with the second quarter of 2014, during which 20% of Eritrean applications had been rejected, seemed to confirm a shift in policy.<sup>412</sup> In 2015, rejection decisions on Eritrean applications in the UK represented more than half of all the rejection decisions on such applications in all EU Member States.<sup>413</sup>

While Denmark and the United Kingdom were not bound by the Recast QD, these examples were illustrative of the importance of accurate COI and of the risk of a 'snowball effect' in the event flawed COI published by a Member State was used by other Member States as well.

<sup>405</sup> Danish Immigration Service, *Eritrea – Drivers and Root Causes of Emigration, National Service and Possibility of Return – Country of Origin Information for Use in the Asylum Determination Process*, August and October 2014, available at <https://bit.ly/1JA24XS>

<sup>406</sup> UNHCR, *Fact finding mission report of the Danish Information Service, Eritrea – Drivers and Root Causes of Emigration, National Service and the Possibility of Return. Country of Origin Information for Use in the Asylum Determination Process, UNHCR's Perspective*, December 2014.

<sup>407</sup> Human Rights Watch, *Denmark: Eritrea Immigration Report Deeply Flawed*, 17 December 2014: <https://bit.ly/1QWiZon>

<sup>408</sup> The Danish Immigration Service FFM report has been publicly criticised by: a number of academics; Asmarino; Eritrean Diaspora organisations; Human Rights Concern Eritrea; Human Rights Watch; Stop Slavery in Eritrea; UNHCR; with observations from Asmarino; the Caperi online newspaper; Europe External Policy Advisors; the Local, a Danish newspaper; the Norwegian Organisation for Asylum Seekers (NOAS) and the Society for Threatened Peoples.

<sup>409</sup> Updated versions of the report (September 2015) are available on the Home Office website. Home Office, *Country Information and Guidance – Eritrea: Illegal Exit*, September 2015, available at <https://bit.ly/2HkzHDP> and *Country Information and Guidance – Eritrea: National (incl. Military) Service*, September 2015, available at <https://bit.ly/2REEIkz>

<sup>410</sup> See for instance Still human still here, *A Commentary on the March 2015 Country Information and Guidance Reports issued on Eritrea*, 1 May 2015, available at <https://bit.ly/2T1tDkN>

<sup>411</sup> Eurostat data, 2015.

<sup>412</sup> Eurostat data, 2014.

<sup>413</sup> Eurostat data, 2015.

### **A3.1.2.2 Diverging application of provisions of the Directive**

#### *Divergences observed across Member States*

A number of the stakeholders consulted interviewed for the Evaluation report agreed that there was a certain level of discretion left to national authorities when granting international protection. The way such discretion was applied was related to different historical, political and economic circumstances. For example, some countries that experienced Jewish refugees fleeing the Holocaust, such as Germany and Austria, mentioned that a sense of historic responsibility would play a role in their decisions when granting refugee status.

In some Member States, a political influence, or at least monitoring, was observed over recognition rates. For instance, since 2012, some members of the Dutch Parliament had expressed concerns about the fact that there seemed to be more positive decisions in the Netherlands than in most other EU Member States.<sup>414</sup> In Belgium, even though the determining authority (CGRA) was independent, a campaign by the Secretary of Asylum to discourage Iraqis from Bagdad from applying for international protection in Belgium was denounced by NGOs in 2015.<sup>415</sup> While it could not be determined whether this campaign had an impact on recognition rates for applicants from the area, NGOs interviewed for the Evaluation report had observed a high number of voluntary returns to Bagdad following it. Due to the difficulty in assessing the influence of politics on international protection decisions, it was not analysed as part of this case study.

The assessment of the security situation in a given country of origin appeared to vary across different Member States. A mapping exercise ran by EASO in 2016 on Member States' mechanisms for asylum decision policy development on Afghanistan shed light on different approaches Member States followed regarding the application of Article 8 and Article 15(c) to applications from Afghan nationals.<sup>416</sup>

While Article 8 of the Directive is an optional provision, only one Member State (IT) chose not to transpose it into its national law, as explained under Section 3.7 of the Evaluation report. Still, Member States' practices were far from uniform in its application, with some Member States not applying it when processing applications in general (FR) or from Afghanistan in particular because they did not consider it opportune in the country's context. Other Member States had different interpretations of what regions in the country could be considered as "safe". As a consequence, the application of the concept of IPA was not the same from one Member State to another.

Regarding Article 15(c), while some Member States considered that the level of violence observed in the country was not high enough and did not apply Article 15(c) at all, others applied it partially to different regions or even districts. In those Member States, different classifications of what regions/provinces might be considered safe, might require an assessment of the individual situation on a case by case basis, or might be considered unsafe altogether. Only two Member States were said to apply the Article to the whole country.

#### *Divergences observed within Member States*

Differences in interpretations of Directive provisions were also observed within Member States. During the stakeholder consultation led for the Evaluation report, several stakeholders stated that different interpretations could be applied depending on the case handler in charge of handling the application (BE, PL, SE). According to the Swedish authorities, this could be explained by the way each Member State assessed the security situation in a given country of origin and how detailed the individual situation of the applicant was assessed.

<sup>414</sup> A. Leerkes, Wetenschappelijk Onderzoek en Documentatiecentrum, Ministerie van Veiligheid en Justitie, *How (un) restrictive are we?*, Cahier 2015-10.

<sup>415</sup> ECRE, AIDA Country Report: Belgium, December 2015.

<sup>416</sup> Interview with EASO official, *op. cit.*

In addition, national courts within the same Member State sometimes reached different conclusions as to the interpretation of the COI available for a given country of origin in the light of the provisions of the Qualification Directive. A striking example lies in the recent case law by the Belgian Council for Aliens Law Litigation (CCE, *Conseil du Contentieux des Etrangers*) on the application of Article 15(c) of the Directive regarding the situation in Bagdad (Iraq). In general, the position held by the CCE – notably by its Dutch-speaking chamber<sup>417</sup> – is that there is no indiscriminate violence in Bagdad.

In those cases, while the parties did not contest the fact that Iraq was at the moment in a situation of armed conflict, and that numerous terrorist attacks, abductions, brutality, murders and other serious forms of violence took place in Bagdad on a regular basis. They also acknowledged the fact that these incidents affected a large share of the local civilian population. The disagreement lied in the determination of the degree/threshold of violence and on whether this violence could be characterised as ‘indiscriminate’ in the sense of Article 15(c) of the Qualification Directive. The State Council based its reasoning on references to the *Elgafaji* and *Diakité* cases as well as relevant ECtHR cases on the application of Article 3 ECHR.

The State Council stated that the situation in Iraq strongly deteriorated following, amongst other things, the offense led by the so-called Islamic State since June 2014. However, it noted that the level and impact of the violence observed varied significantly from one region to another. When it came to the situation in Bagdad, the State Council observed that the city was not besieged by the Islamic State, and that there were no regular or permanent battles between the Iraqi army and the Islamic State. In addition, it proceeded to comparing the number of casualties with the size and population of the city in order to assess the density level of the violence observed, as well as the regular functioning of the city. It came to the conclusion that the level of violence in Bagdad was not so high that there would be serious and established grounds for believing that a civilian returning to Bagdad would risk to be subject to serious harm as a result of his or her mere presence in the city. In some cases, the ruling chamber took into consideration the number of voluntary returns to Bagdad in order to demonstrate the absence of indiscriminate violence in the area.

In parallel, recent cases such as Case n°165616 of 12 April 2016 ruled that the COI used by the Belgian determining authority had been published six months prior to the decision, and that, in a context where the situation in Bagdad was unstable and rapidly evolving, it needed to be updated. The judge called for a new evaluation of the current level of violence in Bagdad, which could justify the application of the national provision transposing Article 15(c) of the Recast QD. The court also considered that some of the information obtained via phone interviews and emails had not been attached to the COI report. This ruling was challenged before the Belgian Court of Cassation, whose final judgment was still pending at the time of this report. In total, 14 rulings emanating from French speaking courts have contested the prevailing assessment in Belgium of the security situation in Bagdad.

### A3.1.3 Granting of different statuses for applicants in comparable situations

This section presents the main differences observed in the reasons invoked behind their decision to grant refugee status or subsidiary protection to applicants from a given country of origin.

The question regarding **Member States’ practices to grant subsidiary protection** was raised during the stakeholder consultation held for the Evaluation report, including the fact that Member States’ practice to grant refugee status or subsidiary protection for the same country of origin greatly varied. Based on these findings as well as complementary research, the differences in interpretation as to whether an applicant should be granted refugee status or subsidiary protection appeared to be rooted in different contextual circumstances, tradition, experience, and in part influenced by available resources.

<sup>417</sup> See for instance Case RvV, n° 157223 du 27 novembre 2016

### *Granting of humanitarian status over refugee status or subsidiary protection*

In Italy, a single procedure could lead to the granting of, alternatively, refugee status, subsidiary protection, or humanitarian protection, an additional form of protection defined at national level. NGOs denounced a tendency to strictly interpret and apply criteria to grant protection, leading to cases where applicants fulfilling the criteria for asylum were granted subsidiary protection instead, and applicants fulfilling the criteria for subsidiary protection were granted a humanitarian status, which gave access to less rights. While this policy did not seem to be followed regarding applications from the most common countries of origin in the EU (in 2015, humanitarian statuses represented 3% of the statuses granted to applicants from Afghanistan, 4% of those granted to applicants from Eritrea, 3% of those granted to applicants from Iraq, 2% of those granted to applicants from Somalia and 2% of those granted to applicants from Syria), it seemed to be the case for applications from less 'common' countries of origin, for which humanitarian statuses were largely granted over other types of protection (e.g. Bangladesh: 85% of 1,225 positive decisions; the Gambia: 85% of 2,995 positive decisions; Ghana: 89% of 800 positive decisions; Guinea: 83% of 600 positive decisions; Mali: 69% of 2,785 positive decisions; Nigeria: 66% of 3,740 positive decisions; Senegal: 85% of 1,565 positive decisions in 2015). In total, humanitarian statuses represented 53% of the international protection statuses granted in Italy in 2015.

### *Divergent interpretation and application of Article 10 Recast QD*

Some of the divergences observed could in part be explained by the way each Member State interpreted the reasons for persecution justifying the granting of refugee status as defined under Article 10(1). When it comes to religion (Article 10(1)(b)), some Member States such as Germany<sup>418</sup> considered Christians from Iraq as a special group to whom refugee status could be granted, while in Sweden the assessment was done on a case-by-case basis, which could lead to different protection statuses being granted. However, refugee statuses represented 53% of the total number of statuses granted following a positive decision on applications from Iraq lodged in Sweden in 2015, while subsidiary protection was only granted in 17% of cases. Still, the recognition rate for Iraqi applicants in Sweden in 2015 (37%) was significantly lower than the EU average (86%, of which 89% were refugee statuses and 10% were subsidiary protection statuses).<sup>419</sup>

The interpretation of the 'concept of political opinions' as a reason for persecution also varied across Member States. While important divergences in recognition rates were observed in a minority of Member States (see section 3.12 of the Evaluation report), the main difference between national practices rather lied in the nature of the status (refugee status or subsidiary protection) granted to Eritrean international protection seekers. Indeed, objection to and desertion from mandatory and indefinite conscription in Eritrea was considered as amounting to an act of treason in some Member States, and therefore qualified as a political act which could justify the granting of refugee status. However, other Member States considered that national service was a duty for all Eritreans and thus granted subsidiary protection for applicants who fled the country to escape it.<sup>420</sup>

### *Available resources*

In Austria, national authorities indicated that a tendency to grant refugee status rather than subsidiary protection was observed amongst case handlers, due to their longstanding experience of the Geneva Convention. Economic reasons were also raised with regard to the high number of judicial challenges of decisions to grant subsidiary protection in Austria. The Austrian authorities added that in the case of certain nationalities (e.g. Syrians), almost 100% of all first instance decisions granting subsidiary protection had been challenged. When for a specific country of origin a high number of such decisions was overturned in the second instance and refugee status was to be granted instead,

<sup>418</sup> ECRE, AIDA Country Report: Germany, November 2015, available at <http://www.asylumineurope.org/reports/country/germany>

<sup>419</sup> Eurostat data 2015

<sup>420</sup> Interview with EASO official, *op. cit.*

the competent authority was instructed to grant refugee status for the respective country of origin in the first place in order to avoid the time and resource intense procedure of legal review. This led to a tendency to increase the number of refugee statuses granted in first instance to nationals of the concerned country of origin. This tendency seemed to be confirmed by statistics on the share of refugee statuses granted in the most frequent countries of origin in Austria in 2014 and 2015. Indeed, in 2015, 99% of applications for international protection originating from Syria were successful. Amongst them, 96% applicants were granted refugee status and 4% were granted subsidiary protection.<sup>421</sup>

This practice was different from what was observed in other Member States. For example in Cyprus, according to lawyers and NGOs, subsidiary protection was automatically granted to Syrian applying for international protection, without an individual assessment of their situation. Indeed, in 2015, 100% of applicants from Syria were granted international protection, 98% of which received subsidiary protection.<sup>422</sup> Likewise, in Portugal, NGOs observed that applicants originating from countries at war, such as Syria, were granted subsidiary protection even though they sometimes qualified for refugee status. In 2015, only five applications from Syria were lodged in Portugal, all of which were rejected.

## **A3.2 Case study 2: Differences in accessing rights between asylum seekers and beneficiaries of international protection**

### **A3.2.1 Introduction**

#### **A3.2.1.1 Aim of the case study**

The evaluation of the application of the Recast QD identified difficulties for beneficiaries of international protection in particular when they initially accessed certain rights the moment after just having been granted refugee status or subsidiary protection. There seemed to be specific challenges when the initially granted rights (usually under the Reception Conditions Directive<sup>423</sup>) could no longer, or to a lesser extent, be accessed under the Recast QD.

While some of the differences were due to a *de facto* difference between the rights granted under the two instruments above, initial evidence also seemed to point at the fact that in some Member States support mechanisms for asylum applicants were more elaborate and comprehensive than those for beneficiaries of international protection. This was in parts related to the fact that different institutions or different federal levels were responsible for asylum seekers than for beneficiaries of international protection. This could lead to situations where relevant information about the asylum seeker, e.g. regarding the outcome of his/her health check, was not passed on to the competent authority in charge of the beneficiary of international protection. Other reasons could be that asylum seekers were provided with more targeted support whereas beneficiaries of international protection received the same 'general' support mechanisms available to all nationals or legally residing third-country nationals to access certain rights. The support mechanisms specifically targeted at asylum seekers on the other hand made it generally easier to gain access and make effective use of services and opportunities offered to them.

The aim of this case study was to identify Member States' practices, which had well working mechanisms in place to fill these 'protection gaps'.

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<sup>421</sup> Eurostat data 2015

<sup>422</sup> *Ibid.*

<sup>423</sup> Directive 2013/33/EU laying down standards for the reception of applicants for international protection. It must be noted that a detailed review of the implementation of the rights included in the Reception Directive was not within the scope of the study, hence most focus was placed on identifying what changes when the Qualification Directive starts being applied to beneficiaries of international protection.

### **A3.2.1.2 Content of the case study**

The above described discrepancy between the accessibility of rights for asylum seekers compared to beneficiaries of international protection concerned specifically the following rights:

- Specific situations of vulnerable persons, Article 20 (3) and (4)
- Social welfare, Article 29
- Healthcare, Article 30
- Access to accommodation, Article 32

#### **Specific situations of vulnerable persons, Article 20 (3) and (4)**

Regarding the **specific situation of vulnerable persons** (Article 20 (3) and (4)), the majority of Member States relied on the vulnerability assessment made during the asylum procedure. The Recast QD does not specifically require another assessment once a protection status has been granted. It only establishes the obligation to take the specific situation of vulnerable people into account when granting the rights foreseen in Chapter VII. However, in order to ensure that this obligation can be fulfilled in practice, it is crucial that the Member State has a mechanism in place that guarantees that the outcome of the first assessment under the Reception Conditions Directive is communicated to the competent authorities in charge of applying the rights set out in the Recast QD. Evidence assessed in the evaluation report however suggested 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.

#### **Social welfare, Article 29**

Article 29 of the Recast QD requires Member States to provide **access to social welfare** under the same eligibility conditions as nationals, without stipulating any additional criteria for accessing social welfare. This can, however, become a significant issue when the national legislation applying to nationals stipulates that a person must work and pay contributions to be able to access social welfare, as it often takes beneficiaries of international protection a long time to be able to find employment. Only a couple of countries indicated that beneficiaries of international protection received additional support during their first months in the country to respond to some of their most urgent needs.

#### **Healthcare, Article 30**

Article 30 of the Recast QD requires Member States to provide **access to healthcare** under the same eligibility conditions as nationals, without stipulating any additional criteria for accessing healthcare. Similarly to Article 29, this stipulation can become a significant issue when the healthcare legislation applying to nationals stipulates that a person must work and pay contributions to be able to access healthcare. In these cases, the Recast QD does not specify any conditions that would fill the gap between the minimum healthcare provided under the Reception Conditions Directives and people who are not yet employed. A few countries specified that access to healthcare is, however, available to people who are registered as unemployed, but this also presents its own set of issues. Indeed, they are often the same countries that indicated that there were administrative obstacles (such as language barriers and/or complexity of the system), and it remains unclear what happens to vulnerable persons if there is no specific system in place for them.

#### **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. Evidence assessed in the evaluation report revealed that in nine Member States beneficiaries of international protection had the same right to access accommodation as that of country nationals, and in two Member States targeted assistance

was provided to beneficiaries of international protection. However, evidence from the evaluation report also suggested that, in many countries, beneficiaries of international protection were affected by issues pertaining to the rental market much more than country nationals were (for instance, requests for two to three months rent in advance, too expensive). In these cases, little to no assistance was offered to them during the transition phase, leaving some homeless, others to remain in reception centres in sub-standard living conditions or others yet to find rentals solutions that did not “guarantee an adequate standard of living” as per Article 18 in the Reception Conditions Directive concerning reception centres.

### A3.2.2 Member States practices identified and examined as part of the case study

In the context of this case study, the following good practices were identified and further examined:

- In relation to Article 20(3) and (4) on **specific situation of vulnerable persons** the case study examined practices in:
  - **Finland** where an evaluation was carried out both as part of the asylum application procedure and once the applicant has received the status of beneficiary of international protection or subsidiary protection. The information was passed on amongst competent authorities and was used to inform the design of the future integration plan for the beneficiary; and,
  - **France** and **Sweden**, which had developed (or were in the process of developing) comprehensive and specific guidelines on how to undertake the assessment of, and deal with, person with special needs.
- In relation to Article 29 on **access to social welfare** the case study examined practices in:
  - In **Austria** beneficiaries of international protection were entitled to benefits in the form of “Needs-based Guaranteed Minimum Resources” (*bedarfsorientierte Mindestsicherung*).
  - **Finland**, where beneficiaries of international protection received a starting package in addition to the social benefits and assistance also available to Finnish nationals.
  - **Poland**, where beneficiaries of international protection received immediate access to social welfare for the first two months after their status was granted, and where they benefited from an individual integration programme after these two months, which included cash benefits and Polish languages classes.
- In relation to Article 30(1) and (2) on **access to healthcare** the case study examined practices in:
  - **Bulgaria** and **Sweden**, where access to healthcare was related to the permanent residence permit, and was therefore automatically granted to beneficiaries of international protection;
  - **Hungary**, where beneficiaries of international protection automatically benefited from free-of-charge national insurance during their first year in the country;
  - **Romania**, where beneficiaries of international protection belonging to a vulnerable group automatically benefited from the healthcare they needed; and,
  - **Sweden**, where beneficiaries of international protection belonging to a vulnerable group automatically benefited from the health care they needed, and where the Red Cross provided number of specialised centres providing healthcare support to vulnerable persons.
- In relation to Article 32(1) on **access to accommodation** the case study examined practices in:
  - **Austria** provided for a combination of general and specific measures to ensure easy initial access to housing.



- **Czech Republic, Croatia, Greece and Italy**, where the state, through European funds or with the logistical support of other local actors, provided financial assistance to beneficiaries of international protection (generally as rent subsidies);
- **France** where beneficiaries of international protection benefited from the same social support as country nationals, as well as emergency accommodation if necessary; and,
- **Finland** where the Ministry of the Environment provided financial support to beneficiaries of international protection through contracts with the municipalities, which were also aimed at ensuring that the beneficiary received integration and employment assistance in addition to accommodation assistance.

### A3.2.3 Ensuring a good assessment of special needs before and after granting status

In **Finland**, the evaluation of the specific situation of vulnerable persons was carried out both during the asylum application procedure and once the applicant had been granted a status of international protection. The identification *during the asylum application procedure* was carried out in the reception centres, through both personal interviews with the asylum seeker and observation of his/her behaviour in the centre both day and night. The interview was carried out by both a nurse and a social worker who had the possibility to call upon an external adviser or organisation for additional advice if needed. Additionally, the entire staff at the reception centre was involved in monitoring the behaviour of the asylum seeker, with clear guidelines to look for signs of sadness, irritability, nervousness, sleep disorders, etc. This process already provided a comprehensive assessment of the vulnerability of the asylum seeker and his/her special needs.<sup>424</sup>

Once an asylum seeker had been granted refugee or subsidiary protection status, the information from the reception centre included in his/her file was then used to draw up an integration plan. The beneficiary of international protection, the municipality and the employment office elaborated the integration plan jointly, which accounted for the necessity to take measures and provide services for the special needs of the vulnerable beneficiary.<sup>425</sup>

In **Sweden**, as part of the process of the transposition of the recast Asylum Procedures Directive into Swedish law, the Swedish Migration Agency (SMA) set up a special working group to look more specifically at the way in which special needs persons should be identified during the asylum process, as well as how their needs should be taken into consideration once they obtained the status of international protection. Little information was available on the details of this future procedure, but it was clear from interviews carried out for the purpose of this evaluation that there would always be an individual assessment of persons with special needs, and that such information would be included in the file that accompanied the applicant throughout the entire process (including, if relevant, in the court of appeal).

In **France**, staff from the French Integration and Immigration Office (*Office Français de l'Immigration et de l'Intégration* – OFII) as well as the *prefecture*, carried out the vulnerability assessment in the “one-stop-shop” where the asylum seekers submit their asylum application. The assessment was made through the use of a questionnaire, which the asylum seeker is not obliged to fill out but should if he/she wants to have a degree of vulnerability recognised. If a situation of vulnerability was detected, which required particular reception conditions, the OFII transferred, with the approval of the asylum seeker, this information to the French Stateless and Refugees Protection Office (*Office Français de Protection des Réfugiés et des Apatrides* – OFPRA). It is important to note that this type of vulnerability did not concern vulnerability on the grounds of which asylum may be granted; rather,

<sup>424</sup> Holt Hasle, C. (2012), “Identification and follow-up on vulnerable asylum seekers with special needs – practices and legislation within Norway compared to the European Union”, Oslo and Akershus University College of Applied Sciences

<sup>425</sup> Seppelin, M. (2010), “Finnish integration policy – Act on the integration of immigrants and reception of asylum seekers”, in *Making success of integrating immigrants into the labour market, Norway*

it concerned vulnerability which might require specific reception conditions, such as: pregnant women and disabled people (mobility, visual, audio, mental or intellectual).

OFPRO was subsequently responsible for processing the asylum seeker's application. In the process of doing so, it also carried out a second vulnerability assessment. This assessment aimed to ensure that the asylum seeker's reception conditions reflected his/her special needs, both during the procedure and if relevant after international protection status was granted.

Information between OFII and OFPRO was transmitted through the use of the database called AGDREF. It is important to note, however, that as of November 2015 a new procedure had been put in place, adding a first step but intended to simplify the whole process. At the time writing this report, the new procedure was not yet fully implemented, as such the process described here would continue to exist as a transitional procedure. Once the new procedure is fully implemented, it would require asylum seekers to present themselves to a "welcome platform" that would help them register their asylum application on to AGDREF. This was intended to unburden the OFII and *prefecture* staff, so as to give them more time to properly assess an asylum application.

### A3.2.4 Ensuring easy initial access to social welfare after being granted a status

In **Austria** beneficiaries of international protection were entitled to benefits in the form of "Needs-based Guaranteed Minimum Resources" (*bedarfsorientierte Mindestsicherung*), a general non-contributory system available for the entire population, in which beneficiaries of international protection were assimilated to Austrian citizens.<sup>426</sup> Additional support measures to facilitate access by beneficiaries of international protection to the Needs-based Guaranteed Minimum Resources emphasised the provision of counselling.<sup>427</sup> In this regard, public authorities cooperated with counselling centres, which accompanied beneficiaries of international protection to appointments at government offices and centres or when applying for income support. An example of this approach could be found in the cooperation between the City of Vienna and Interface Wien GmbH, a non-profit company contracted by the municipality for providing temporary integration support for up to two years to refugees and beneficiaries of subsidiary protection residing in Vienna.<sup>428</sup> It was reported that in 2014 for example, almost 50 % of initial counselling sessions concerned securing an immediate means of subsistence, whereby applying for Needs-based Guaranteed Minimum Resources was the most common issue.<sup>429</sup>

In **Finland**, beneficiaries of international protection were entitled to social benefits equivalent to those received by nationals. These included benefits based on residence such as child benefits, sickness benefits, parental benefits (maternity leave), pension benefits (for those who have not earned a work pension), disability benefits and unemployment benefits (for those who are on the labour market but are unable to find employment). A beneficiary of international protection could also be granted social assistance, also known as income support, which was last-resort and means-tested (proof that all the other benefits were insufficient for adequate living conditions) as financial assistance in the Finnish social security system. The conditions for receiving social benefits were contingent upon contracts the Ministry of the Environment (MoE) was setting up between the Ministry's regional authorities and smaller municipalities across Finland. Such contracts stipulated that if Municipalities agreed to provide beneficiaries of international protection with all the support they needed, including also integration training and assistance in finding employment, the State

<sup>426</sup> Koppenberg, S. 'Integration of beneficiaries of international protection and holders of humanitarian residence titles into the labour market - Policies and Measures in Austria', IOM, December 2015, pp. 71-2, available at: <https://europa.eu/!tK77Yp>, last accessed on 23 May 2016.

<sup>427</sup> Ibid, pp. 73-4.

<sup>428</sup> See Interface Wien, 'Starting Aid for persons entitled to asylum or holding a subsidiary protection status in Vienna', available at: <https://bit.ly/2RzupbX>, last accessed on 23 May 2016.

<sup>429</sup> Koppenberg, S. 'Integration of beneficiaries of international protection and holders of humanitarian residence titles into the labour market - Policies and Measures in Austria', IOM, December 2015, pp. 73-4.

would reimburse the initial costs of receiving the beneficiaries for the first three to four years. Finally, when they moved to their municipality of residence, beneficiaries of international protection also received a “starting package” from their municipalities, which typically included household items, and which was meant to guarantee minimum standards of living. The value of the package, much like everything else, was also left at the discretion of the municipality, and usually varied between EUR 295 to EUR 1,000 for a single person, whereas it depended on the number of children for a family.

In **Poland**, when as soon as an asylum seeker had been granted an international protection status, for the first two months of protection, he/she received social assistance benefits associated with the procedure. After this two months period, district family assistance centres carried out individual integration programmes (IPI), which were implemented throughout the first year of integration in Poland. The benefits offered were cash benefits, intended to cover the costs of their stay in Poland, as well as courses to learn the Polish language, which were a precondition to benefit from the IPI, otherwise it would be interrupted due to absenteeism. Financial assistance amounted to approximately PLN 1200 for a single person; this amount per person, however, decreased if there were more people in the family. There were no restrictions for people benefitting from the IPI to be employed, as they were not subject to income criteria. The programme might also be suspended if the beneficiary committed a crime during the year.

### **A3.2.5 Ensuring easy initial access to healthcare after being granted a status**

#### **A3.2.5.1 Ensuring there are no gaps in accessing healthcare**

In **Bulgaria**, the Health Insurance Act, through Articles 33 and 34, stipulated that health insurance was mandatory for beneficiaries of international protection who had been granted long-term or permanent residence in Bulgaria, and that such health insurance should start from the day they received the decision granting their status. Moreover, Article 45 of the same legislation indicated that beneficiaries of international protection should receive a package of health services. Similarly, in **Sweden**, people who had been given a permanent residence permit (which comes automatically with international protection status) were registered with their given personal identity number in the Swedish population records, which gave them instant access to healthcare.

In **Hungary**, beneficiaries of international protection could access healthcare under the same conditions as Hungarian nationals. Nevertheless, in an attempt to avoid beneficiaries being left without protection if they did not fulfil the conditions, once their status had been granted they automatically benefited from free-of-charge national insurance for their first year in the country.

#### **A3.2.5.2 Ensuring there is no gap in access to healthcare for beneficiaries with special needs**

In **Romania**, if a person had been assessed as belonging to a vulnerable group, they were automatically medically insured without having to pay the requisite contributions. Vulnerable people included: unaccompanied minors; persons with disabilities; persons who had reached retirement age and did not receive pension; pregnant women; single parents with minor children; victims of trafficking; and, victims of torture, rape or other serious forms of psychological, physical or sexual violence.

Health workers in **Sweden** provided health care following a needs assessment. If someone was deemed in need of a specific form of treatment, for example mental care, the care was given irrespective of whether the person in question was a beneficiary of international protection or a national. Whoever had the greatest need for health care was given preferential access to care. Moreover, different county councils and regions provided some specialised clinics for beneficiaries of international protection with special needs, such as primary care for refugees (*Flyktinghälsan*) and centres that focused on culturally specific needs (*Transkulturellt centrum*) etc. In Gothenburg, for instance, there was a special primary healthcare centre for refugee children (*Flyktingbarnteamet*). Finally, the Swedish Red Cross organisation had six Centres (in Stockholm, Gothenburg, Malmö,

Skövde, Uppsala and in the north of Sweden) specialised in treatment for refugees traumatised as a result of war, persecution or torture and have trouble sleeping, difficult memories, feeling stressed, anxious, scared or sad. Information in those centres was available in Arabic, Farsi, Somali, English and Swedish on the website.

### A3.2.6 Ensuring easy initial access to accommodation after being granted a status

**Austria** provided for a combination of general and specific measures for the target group.<sup>430</sup> As for the general measures, these included the granting of in-cash assistance in the form of housing subsidies. The provision of such subsidies fell within the jurisdiction of the *Länder*, which meant that different regulations and levels of support applied throughout the territory. In addition, the municipalities built and administered pools of social housing, which they rented out directly.

Tailored accommodation assistance was offered as part of transitional measures, usually through the so-called ‘start up’ flats for both refugees and beneficiaries of subsidiary protection.<sup>431</sup> Start-up accommodation projects were generally run by church-affiliated organisations and other NGOs and co-financed by the AMIF and the Austrian Federal Ministry for Europe, Integration and Foreign Affairs. The City of Vienna offered similar assistance through a fund financed by the municipality, *Fonds Soziales Wien*, which provided supported accommodation for individuals requiring start-up assistance in Vienna.<sup>432</sup> Two of the projects funded under this scheme were:

- **Project Future Space (*ZukunftsRaum*)**, run by the Diakonia Refugee Service Vienna.<sup>433</sup> The project supported beneficiaries of international protection by offering accommodation in integration-oriented starter flats, counselling and planning, as well as arranging vocational orientation and job placements.
- **Project Flatworks**, run by People’s Aid Austria Vienna, which targeted recognized refugees and persons granted subsidiary protection offering the possibility to live in cooperative flats (*Genossenschaftswohnungen*).<sup>434</sup> People’s Aid Austria provided the necessary co-financing which the tenant could repay within two years. The project also offered personal social counselling, guidance and assistance in the homes, acted as a mediator and helped beneficiaries improve their understanding of Austrian society, institutions and culture.

In the **Czech Republic**, a state integration programme provided support in finding accommodation to beneficiaries of international protection living in integration asylum centres. Providers of these integration services were NGOs, the Church or the Municipality. Once the beneficiaries moved out to their new accommodation, these providers initially covered the accommodation rental costs, receiving funds from the Ministry of Interior under the condition that accommodation costs would be covered for one year. During the time it took to find adequate accommodation, the beneficiaries of international protection were allowed to continue living in the integration asylum centre for up to 18 months.

In **Croatia**, the state covered housing costs for beneficiaries of international protection who had submitted a request to the competent social welfare centre. The duration of this right was limited to a period of two years under the condition that they could prove they had no income. While beneficiaries of international protection could be accommodated in either state or private owned

<sup>430</sup> For a brief description of Austria’s housing policy for beneficiaries of international protection, see Koppenberg, S. ‘Integration of beneficiaries of international protection and holders of humanitarian residence titles into the labour market - Policies and Measures in Austria’, IOM, December 2015, pp. 65-9.

<sup>431</sup> Ibid, p. 68.

<sup>432</sup> Further information can be accessed at the Fonds Soziales Wien website, available at: <http://www.fsw.at/index.html>, last accessed on 24 May 2016.

<sup>433</sup> UNHCR, ‘Facilitators and barriers - Refugee Integration in Austria’, 2013, p. 81.

<sup>434</sup> Ibid, p. 75.

apartments, there were rules on the types of apartments in which they would be relocated: for instance, one person must be relocated in an apartment of at least 25m<sup>2</sup> for approximately EUR 200 per month.

In **Greece**, although there was no well-established state support, there was an attempt to provide rent subsidies to beneficiaries of international protection through the European Social Fund (ESF) for the period 2014-2020. In **Italy**, where SPRAR was present to provide assistance to beneficiaries of international protection, the municipality acted as a guarantor and provided an initial contribution to pay the rent. There remained, however, significant problems in terms of availability of housing.

In **Finland**, the Ministry of the Environment (MoE) was in the process of developing measures that would aim to assist beneficiaries of international protection with accommodation. This will include providing them with assistance to find accommodation as well as acting as guarantor and providing deposits for rental contracts. Moreover, the contracts between the MoE and the smaller municipalities, were also used in the framework of providing assistance in finding accommodation. At present, however, only 80 municipalities had signed such contract, as a result of a wider concern across the country that big cities would not have enough housing available whereas smaller municipalities were worried of the beneficiaries' impact on their employment market once state subsidies ended.

In **France**, beneficiaries of international protection had access to the same insertion mechanism set up for French nationals. This included a wide variety of options, such as: direct access to social housing with social support; accommodation in social housing with an operator who took care of the lease accompaniment; access to private accommodation (transferable lease); accommodation in social residences; emergency accommodation. Such wide access to accommodation support solutions, which was ensured by the Communal Centre for Social Action (*Centre Communal d'Action Sociale – CCAS*), meant that, at least in theory, no one should be left behind. As it may nevertheless remain challenging to find accommodation for beneficiaries of international protection, depending on where they were, such dispersion mechanisms were key to the good functioning of this system.

### A3.3 Case study 3 - Access to integration facilities (Article 34)

#### A3.3.1 Introduction

##### A3.3.1.1 Aim of the case study

The overall aim of this case study was to complement the analysis presented in the Evaluation report on the implementation of Article 34 in selected Member States by providing additional information on:

- The different approaches applied in Member States to integration;
- The nature of the integration programmes implemented; and
- The tailoring of these programmes to the needs of beneficiaries.

##### A3.3.1.2 Practices identified and examined as part of the case study

In the context of this case study, the following Member States were specifically chosen for review:

- Member States which had in place an integration programme established for more than five years, supported by a long(er) history of integration policy (**Austria, Belgium, Germany, Sweden**);
- Member States which had recently introduced changes to their integration policy and/or new integration measures (**Austria, Croatia**<sup>435</sup>);

<sup>435</sup> At the time of writing, **Germany** and **Sweden** had also introduced changes to policy and practice, but these were yet to be operationalised.

- Member States with particularly unusual or distinct practices in place (**Poland, Slovenia**).

### A3.3.1.3 Content of the case study

- This case study reviewed specific Member State practices in providing access to integration facilities (Article 34). Article 34 of the Recast QD created an obligation for Member States to ensure access to appropriate integration programmes to beneficiaries of international protection, as far as possible taking into consideration their specific needs or which create pre-conditions which guarantee access to such programmes. This Article was meant to be read in conjunction with Recital 47 providing for the consideration of beneficiaries' particular needs (language training and the provision of information concerning individual rights and obligations relating to their protection status in the Member State concerned) in integration programmes. The Recast QD did not specify further how the integration programmes should be defined, taking into account that integration remained primarily a national competence.
- Integration measures were influenced in Member States by a number of factors, most recently the notable increase in the number of asylum seekers registering in the EU (this has triggered policy changes recently in **Austria, Germany** and **Sweden**). **Croatia** introduced a new integration policy and related measures in 2013 after acceding to the EU. The introduction of Article 34 had not triggered legislative changes in the Member States reviewed for this case study. In **Germany** it triggered a practical change, as the national integration programme was amended to extend conditions applying refugees to beneficiaries of subsidiary protection following the introduction of the Recast QD.
- Four broad approaches to integration were employed in Member States, namely a holistic programme; access to disparate support; coordinated support (including referrals) and; dependence on ad-hoc support provided locally or by CSOs). The focus of integration measures also varied between Member States with some (BE, DE and HR) placing more emphasis on the cultural integration of the migrant (i.e. on the understanding of cultural values by the migrant), others (**Austria**) on the societal integration of beneficiaries (i.e. understanding of practical aspects of the host country's society) , integration into the labour market (**Sweden**) or on reducing the vulnerability of the beneficiary of international protection (PL, SI). The notable variety between the case study Member States in terms of the caseload registered on integration programmes and the subsequent budget assigned to them, might have also influenced the programme approach.

All Member States reviewed for this case study offered language teaching and assistance with orientation. However, there was a distinction between the Member States as to the type of orientation support provided (cultural or practical) and only some Member States (AT, BE (Flanders), PL, SE, SI) incorporated access to housing, education, employment and social and health care into their overall programmes. Case study Member States also varied in the extent to which their integration programmes were delivered at national or local level (or both). There was also variation between Member States as to whether integration support was free / paid for and unconditional / conditional. Finally, Member States also differed as to whether they provided generic or individualised support and whether they targeted it specifically at beneficiaries of international protection or at third country nationals / newly arriving non-nationals in general.

This case study was not able to find sufficient information to conclude which of the above-described approaches are most effective for integration. This was due to a number of factors:

- a) Evaluations of integration programmes are rare and - when conducted - vary in method and quality;
- b) Member States do not always monitor integration nor the outcomes of integration programmes and - when they do - they apply different indicators rendering the results incomparable;

- c) Multiple other factors additional to participation in integration programmes affected integration outcomes. It would therefore be inaccurate to draw conclusions about the effectiveness of integration programmes from general findings on integration.

### A3.3.2 The impact of the Recast QD on use of integration programmes in the EU

The Evaluation report found that only a few Member States changed their national legislation (BG, HU, IT, LT) and/or practices (HU, LT) in response to the introduction of Article 34. This was perhaps because most Member States (AT, BE, CY, CZ, DE, EE, FI, FR, LT, LV, MT, PL, PT, RO, SE, SI, SK) already had integration programmes in place which were accessible to beneficiaries of international protection.<sup>436</sup> In **Germany**, following the introduction of the Recast QD, beneficiaries of subsidiary protection were granted the right to attend existing integration courses; previously the possibility to participate was only optional and subject to free non-used places in the course.

Prior to the introduction of the Recast QD, nationally-specific experiences of immigration or asylum had more of an influence on the development of integration programmes (and policies) than EU legislation. Member States such as **Austria, Belgium, Germany** and **Sweden** had long-standing histories of supporting integration and most of these had had integration programmes in place for more than a decade.<sup>437</sup> These had been driven by different national experiences, e.g. the need to integrate Hungarian refugees in the 1960s (**Austria**) and the transfer of competences to regional governments in the 1990s (**Belgium**).

Since 2011, changes to integration policy had been mainly driven by increases in the number of asylum applications in the EU following political unrest in the Middle East and Africa. For example, in 2015, **Austria** introduced a **new policy** specifically focussing on the integration of beneficiaries of international protection: ‘50 Action Points: A Plan for the Integration of Persons entitled to Asylum or Subsidiary Protection in Austria.’<sup>438</sup> The impetus for the policy was the “growing challenge” of the integration of recognised refugees in the face of rapidly rising applications for international protection in Austria; until then Austria’s policy on integration and its public services had not specifically targeted beneficiaries of international protection. Similarly, in **Germany**, it was announced in April 2016 that the Member State’s ‘first ever integration law’ would be introduced later in the year “to make it easier for asylum seekers to gain access to the German labour market.”<sup>439</sup> This announcement was in direct response to the increase in the number of asylum seekers being registered in Germany.

In **Croatia**, integration policy and practice was relatively new, having been gradually introduced since 2013, and appeared to be influenced by Croatia’s accession to the EU. Following accession, Croatia reviewed its migration and integration policies and – in response – established a Permanent Committee for the Integration of Foreigners, as well as an Action Plan for the Removal of Obstacles to the Exercise of Particular Rights in the Area of the Integration of Foreigners 2013-2015.<sup>440</sup>

<sup>436</sup> Denmark, Ireland and the United Kingdom are not here considered, because they are not party to the Recast QD. Croatia introduced integration policies not in response to the Recast QD, but in response to their accession to the EU in 2013. Greece does not have a national integration programmes in place (though it has implemented ad-hoc integration projects with European Refugee Fund (ERF) funding. No information was available for Spain

<sup>437</sup> Austria has been offering integration services since the 1960s, in Belgium (Flanders and Wallonia) integration programmes have been in place since the mid-1990s, the German Integration Course was introduced into Germany in 2005, and Sweden has had an integration policy in place since the 1980s.

<sup>438</sup> <https://bit.ly/2FJkERG>

<sup>439</sup> <https://bit.ly/1NpYAVY>

<sup>440</sup> <https://bit.ly/2FKiwJd>

### A3.3.3 Integration programmes in case study countries

#### A3.3.3.1 Overview of national approaches

Article 34 does not define the content nor the format of integration programmes. Recital 49 provides some minimal guidance (that integration should involve language training and orientation), but this is not binding. Consequently, there was significant variation between Member States in the approaches they took to integration, styling it either as access to existing, disparate services (that were often also available to nationals and other non-nationals) or as a purpose-built programme of courses and services targeting non-nationals.

##### *National approaches to integration programmes*

Broadly there were four different approaches to integration applied in Member States:

1. A holistic standard programme was made available, which offered a range of services ‘in one’ usually including as a minimum language lessons and orientation lessons and in some Member States (e.g. **Belgium**) support and advice on finding a job and sometimes vocational training or otherwise referral onto generic vocational training courses. These programmes were always compact, usually delivered or coordinated by a single organisation, usually centralised at national level (though they might be delivered by regional or local actors), were usually to be completed within a set amount of time and were sometimes either obligatory or tied to certain conditions. Such programmes were implemented in **Belgium, Croatia** and **Germany**.
2. Integration support was not delivered as a single, holistic programme of services, but rather through a coordinated set of services which the beneficiary had the right to access. This was the case in **Austria**.
3. An integration supervisor or support worker was assigned to the beneficiary and was responsible for coordinating support and for referring the beneficiary onto services (e.g. language courses, vocational training, orientation support). The services and support available to the beneficiary of international protection were pre-defined in national policy or legislation. This type of ‘programme’ format was used in **Poland, Slovenia** and **Sweden**.
4. No policy nor programme of integration support was defined nationally, but different actors (e.g. NGOs, faith-based groups, local authorities) provided some support (e.g. language classes, orientation services, etc.) This case study has not reviewed such Member States, though these include **Bulgaria, Greece, Ireland** and **Italy**.

##### *The purpose and focus of integration programmes*

The purpose and focus of integration programmes differed between case study countries. In countries where ‘civic integration programmes’ were implemented (i.e. in **Belgium** and **Germany**), the focus was on the **cultural orientation** of the migrant – particularly, in the case of Germany, on the migrant **learning the national language**. Similarly, in **Croatia** the national integration programme, which began in 2015, focussed on teaching Croatian history and culture through Croatian language teaching. In **Slovenia**, the integration programme also had the primary purpose of providing practical orientation and language teaching,<sup>441</sup> though in practice there was a greater focus on addressing vulnerability and practical orientation.<sup>442</sup>

The Common Basic Principles for immigrant integration policy, which underpin EU policymaking on integration, underline that integration is “a dynamic, two-way process of mutual accommodation by

<sup>441</sup> Ministry of Interior (MINISTRSTVO ZA NOTRANJE ZADEVE) Brochure on ‘Integration into Slovene society: information for foreigners’ available at: <https://bit.ly/2Cy6oaT>

<sup>442</sup> Slovenian National Report of the EMN (2016) ‘Integration of beneficiaries of international/humanitarian protection into the labour market: policies and good practices’ – *as yet unpublished*



all immigrants and residents of Member States”.<sup>443</sup> “One way integration” by which the onus is on the migrant to obtain sufficient knowledge and experience to integrate into the host society has been criticised by some authors.<sup>444</sup> In **Austria**, integration was seen as a **two-way process** between the host society and the migrant. The Austrian government recognised that “integration is not something that happens by itself ... the basic framework must be defined, communicated in a clear and transparent manner and accepted by all players”.<sup>445</sup> The objectives of Austrian integration policy was not only to better habituate the migrant to Austrian life, but also to **reduce discrimination** towards migrants.

In **Sweden**, the focus of integration programmes was on **facilitating equality** between migrants and nationals, particularly in the **labour market**. To do this, permanent residents were given access to the same rights as citizens, though needs-based, tailored integration support was offered to those requiring additional support (including beneficiaries of international protection).<sup>446</sup>

Similarly to **Slovenia**, in **Poland**, the focus of integration was on **supporting the most vulnerable**. Unlike other Member States the integration programme did not focus on orientation, but rather on the **provision of financial and social assistance**.

#### *Differences in the caseloads of integration programmes*

It was challenging to compare the caseloads of integration programmes between Member States, because some (e.g. **Austria** and **Poland** which did not offer standard, centralised programmes) did not collect this information at national level and for others (i.e. **Croatia**) this information could not be identified for the case study. In all cases, information was not comparable, because it was collected for different years and using different metrics.

However, the information collected indicated that **Germany** had by far the largest number of participants on its integration course than other Member States. This was not surprising given that it also had the largest migrant and refugee populations in the EU during the evaluated period. **Belgium** also had reasonably high numbers of participants and it can be assumed, given the extensiveness of integration programmes in **Austria**, that comparatively high numbers also participated there. By contrast, **Slovenia** had much lower numbers of participants.

<sup>443</sup> See the Press Release of the 2618th Justice and Home Affairs (JHA) Council Meeting, Brussels, 19 November 2004: [http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/jha/82745.pdf#zoom=100](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/jha/82745.pdf#zoom=100)

<sup>444</sup> Z, Hübschmann (2015) ‘Migrant Integration Programs: The Case of Germany’ in Global Migration Research Paper no. 11 (2015) - <https://bit.ly/2Djq97X>

<sup>445</sup> <https://bit.ly/2FJkERG>

<sup>446</sup> UNHCR (2013) ‘Refugee Integration in Europe: a new beginning’. Outcome of an EU funded project on Refugee Integration Capacity and Evaluation (RICE), September 2013

### **Examples of caseloads in integration programmes**

- From 2005-mid-2014 over one million people started the integration course in **Germany** for the first time and around 200,000 of these resat courses (amounting to over 1.2 million attending courses)<sup>447</sup> this would amount to an average of 120,000 participants in the course per year.<sup>448</sup> In Flanders, **Belgium**, in 2014, 14,815 persons signed up, whilst during the period 2011-2013, around 13,000 signed up on an annual basis and in 2009 and 2010, it varied between 8,000 and 9,000.<sup>449</sup> In **Sweden**, according to one report, from 2012 to 2014, 8,000 beneficiaries of international protection received integration support from the public employment service.<sup>450</sup>
- In **Slovenia**, at the end of 2014, 114 beneficiaries of international protection were registered within the three year integration programme.<sup>451</sup>

### **Budgets for integration in Member States**

It was not possible to accurately compare expenditure on the integration of beneficiaries of international protection between Member States mainly because (a) this information was not collected at EU level and was therefore not uniform and (b) most Member States budgeted their expenditure on integration across the board without distinguishing between expenditure on the integration of different migrant groups.

Both **Austria** and **Sweden** increased their budgets for integration (specifically of beneficiaries of international protection) in 2016 in response to the increasing number of beneficiaries of international protection in their Member States, who would require integration support:

- The Austrian Federal government allocated **EUR 145 million** for the integration of refugees into the labour market (EUR 70 million) to establish a fund dedicated to integration projects (EUR 75 million).<sup>452</sup>
- The Swedish government proposed to spend more than **EUR 160 million** on integration in the year 2016:
  - SEK 376 million (EUR 40.92 million) for facilitating and speeding up the introduction of new arrivals to working life,

<sup>447</sup> German National Report of the EMN (2016) 'Integration of beneficiaries of international/humanitarian protection into the labour market: policies and good practices' – *as yet unpublished*

<sup>448</sup> To put this into perspective, from 2008 to the end of 2014 28,880 third-country nationals received positive final decisions on their asylum applications. However, it must be noted that integration programmes target not only BIPs but other types of TCNs (including some asylum seekers and legal residents, as well as I think EU nationals).

<sup>449</sup> Sarah Van den Broucke, Jo Noppe, Karen Stuyck, Philippe Buyschaert, Gerlinde Doyen & Johan Wets (2015) Flemish Migration and Integration Monitor 2015 - Executive Summary. To put this into perspective, from 2009 to 2014, Belgium issued 1,890 positive final decisions on asylum applications. However, it must be noted that integration programmes target not only BIPs but other types of TCNs.

<sup>450</sup> M. Peromingo (2014) 'Work and refugee integration in Sweden' in Forced Migration Review no.48, November 2014: <https://bit.ly/2Cy6vTR> To put this into perspective, between these years there were 7,645 positive final decisions on asylum applications in Sweden. However, it must be noted that integration programmes target not only BIPs but other types of TCNs.

<sup>451</sup> Ministry of Interior (2015) 2014 Report on Migration, International Protection and Integration: <https://bit.ly/2FBnAAe> Note that the statistics are not very clearly presented, so it is not fully clear the period covered by the monitoring – it appears that the 114 figure is the number of people *in the system* on the day that the figures were reviewed (31.12.2014), which is a very different metric from the other Member States which consider numbers participating within a defined time period.

<sup>452</sup> Austrian federal Ministry of Finance (2016) 'Draft Budgetary Plan 2016' In that year there were no positive final decisions on asylum applications issued in Slovenia.

- an estimated SEK 1.1 billion (EUR 119.7 million) to compensate municipalities for supporting new arrivals, and
- a permanent increase of SEK 20 million (EUR 2.18 million) per year in the county administrative boards' funding for administration, beginning in 2016, for their work in the reception of resettled refugees.<sup>453</sup>

Comparable information was not available on *overall* national spending on integration. Information available for **Germany** showed that it spent EUR 1.7 billion on integration between 2005 and 2014 (an **average of EUR 189 million per year**).<sup>454</sup>

### A3.3.3.2 Nature of the programmes

#### Services offered

Member States reviewed for this case study differed slightly in terms of their service offer, largely in line with the focus and objectives of the programme (see section A3.3.1) though all Member States offered language teaching. The table below summarises the variation in the integration services offered.

**Table A3.2 Summary of the content of integration programmes in the case study countries**

Member State	Language teaching	Practical orientation	Cultural orientation	Housing support	Integration-focused financial assistance	Education	Employment-related support
Austria	YES	YES	YES	YES	NO	YES	YES
Belgium	YES	NO	YES	NO	NO	YES	YES
Croatia	YES	NO	YES	NO	NO	NO	NO
Germany	YES	NO	YES	NO	NO	NO	NO
Poland	YES	YES	NO	YES	YES	YES	NO
Slovenia	YES	YES	NO	YES	YES	YES	NO
Sweden	YES	YES	YES	YES	NO	<i>Not through the main integration programme</i>	YES

Further details on these integration programmes is provided below:

- **Austria:** the policy on integration focused on seven fields of action: language and education, work and employment, rule of law and values, intercultural dialogue, health and social issues, sports and leisure, as well as housing.<sup>455</sup>

<sup>453</sup> Government Offices of Sweden, webpage on 'Labour market policy initiatives in the Budget Bill for 2016': <http://www.government.se/press-releases/2015/09/labour-market-policy-initiatives-in-the-budget-bill-for-2016/>

<sup>454</sup> German National Report of the EMN (2016) 'Integration of beneficiaries of international/humanitarian protection into the labour market: policies and good practices' – *as yet unpublished* based on information published by BAMF.

<sup>455</sup> <http://www.bmeia.gv.at/en/integration/>

- **Belgium** (Flanders): the primary civic integration programme (which was obligatory for beneficiaries of international protection) included individual counselling and career orientation (i.e. coaching on job-searching). The optional **secondary civic integration programme** offered the possibility for beneficiaries to follow vocational training or entrepreneurship training and enrol in further language education programmes. Access to housing and social welfare was not an integral part of the integration programme.
- **Poland**: As part of the development of the individual integration programme in Poland, the social worker assigned to the beneficiary of international protection assessed the beneficiary’s family, health, housing, vocational education situation, etc. and develop the individual programme of financial aid and specific integration measures (e.g. access to mainstream language teaching, vocational training, etc.) accordingly. Housing was a major component of the programme, as was welfare (the exact sum was calculated by the District Family Support Centre (DFSC) based on the integration needs and approved by the provincial governor) and language learning (the financial and in-kind support provided was conditional on attendance in Polish language courses (if language learning was needed).
- **Slovenia**: The integration programme included financial compensation for housing for up to three years (of 270 euro per month) and temporary accommodation of up to 1.5 years for particularly vulnerable persons (e.g. UAMs), access to secondary education and support with the recognition of qualifications. **Sweden**: The Introduction Act introduced in 2010 to improve labour market integration among newly arrived immigrants provided that working-age beneficiaries of international/humanitarian protection and their working-age family members would receive Swedish language tuition (Sfi), civic orientation courses<sup>456</sup> and employment preparatory activities (including vocational training) as part of an “introduction plan”. The support provided (through the Public Employment Service) included support in finding housing. Access to education was not integral to the main integration programme, though the national and local governments fund several separate schemes aimed at improving access to education for beneficiaries of international protection and this was budgeted for under the national integration budget.<sup>457</sup>Service providers

Member States reviewed for this case study differed as to whether integration support was provided at national local or regional level, as outlined in Table 1.2 below.

**Table A3.3 Responsibility for managing and delivering integration programmes**

<b>Responsibility was centralised nationally</b>	Croatia, Germany, Slovenia, Sweden (shared)
<b>Responsibility lay with regional / provincial governments</b>	Austria, Belgium (Flanders), Poland, Sweden (shared)
<b>Responsibility lay with municipalities</b>	Austria, Belgium (Wallonia)

In the case of **Austria** provincial, local and municipal authorities had responsibility for integration and each had the power to implement their own programmes. Only the local programmes of the Austrian Integration Fund (OIF) and the public employment services (AMS) are standardised across

<sup>456</sup> Civic orientation was comprised of eight modules: to come to Sweden, to live in Sweden, to be self-sufficient and develop in Sweden, the rights and obligations of the individual, to form a family and live with children in Sweden, to influence in Sweden, to care for your health in Sweden and to age in Sweden provided over a 60+ hours period by municipalities.

<sup>457</sup> See the Swedish National Report of the EMN (2016) ‘Integration of beneficiaries of international/humanitarian protection into the labour market: policies and good practices’ – *as yet unpublished*

the country,<sup>458</sup> although all local programmes are guided by and are obliged to align with national integration policy (i.e. the 2010 National Action Plan for Integration<sup>459</sup> and the more recent 50 Action Points for refugee integration). **Civil society** organisations also played a role in supplementing publically-funded integration measures. Local integration policy was guided by national policy and monitored at national level.

In the Flanders region of **Belgium**, the regional government operated a standard programme centralised in its planning by the Flanders Welcome Office (an integration agency), but implemented uniformly at municipal level. By contrast, in the Walloon Region, the civic integration programme was delivered by seven Regional Integration Centres (CRI). These were ran by local public authorities and are decentralised, meaning that the service offer could change depending on the locality in which the beneficiary of international protection resided.

In **Croatia**, educational institutions (under the oversight of the Ministry of Science, Education and Sports) implemented Croatian language learning programmes. Other aspects of integration were overseen by other Ministries and coordinated by the Permanent Committee for the Integration of Foreigners.

In **Germany** the national civic integration programme was centrally regulated and implemented by the Federal Officer for Migration and Refugees (BAMF).

In **Poland**, integration support was highly individualised and developed – with the beneficiary’s inputs – by the District Family Support Centre (DFSC) and approved by provincial governors. There was little input nationally.

In **Slovenia**, the national government contracts specific organisations to provide the language and orientation support. Counsellors were assigned to develop the integration plans. They mainly worked in Ljubljana or Maribor where most beneficiaries of international protection were based.

In **Sweden**, responsibility for integration was shared between the State and the municipalities: the content of the integration programme fixed nationally, and since 2010 the public employment service had had responsibility for coordinating and arranging individual migrants’ integration plans; this was funded by the State. The municipalities had responsibility for Swedish language tuition for immigrants, civic orientation courses and adult education.

#### *Costs to the beneficiary of international protection*

Integration programmes were provided free of charge in **Belgium** (both Flanders and Wallonia), **Croatia**, **Slovenia** and **Sweden**. Additionally, in **Slovenia**, participants who attended regularly could apply for their travel costs to be covered.

In **Germany**, attendance in the integration programme was subsidised: migrants had to pay €1.55 for every lesson which amounted to €1,023 for the obligatory 660 hours tuition. In **Austria**, costs depended on the service provider, but the cost was usually subsidised though not entirely free of charge: the OIF in Austria provided financial support for integration courses<sup>460</sup> and the AMS offered a limited number of places on German courses for registered job-seekers (which may also include nationals) free of charge.<sup>461</sup> Some NGOs may also provide some courses free of charge. In **Poland**,

<sup>458</sup> The OIF had integration centres, which provided information and counselling services located in the capitals of five out of nine Austrian provinces and welcome desks which also offered such services located in two additional towns (Wörgl and Imst).

<sup>459</sup> <http://www.bmeia.gv.at/en/integration/>

<sup>460</sup> Information taken from the Austrian National Report of the EMN (2016) ‘Integration of beneficiaries of international/humanitarian protection into the labour market: policies and good practices’ – *as yet unpublished*

<sup>461</sup> L&R Social Research (2016) National Report on ‘Labour market integration of asylum seekers and refugees’ for the European Commission (DG EMPL) – *as yet unpublished*

language learning cost around 1200 PLN (approximately 300 euro)<sup>462</sup> for a single person (amount per person decreased if there are more people in the family), though this was taken into account in calculating how much financial assistance would be granted to the beneficiary of international protection under their individual integration plan.

#### *Conditions placed on support*

In **Belgium** (Flanders), **Croatia** and **Germany**, attendance on integration courses was compulsory and subject to penalties if not completed fully:

- In Flanders, failure to attend 80% or more of the classes could result in a fine;
- In Croatia, non-attendees could be charged the cost of the course (it was usually free), though a stakeholder interviewed for this evaluation reported that this had not yet happened in practice;
- In Germany failure to attend could result in the beneficiary losing their right to early citizenship.

The Walloon region of **Belgium** announced in February 2016 that it planned to make integration programmes mandatory (this would include 120 hours of French training and 20 hours of cultural orientation or ‘citizenship training’). In **Austria** integration programmes were not compulsory, but adult beneficiaries in unemployment programmes were obliged to take German classes if they wanted to participate in labour market integration programmes.

In contrast to the above-described Member States, in **Poland**, beneficiaries of international protection could only access integration support if they adhered to the following conditions:

- They applied within 60 days from the date of receiving a positive decision on their application to apply for the support.
- They registered at their place of residence;
- They registered with the local labour office within the time period specified in the programme and actively search for a job;
- They attended Polish language courses (if language learning was needed);
- They maintained contact with their the programme supervisor at least twice a month during the period of the programme;
- They participated in other activities necessitated by his/her individual situation agreed upon with the programme coordinator;
- They complied with any other obligations agreed upon in the programme.<sup>463</sup>

In **Slovenia**, no conditions on participation applied, although beneficiaries attending more than 80% of the 120 hour language training course could have the cost of the language exam met by the State.

#### **A3.3.3.3 Tailoring integration to the needs of beneficiaries**

A distinction existed between Member States as to whether their integration programmes were tailored to the need of beneficiaries or not. Most Member States targeted their programmes at third-country nationals or newly-arriving non-nationals (e.g. **Austria, Belgium, Croatia, Germany, Sweden**) though amongst these **Austria** and **Sweden** recognised that beneficiaries of international protection faced specific obstacles to accessing support and/or had specific integration needs and they therefore they enforced specific provisions or conditions of access for beneficiaries of international protection within the wider programme. Other Member States (e.g. **Poland, Slovenia**) only offered integration services to beneficiaries of international protection.

<sup>462</sup> Based on currency exchange rates for 2015 checked at: <https://europa.eu/Dh36Gr>

<sup>463</sup> Łukasz Sienkiewicz (2016) National Report on ‘Labour market integration of asylum seekers and refugees’ for the European Commission (DG EMPL) – *as yet unpublished*

UNHCR (2013)<sup>464</sup> suggests that since beneficiaries of international protection are not a homogenous group (“refugees [...] arrive in EU Member States from very different individual backgrounds”) they are better able to integrate when “recognised as individuals.” This suggests that *individually* tailored programmes when conducted as planned might be more effective than generic programmes (even where the latter are aimed at beneficiaries of international protection).

The support provided by **Austria** and **Germany** has been commended for being tailored to the specific needs of different target groups. In Germany, a variety of tailored language courses were provided to women, young people and illiterate persons.<sup>465</sup> Course accessibility can be particularly challenging for female beneficiaries of international protection who are more likely to have childcare obligations and may be deterred from learning for cultural reasons.<sup>466</sup> A number of Austrian programmes specifically targeted women (e.g. ‘Mama lernt Deutsch!’ (Mum is learning German!) in Vienna)<sup>467</sup> and the 2015 integration plan for beneficiaries of international protection set out a national aim to increase opportunities for mothers to attend language courses in the vicinity of their children’s kindergarten classes. **Austria** introduced a number of integration measures specifically targeting beneficiaries of international protection in 2015. These are described in the box below.

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<sup>464</sup> UNHCR (2013) ‘Refugee Integration in Europe: a new beginning’. Outcome of an EU funded project on Refugee Integration Capacity and Evaluation (RICE), September 2013

<sup>465</sup> Z, Hübschmann (2015) *Ibid*

<sup>466</sup> Riller (2009) quoted in Migration Policy Centre (2016) Mapping Labour Market Integration Support Measures for Asylum-Seekers and Refugees: Policies and Practices in EU Member States

<sup>467</sup> See Austrian Report for the EMN (2016) Integration of beneficiaries of international/humanitarian protection into the labour market: policies and good practices’ – *as yet unpublished*

### **Tailored support offered to beneficiaries of international protection in Austria**

In **Austria**, tailored integration support for beneficiaries of international protection had been available for some years provided by civil society organisations and local authorities (e.g. the State-funded 'Start-Up Assistance' offered to beneficiaries of international protection transitioning from the asylum procedure to refugee / subsidiary protection status and the project 'Start-Up Support' in Vienna).<sup>468</sup> However, in 2015, an 'Integration Package' was introduced, which included:<sup>469</sup>

- 7,300 new places on OIF **German language courses** for beneficiaries of international protection (mainly Syrians). Funding was later made available for up to 10,000 participants.
- The **MORE initiative**, launched by Universities Austria (a body coordinating activities among Austria's 21 state universities) supported by Caritas, Diakonie, the Federation of Austrian Industries and the Austrian Student Union. This comprised a set of actions aimed at helping beneficiaries of international protection (and asylum-seekers and persons with tolerated stay) to access to courses and lectures at Austrian **universities**, to access libraries, to have their qualifications recognised and their study and course fees and to receive certificates of course attendance.
- Expansion of existing programmes in the area of **vocational education** and **training** to accommodate persons granted asylum and beneficiaries of subsidiary protection as well as unaccompanied minors. A pilot project 'Placing Apprentices Across Regions' was launched aimed at placing 100 beneficiaries of international protection aged 16 - 25 in apprenticeships based on skills assessment in their first languages. On-site support was also provided to the apprentices and their firms.
- A pilot project aimed at assessing and official **recognising skills** of young beneficiaries of international protection introduced in Vienna mid-2015 for persons registered with the public employment service (AMS). The '**Competency Check**' comprised a five-week course during which participants' previously acquired qualifications and skills are tested and the need for further training assessed. At the end of the Competency Check, all participants received a final report demonstrating their competencies. Up to 10,000 individuals benefitted from the project in the last six months of 2015. Plans were made to establish the project nationwide.
- Project to **test the job-related language and qualification levels** of young beneficiaries of protection in their own language – set up by the Austrian Economic Chamber. The job profile competency assessment was administered in Arabic, English, French, German, and Farsi and was first being piloted with 150 participants.
- Since September 2015, a range of **counselling services** were being offered to new arrivals in Vienna by 'StartWien'. This included a free information workshop for beneficiaries of international protection offered twice a week in different languages and covering issues such as community living, education, health, housing and social affairs.

#### **A3.3.4 Findings from evaluations and studies of integration programmes**

Very few integration programmes were evaluated in Member States and the quality of existing evaluations varies.<sup>470</sup> Nonetheless, a number of reports provided commentary and critiques of the approaches taken. Their findings are described below.

<sup>468</sup> Information taken from the Austrian National Report of the EMN (2016) 'Integration of beneficiaries of international/humanitarian protection into the labour market: policies and good practices' – *as yet unpublished*

<sup>469</sup> Information taken from the Austrian National Report of the EMN (2016) 'Integration of beneficiaries of international/humanitarian protection into the labour market: policies and good practices' – *as yet unpublished*

<sup>470</sup> De Cuyper, P. and M. González Garibay (2013) The evaluation of integration policies across the OECD: a review



### *Access to integration*

A number of obstacles have been found to prevent beneficiaries of international protection from accessing integration programmes.<sup>471</sup> This was why it was considered good practice that **Austria** and **Germany** tailor their programmes to the needs of specific sub-groups of third-country nationals or beneficiaries of international protection. Linked to this, stakeholders interviewed for this evaluation criticised the integration in **Poland** for not being sufficiently accessible to prospective participants: beneficiaries of international protection were not, in their opinion, being effectively informed of the programme nor was the 60 days provided for enrolment sufficient given the psycho-social challenges (e.g. trauma, poor health, language difficulties) often faced by refugees, which can delay or complicate their application for integration support. The integration programme in Wallonia and Brussels (**Belgium**) have been criticised for providing too few course places.<sup>472</sup> This finding was also stated in the recent EMN study.<sup>473</sup>

### *The results of integration programmes*

Since Sweden's integration reform in 2010, there were several evaluations and studies conducted; some of which have found that the programme had (to date) had limited effects on labour market integration as a whole and in particular on the employment rate of newly arrived immigrants.<sup>474</sup> The reasons for this were unclear, since in **Sweden** employment-searching support was conducted at the same time as language teaching and this has been commended.<sup>475</sup>

In **Belgium** Flemish integration programmes were evaluated three times between 2007 and 2013,<sup>476</sup> though the 2013 study was not accessible to the evaluators. The 2010 study found that migrants who participated in the civic integration programmes were more likely to find employment than those who had not completed a course. Positively, it also found that social orientation courses were useful for newly arriving migrants adapting to daily life in Belgium during the first year. However, it also found a negative correlation between participation in the course and wage levels / extent to which migrants found full time employment: it found that newly arriving migrants who did not complete the programme, but who did find employment were more likely to be in full time employment and with higher wages than those who did complete it. A qualitative study conducted by academics Yanasmanayan and Foblets (2012) found that participation in the courses led to a "heightened degree of self-sufficiency and integration", but this was based on limited evidence (from a document analysis and 34 interviews).<sup>477</sup> In addition, a study by Boulet<sup>478</sup> found that the Flanders integration programmes showed positive effects in some fields like workplace insertion, though less in terms of intercultural relations.

Several evaluations of integration programmes have been conducted in Germany. These are discussed in the Box below.

<sup>471</sup> EMN (2016) 'Synthesis Report on Integration of beneficiaries of international/humanitarian protection into the labour market: policies and good practices' – *as yet unpublished*.

<sup>472</sup> Mandin (2014) An overview of integration policies in Belgium: INTERACT Research Report 2014/20, available at: <https://bit.ly/2T0ha0H>.

<sup>473</sup> Belgian National Report of the EMN (2016) 'Integration of beneficiaries of international/humanitarian protection into the labour market: policies and good practices' – *as yet unpublished*.

<sup>474</sup> EMN (2016) Swedish National Report on 'Integration of beneficiaries of international/humanitarian protection into the labour market: policies and good practices' – *as yet unpublished*.

<sup>475</sup> M. Peromingo (2014) 'Work and refugee integration in Sweden' in Forced Migration Review no.48, November 2014.

<sup>476</sup> González Garibay, M. and P. De Cuyper (2013) *Ibid*.

<sup>477</sup> *Ibid* González Garibay, M. and P. De Cuyper (2013).

<sup>478</sup> Boulet (2012).

### **Results of the evaluation of the German integration programme**

The **German** integration programme was evaluated in 2012<sup>479</sup> and it was found that language courses improved their proficiency in listening, reading, writing, spoken production and spoken interaction. However, the effects were not found to be sustainable: language proficiency deteriorated for a large part of the participants (42%) one year after having concluded the course.<sup>480</sup> It was suggested that this was because, without having contact with German-speaking persons, the language learning was lost. This suggested that effective integration required social insertion.

Linked to this, the German programme had also been criticised for being too long and for (thus) delaying opportunities for work.<sup>481</sup> The course lasted a minimum of 660 hours, which one critic stated was, “660 hours not spent working”.<sup>482</sup> Nonetheless there is no robust evidence to suggest a negative (nor a positive) impact of the course on employment. The 2012 evaluation found a “direct correlation” between increased employment and language skills. However, the study could not prove that the correlation was causal and neither whether – if there were a causal link if it were the employment positively affecting language skills or the language skills affecting employment.<sup>483</sup> An earlier study conducted by OECD in 2007 suggested that the programme led to a reduction in welfare dependence (55% of participants, as opposed to 68% among non-participants), and an increase in employment (29% vs. 12% among non-participants),<sup>484</sup> but this study did not consider sustainability and was not implemented under the same (robust) conditions as the 2012 evaluation.

### **Conclusions**

Comparable information on the effectiveness of integration as a whole, nor of integration programmes specifically, on beneficiaries of international protection were not available. However, the lessons learned described above seem to suggest that it can be challenging for integration programmes in the EU to have an overriding effect on overall integration (especially into the workplace, culturally and socially). This was most likely because integration was highly influenced by multiple factors within the environment of the beneficiary of international protection: *inter alia* their family situation, time spent in the asylum procedure and reception, absence of documentation, the (effectiveness of the) transition phase from asylum applicant to beneficiary of international protection status, language and health<sup>485</sup>.

Nonetheless, the lessons learned seem to suggest that some integration programmes had positive effects on the well-being and self-sufficiency of the third-country national, as well as (at least initially) on employability and language capacity. These were more likely to be sustained where migrants continued to interact with national language speakers and within day-to-day society. In view of this, the EU could consider further investigating the outcomes of programmes which involve social emersion (i.e. those which involve networking with citizens or local residents or which involve subsidised employment or educational opportunities) to see whether they produce positive outcomes

<sup>479</sup> Participants and non-participants were compared at different points in time (when starting the course, by the end of the course, one year after having completed the course and three years after having completed the course) using a quasi-experimental panel design.

<sup>480</sup> See: González Garibay, M. and P. De Cuyper (2013) The evaluation of integration policies across the OECD: a review, *Steunpunt Inburgering en Integratie* and Z, Hübschmann (2015) *Ibid.*

<sup>481</sup> Z, Hübschmann (2015) *Ibid.*

<sup>482</sup> Z, Hübschmann (2015) *Ibid.*

<sup>483</sup> González Garibay, M. and P. De Cuyper (2013) *Ibid.*

<sup>484</sup> OECD. (2012). *Jobs for Immigrants. Volume 3. Labour market integration in Austria, Norway and Switzerland* (Vol. 3). Paris: OECD Publishing.

<sup>485</sup> UNHCR (2013).

for integration and whether therefore promising practices can be identified that could be shared across Member States.

More generally, it would be useful for the Commission to systematically review all integration programmes in the EU and the effects of these on different parameters of integration (e.g. on language learning, employment, well-being, health, housing, paths to citizenship and civic participation). This is because currently, studies have covered only a restricted number of Member States<sup>486</sup> or have focussed on wider integration.<sup>487</sup>

### A3.4 Case study 4 – Social welfare (Article 29) and access to accommodation (Article 32)

#### A3.4.1 Introduction

##### A3.4.1.1 Aim of the case study

The overall aim of this case study was to complement the analysis presented in the Evaluation report by providing additional information and examples with regard to:

- Member States having a particularly well-working mechanism / practices in place which set a high standard;
- The existence of other good practices or lessons-learnt in relation to the above;
- Representative practices on sensitive areas where different models have been implemented across the EU;
- Recent and planned changes or introduction of new legislation, policy strategies or mechanisms;

More specifically, with regards to **social welfare**, the case study analysed the kind of social assistance provided to beneficiaries of international protection, whether a difference was made or expected to be made in the near future between refugees and beneficiaries of subsidiary protection in the provision of welfare and, if so, what the provision of core benefits entailed. In addition, measures to help beneficiaries to gain access to social assistance by overcoming any existing obstacles were also identified.

For **housing**, the case study looked at targeted support measures to help beneficiaries of international protection gain access to (affordable) housing and examined specific national practices as regards dispersal policies.

##### A3.4.1.2 Content of the case study

This case study looked at Member States' practices in relation to:

- Access to social assistance (Article 29 (1)) and any limitations thereof to 'core benefits' for beneficiaries of subsidiary protection (Article 29(2));
- Access to accommodation (Article 32(1)) as well as dispersal practices and policies aimed at promoting equal opportunities in relation to access to housing (Article 32 (2)).

<sup>486</sup> E.g. UNHCR (2013).

<sup>487</sup> E.g. MIPEX: <http://www.mipex.eu/> and PROSINT: <https://bit.ly/2RTX5vH> .

### ***Social welfare***

The information collected for the Evaluation report showed that all Member States had transposed Article 29 in their national laws and granted access to social assistance to beneficiaries of international protection under equivalent conditions to nationals.

With very few exceptions, there was no evidence of discrimination at the institutional level as regards access to social welfare for beneficiaries of international protection. However, the Evaluation report identified a number of practical obstacles to access social assistance in the Member States. These were linked, in particular, to the residence/ registration requirements applicable in some countries (e.g. the need to reside in a specific municipality/ region, to have a valid address or to present proof of continuous residence for a certain period in order to access social assistance). Other challenges identified concerned the highly formalised and bureaucratic character of the procedures to access social assistance; the complexity linked to the involvement of various administrations and territorial jurisdictions; difficulties concerning some beneficiaries' lack of a verifiable identity, which prevented them from opening a bank account where benefits could be paid; language difficulties; the limited availability of funding for social assistance, a problem which also affected nationals; and other capacity issues linked to the stretching of the social services. The case study examined specific mechanisms and practices set up in selected Member States to support beneficiaries of international protection in overcoming such barriers.

As for the concept of 'core benefits', the Evaluation report found that, in the vast majority of cases, refugees and beneficiaries of subsidiary protection had access to the same levels of social assistance. However, some Member States did provide more restricted social welfare rights to beneficiaries of subsidiary protection, compared to refugees, while others expressed their intention to do so in the near future. In addition, in some cases the limitation of social assistance to 'core benefits' did not apply depending on the status granted (as a refugee or a beneficiary of subsidiary protection status) but on other conditions such as the ability to work. This case study examined in detail some examples of these practices, including the changes planned by the Member States.

It is also important to note that some of the practices identified in this case study did not specifically target beneficiaries of international protection but Member States' citizens entitled to similar assistance overall, as the needs of the former were considered to be similar to those of nationals who were recipients of social benefits. Nevertheless, some Member States had adopted a specific approach on the grounds that beneficiaries of international protection faced particular integration challenges which called for targeted support.

### ***Access to accommodation (Article 32)***

The Evaluation report found that, overall, all Member States granted access to housing to beneficiaries of international protection under conditions equivalent to other third-country nationals legally residing in their territories, with eight countries providing beneficiaries of international protection the same right to housing as to citizens, thus going beyond the requirements of the Recast QD. However, there were some obstacles hindering beneficiaries' access to housing, in particular the unaffordability of rental prices, the limited availability of social housing and the reluctance of property owners to rent houses to beneficiaries of international protection of certain nationalities.

The case study examined specific mechanisms and practices set up in selected Member States to support beneficiaries of international protection in overcoming such barriers. The case study explored a number of institutionalised mechanisms/initiatives (i.e. developed nationally by public bodies and institutions, often in cooperation with NGOs) and described a particularly innovative project springing from a civil society initiative.

The Evaluation report also revealed that a number of Member States had dispersal policies in place, whereby beneficiaries of international protection were restricted from choosing freely where to reside. The introduction of similar restrictions was being discussed in other Member States, as part of the realignment of national refugee policies caused by large inflows of asylum seekers with a high

likelihood to be granted protection and with a view to achieve a more even distribution of the financial and social responsibility of receiving newcomers across their countries. Examples of Member States dispersal policies were further explored in the case study, which presented specific examples of compulsory and voluntary dispersal settlement schemes.

#### **A3.4.1.3 Practices identified and examined as part of the case study**

In the context of this case study, the following practices were identified and further examined:

##### **Social welfare**

- **National schemes combining general welfare support with the provision of tailored assistance to beneficiaries of international protection** – the case study examined practices in:
  - **Finland and Sweden**, which complemented the support provided by their general social security schemes with targeted assistance for beneficiaries of international protection within the framework of integration plans.
- **National practices aimed at redressing the obstacles encountered by beneficiaries of international protection in accessing social welfare** – the case study examined practices in:
  - **Austria and Finland**, where a range of initiatives had been set up to help beneficiaries of international protection overcome these barriers, including the provision of start-up accommodation and counselling and the extensive use of translation services.
- **National policies restricting the right to social welfare to ‘core benefits’ to certain categories of beneficiaries of international protection** – the case study examined practices in:
  - **Austria and Belgium**, where beneficiaries of subsidiary protection had their benefits restricted either by national law (in Belgium) or leaving it up to the regional level (in Austria);
  - **Germany**, where the limitation of welfare to core benefits applied on the basis of a different criterion (ability vs inability to work).
- **Planned and recent changes introduced in the area of social welfare for beneficiaries of international protection** – the case study examined changes in:
  - **Austria**, where an increasing emphasis was placed on the conditionality of social welfare and its use to accomplish self-reliance in the short term, and **Finland**, which was exploring the possibility of creating a parallel social security system for beneficiaries of international protection.

#### **A3.4.1.4 Access to accommodation**

- **Institutionalised initiatives to provide tailored support to beneficiaries of international protection in accessing accommodation** – the case study examined practices in:
  - **Austria, France, Slovenia and Sweden**, which have developed specific initiatives to facilitate access to housing by beneficiaries of international protection, sometimes in cooperation with civil society organisations/ NGOs (in Austria, France and Slovenia).
- **Non-institutionalised innovative housing initiatives springing from civil society** – the case study examined the example of:

- **Refugees Welcome**, a civil society initiative launched in Germany and now operating in a number of Member States which used the methods of the sharing economy to facilitate access to housing top beneficiaries of international protection.
- **Dispersal policies, whereby the responsibility for housing beneficiaries of international protection is shared across various territorial levels** – the case study examined practices in:
  - **The Netherlands**, which has a long-standing compulsory dispersal policy in place.
  - **Sweden**, which in the mid-1990s moved from a compulsory dispersal policy to a voluntary dispersal mechanism.
- **Recently introduced or planned policy/ legislative measures in connection with the provision of accommodation to beneficiaries of international protection** – the case study examined developments in
  - **Finland**, where a number of initiatives are envisaged in the area of housing;
  - **Sweden**, where a compulsory dispersal policy was reintroduced in 2016.

#### A3.4.2 Social welfare (Article 29)

As noted above, in general Member States' legislation ensured the same treatment of beneficiaries of international protection as of nationals with regard to social welfare. However, some Member States combined access to the general welfare schemes available for the population as a whole with some form of targeted assistance, in recognition that beneficiaries of international protection could be in need of additional support before becoming fully self-reliant. Usually, these specific forms of support were part of an introduction package and could be conditional to the beneficiaries' active participation in specific integration activities. In addition, a number of Member States had in place particular initiatives to address the practical challenges faced by beneficiaries of international protection to gain access to social assistance. As part of this case study, several examples of targeted assistance have been identified.

The case study also reviewed national practices concerning the limitation of welfare support to core benefits. In this regard, the aim was to illustrate the various ways in which this limitation applied in practice rather than assessing whether these examples could be regarded or not as good practices. The case study concluded by examining recent and upcoming changes to social welfare provision for beneficiaries of international protection.

#### **Combining general support with targeted forms of welfare assistance within the framework of integration plans**

**Finland** and **Sweden** were two of the Member States which complemented the support provided by their general social security schemes with targeted assistance for beneficiaries of international protection.

In **Finland**, beneficiaries of international protection could be granted 'social assistance', the last resort means-tested financial assistance available in the Finnish social security system, or an 'unemployment benefit'.<sup>488</sup> The payment of the latter was not conditional on the person having been previously employed but required that he/she registered as a jobseeker at an Employment and Economic Development Office and participating in the services promoting employment and integration. Labour market support could be complemented by social assistance if necessary.

<sup>488</sup> See 'Integration into Finland', available at <https://bit.ly/2FKIAFd>, last accessed on 23 May 2016.

Financial support was provided for the duration of the beneficiary's personalised Integration Plan,<sup>489</sup> that is, for three years which in special cases could be extended to five years.

Similarly to other Member States, in **Sweden** as a general rule, social assistance/ income support entitlements (*försörjningsstöd/ekonomiskt bistånd*) were granted to beneficiaries of international protection under identical conditions as to nationals and other legally residing third country nationals who had been registered in the population register.<sup>490</sup> Income support entailed financial support paid under the Social Services Act. An application for income support was to be submitted to the municipality (Social Services office, *Socialtjänsten*), which would then conduct a financial investigation into the person's assets and sources of income.<sup>491</sup> Income support could be received for two types of expenses: 1) the costs covered by the national standards, which applied to expenses where the costs were approximately the same for everyone regardless of where they lived, such as food, clothing, health, etc.; and 2) the costs which varied and fell outside the national standard, such as accommodation and household electricity.<sup>492</sup> These general forms of support were combined with a state-funded introduction benefit, established by the 2010 Introduction Act, which was specific to beneficiaries of international protection and conditional on their participation in an Introduction Plan. When taking part in the activities foreseen within the framework of such plan, beneficiaries of international protection received a benefit of SEK 308 (approximately EUR 33) a day, five days a week. Supplementary introduction benefits could also be granted to beneficiaries with high renting costs and families with children. In addition, beneficiaries could work for up to six months within the framework of the introduction plan, and still receive a full introduction benefit.<sup>493</sup>

### **Helping beneficiaries overcome barriers in accessing social assistance**

Existing obstacles for refugees and beneficiaries of international protection to access social assistance were reviewed in the Evaluation report and briefly summarised above. **Austria** and **Finland** were two of the Member States which have devised specific initiatives to support beneficiaries of international protection in overcoming such barriers.

In **Austria** beneficiaries of international protection were entitled to benefits in the form of "Needs-based Guaranteed Minimum Resources" (*bedarfsorientierte Mindestsicherung*), a general non-contributory system available for the entire population, in which beneficiaries of international protection were assimilated to Austrian citizens.<sup>494</sup> However, in practice beneficiaries of international protection sometimes found themselves in a precarious financial situation due to the combined difficulty of finding employment and/or renting an apartment.<sup>495</sup> In particular, in order to benefit from the financial assistance provided under Needs-based Guaranteed Minimum Resources mechanism, all applicants (including beneficiaries of international protection) were required to present proof of

<sup>489</sup> The Integration Plan was a personalised plan covering the measures and services to promote and support beneficiaries of international protection in acquiring a sufficient command of Finnish or Swedish and other knowledge and skills required in Finnish society and working life, and to promote and support their opportunity to participate in society. See Seppelin, M. 'Act on the Integration of Immigrants and Reception of Asylum Seekers', 18-19 November 2010, available

<sup>490</sup> EMN Focused Study 2015, 'Integration of beneficiaries of international/humanitarian protection into the labour market: policies and good practices – Sweden', pp. 48-9, available at: <https://europa.eu/VP66qK>, last accessed on 23 May 2015.

<sup>491</sup> Ibid.

<sup>492</sup> European Commission, 'Sweden - Financial support', available at: <https://europa.eu/Br69qn>, last accessed on 23 May 2016.

<sup>493</sup> EMN Focused Study 2015, 'Integration of beneficiaries of international/humanitarian protection into the labour market: policies and good practices – Sweden', pp. 48-9.

<sup>494</sup> Koppenberg, S. 'Integration of beneficiaries of international protection and holders of humanitarian residence titles into the labour market - Policies and Measures in Austria', IOM, December 2015, pp. 71-2, available at: <https://europa.eu/tK77Yp>, last accessed on 23 May 2016.

<sup>495</sup> Ibid, p. 74

residence. In reality, it was difficult for persons without a job to rent an apartment, given the costs of bail and the fact that landlords often asked for proof of income. Put differently, the entitlement to minimum income support arose only when the person took up residence and registered in a rented flat, which meant that benefits could not be claimed to cover the rental deposit and other applicable fees. To redress this issue, there were projects in place to provide temporary accommodation to beneficiaries of international protection, the so-called ‘start-up flats’.<sup>496</sup> These projects are reviewed in further detail in section A4.3 on access to accommodation below.

In **Finland**, an obstacle observed for beneficiaries of international protection to receive welfare payments concerned the lack of a verifiable identity, which prevented the persons concerned from opening a bank account. This had led some municipalities to make special arrangements for the payment of social assistance in cash.<sup>497</sup> In addition, in order to redress language barriers, the Social Insurance Institution of Finland, *Kela*, had developed multilingual services and translated the relevant forms into different languages.<sup>498</sup> For instance, information about *Kela* and benefits in Finland was available at the *Infopankki* website in Finnish, Swedish, English, Russian, Estonian, French, Somali, Spanish, Turkish, Albanian, Chinese, Kurdish, Persian and Arabic,<sup>499</sup> and selected information was provided in the *Kela* website itself in Kurdi, Arabic, Farsi and Somali.<sup>500</sup> Since March 2015, *Kela* also provided video-based services in different languages, such as Kurdish.<sup>501</sup>

### **Examples of national practices restricting social welfare to core benefits**

Few Member States restricted welfare support to core benefits to beneficiaries of international protection, although the refugee crisis had spurred discussions in this regard in other countries (see subsection below). **Austria** and **Belgium** were among the Member States where such restrictions were in place, either by national law (in Belgium) or leaving it up to regional level (in Austria). In **Germany**, the limitation to core benefits responded to principles other than the distinction between refugees and beneficiaries of subsidiary protection.

In principle, **Austria** granted access by law to the Needs-based Guaranteed Minimum Resources to all beneficiaries of international protection who met the conditions, including beneficiaries of subsidiary protection status. However, research by UNHCR showed that this requirement was not abided by in all the *Länder*, so that not all individuals under subsidiary protection benefited from this entitlement as they should.<sup>502</sup> Some *Länder* justified this exclusion by arguing that the basic services provided to asylum seekers, such as accommodation, meals, health care, clothing, etc. (*Grundversorgung*), which were also provided to beneficiaries of subsidiary protection were sufficient or by reducing the Needs-based Guaranteed Minimum Resources allowance to what was not covered by the basic services described above.<sup>503</sup>

In **Belgium** refugees had equivalent social security rights to citizens. In contrast, a number of exceptions applied concerning welfare entitlements for beneficiaries of subsidiary protection

<sup>496</sup> Ibid, p. 68.

<sup>497</sup> EMN Focused Study 2015, ‘Integration of beneficiaries of international/humanitarian protection into the labour market: policies and good practices – National Report of Finland’, p. 38, available at: <https://europa.eu/!Mr98wQ>, last accessed on 23 May 2016.

<sup>498</sup> Ibid

<sup>499</sup> See ‘Moving to Finland’, available at: <http://www.infopankki.fi/en/frontpage>, last accessed on 23 May 2016.

<sup>500</sup> See *Kela*, ‘Other languages’, available at <http://www.kela.fi/muutkielet>, last accessed on 23 May 2016.

<sup>501</sup> EMN Focused Study 2015, ‘Integration of beneficiaries of international/humanitarian protection into the labour market: policies and good practices – National Report of Finland’, p. 38

<sup>502</sup> UNHCR, ‘Subsidiär’schutzberechtigte in Österreich’, February 2015, pp. 26-7, available at: <https://bit.ly/2QXsMzC>, last accessed on 23 May 2016.

<sup>503</sup> According to UNHCR (ibid), the following *Länder* granted Needs-based Guaranteed Minimum Resources to subsidiary protection beneficiaries: Kaernten, Niederoesterreich (albeit with some restrictions), Oberoesterreich, Tirol, Vorarlberg and Wien. The following did not: Burgenland, Salzburg, Steiermark.



compared to Belgian nationals and refugees. The Belgian social security system consisted of a contributory system of work-based social insurance and a non-contributory system of social assistance, which was not work related and financed by the general taxation system.<sup>504</sup> In general, beneficiaries of international protection (both refugees and beneficiaries of subsidiary protection), as Belgians, only had access to social-insurance scheme after they had worked. The main differences between the rights of beneficiaries of refugees and those of beneficiaries of subsidiary protection were the following:<sup>505</sup>

- Concerning social insurance rights (work-based), beneficiaries of subsidiary of protection were entitled to pensions, but could not export them outside of the EU whereas Belgians and refugees could have their pensions paid anywhere in the world. In addition, beneficiaries of subsidiary protection could not invoke periods worked abroad to calculate the number of required working days in order to be entitled to Belgian unemployment benefits.
- Concerning social aid, beneficiaries of subsidiary protection were not entitled to an integration income (*leefloon, revenue d'intégration sociale*). They were, however, entitled to residual social aid (*maatschappelijke dienstverlening, aide sociale*). The integration income, a means-tested benefit, was intended to ensure a minimum income to persons without sufficient resources and unable to provide them through other means. Social aid constituted a more residual system for which all people legally resident on the Belgian territory were eligible if they were 'in a state of need', Social aid encompassed various kinds of benefits, such as heating allowances, the granting of a rental deposit or the provision of help to join a health insurance fund.

Other differences between recognised refugees and beneficiaries of subsidiary protection had been eliminated at the end of 2013 in light of the transposition of the Recast QD, where guaranteed family benefits and minimum pensions were granted to beneficiaries of subsidiary protection in addition to refugees. Changes were also introduced following a ruling of the Belgian Constitutional Court on potential discrimination regarding benefits granted on the basis of residence rights.<sup>506</sup>

In **Germany** the concept of 'core benefits' was qualitatively different to the cases described above, with the main distinction relating not to the legal status (as a refugee or a beneficiary of subsidiary protection) but to whether the person concerned was 'capable of work' or 'not capable of work'. All persons capable of work and eligible for benefits could receive unemployment benefit II (*Arbeitslosengeld II*) from the age of 15 years until the legally stipulated age limit between 65 and 67 years.<sup>507</sup> Persons not capable of work could, in turn, receive 'core benefits' in the form of the social benefit (*Sozialgeld*),<sup>508</sup> designed to meet a minimum standard of living. Limiting assistance below that minimum was considered contrary to the constitutional requirements established by the Basic Law.<sup>509</sup>

<sup>504</sup> Mussche, N. 'Migrant Access to Social Security –policy and practice in Belgium: Study for the Belgian National Contact Point of the European Migration Network (EMN)', available at: <https://bit.ly/2Hk77SU>, last accessed on 23 May 2016.

<sup>505</sup> Ibid; EMN, Ad-Hoc Query on Possible changes in the social security concerning the foreigners with residence permit on the grounds of protection status - Requested by FI EMN NCP on 18th September 2015', available at <https://europa.eu/!VD76BG>, last accessed on 23 May 2016.

<sup>506</sup> Ibid; Case 3/2012 of 11 January 2012, available <https://bit.ly/2HiWaRx>, last accessed on 20 May 2016.

<sup>507</sup> German Federal Employment Agency, 'Unemployment Benefit II (Arbeitslosengeld II) / Social Benefit (Sozialgeld)', available at <https://bit.ly/25FyBYA>, last accessed on 23 May 2016.

<sup>508</sup> Ibid.

<sup>509</sup> Interview with national expert, University of Bielefeld.

### **Recent and/or planned changes in social welfare policies for beneficiaries of international protection**

Against the background of increasing numbers of asylum applications, **Austria** adopted a ‘Plan for the integration of persons entitled to asylum or subsidiary protection in 2015’.<sup>510</sup> The plan’s action 23 concerned the establishment of integration plans in exchange for the reception of needs-based minimum income. It is provided that, in order to enable beneficiaries of international protection to enter the labour market as soon as possible, ‘efficient referral to necessary training measures [was] to be ensured based on specific and mandatory support agreements, which [were] defined in the context of an individualised “integration plan”’.<sup>511</sup> Sanctions in the form of cuts in the needs-based minimum income were also foreseen in case the individual concerned refused to observe the obligations established in the integration plan. Importantly, the plan established that ‘the needs-based minimum benefit system [was] to be increasingly understood as a pedagogic instrument that enables transition to a life in which one is no longer dependent on transfer services’.<sup>512</sup>

Moreover, on 20 January 2016 consultations were held amongst the federal government, the provinces, cities and municipalities in order to find a common approach to effectively and sustainably reduce refugee and migration flows to Austria. An agreement regarding responsibilities, priorities and measures was concluded.<sup>513</sup> This also emphasised the need for compliance with integration obligations in exchange for welfare support.<sup>514</sup> In addition, the *Land* Upper Austria (*Oberoesterreich*) was allegedly debating the possibility to lower core benefits for subsidiary protection beneficiaries to around EUR 320.<sup>515</sup>

In **Finland** discussions have taken place concerning the possibility of introducing restrictions to the social security related rights of beneficiaries of international protection.<sup>516</sup> The existing Finnish social security system was residence-based, meaning that refugees and beneficiaries of subsidiary protection were entitled to the same treatment as citizens with few exceptions.<sup>517</sup> According to the Government’s Action Plan on asylum policy, adopted in December 2015, there were plans to explore the option of changing migrant’s social security system so that beneficiaries of international protection did not fall within the scope of residence-based social security but had their own separate integration system in order to limit welfare costs. It was also provided that the level of support granted to asylum seekers would be lower than the level of labour market support and ‘strongly conditional, requiring active participation in integration measures’.<sup>518</sup>

#### **A3.4.3 Access to accommodation (Article 32)**

As noted above, Member States generally granted access to accommodation to beneficiaries of international protection under conditions equivalent to other third-country nationals legally residing in their territories, while several Member States went beyond the requirements of the Recast QD to

<sup>510</sup> ‘50 Action Points: A Plan for the Integration of Persons entitled to Asylum or Subsidiary Protection in Austria’, November 2015.

<sup>511</sup> *Ibid.*, p. 16.

<sup>512</sup> *Ibid.*

<sup>513</sup> EMN Bulletin, 14th Edition, January-March 2016.

<sup>514</sup> *Ibid.*

<sup>515</sup> Interview with the Austrian Federal Agency for Immigration and Asylum (*Bundesamt für Fremdenwesen und Asyl – BFA*).

<sup>516</sup> EMN Bulletin, 13th Edition, October – December 2015.

<sup>517</sup> EMN; <https://europa.eu/VD76BG>

<sup>518</sup> EMN, Ad-Hoc Query on Possible changes in the social security concerning the foreigners with residence permit on the grounds of protection status; Government action plan on asylum policy”, 8.12.2015, available at: <https://bit.ly/2RFohiM>, last accessed on 26 May 2016.

offer the same right to housing to beneficiaries and citizens. However, in practice, merely offering beneficiaries of international protection the same treatment, may not be sufficient for them to gain access to suitable accommodation. In this regard, it is commonly acknowledged that refugees and beneficiaries of subsidiary protection face particular obstacles when it comes to finding affordable and good quality housing due, for instance, to the lack of sufficient financial resources, contacts and local knowledge, as well as to language difficulties and discrimination.<sup>519</sup> The issue was further compounded by the challenges public authorities face in meeting the housing needs of beneficiaries of international protection, other third country nationals and the local population, in particular within a context characterised by accommodation shortages and a high influx of new arrivals.<sup>520</sup> As part of this case study, several initiatives to address these challenges have been identified.

Where beneficiaries of international protection settle often determines their integration prospects,<sup>521</sup> as it has a strong impact on their access to education and job opportunities. Dispersal policies, whereby refugees and beneficiaries of subsidiary protection are transferred from reception centres to municipalities for settlement are integration,<sup>522</sup> are one of the mechanisms used by the Member States to better allocate scarce housing resources, enable a better distribution of integration responsibilities across the country and prevent the creation of segregated districts in large urban areas. The case study reviewed specific examples of dispersal policies in the Member States, with a focus on compulsory and voluntary dispersal mechanisms. The case study concluded by highlighting specific examples of adjustments introduced to Member States' housing policies for beneficiaries of international protection within the context of the refugee crisis.

### **Providing tailored support to facilitate access to housing by beneficiaries of international protection**

**France** combined general measures with targeted assistance in the area of housing. In principle, refugees and beneficiaries of international protection had access to the same housing options as French citizens; however, a survey on the integration of new arrivals conducted in 2010 revealed that refugees had difficulties in accessing independent and stable housing, with 28% of them being housed with friends of family and 25% living in temporary accommodation such as reception centres for asylum seekers.<sup>523</sup> By 2013, housing conditions for refugees had improved, with some 35% having rented social housing (compared to less than 15% in 2010) and around 18% renting in the private market (23% in 2010).<sup>524</sup> Still, a quarter continued to live in temporary accommodation (compared to only a 4% of migrants arriving in France for family reunification purposes and 11% of economic migrants).<sup>525</sup> Several measures have been put in place to remedy this situation.

Firstly, beneficiaries of international protection whose income did not exceed the established ceiling could apply for social housing under a framework for priority housing for vulnerable people managed at the regional level, the Departmental Action Plans for Housing Vulnerable People (*Plans*

<sup>519</sup> For a review of those challenges, see for example UNHCR, 'Note on refugee integration in Central Europe', April 2009; UNHCR, 'A new beginning - Refugee integration in Europe', September 2013; OECD, 'Making integration work - Refugees and others in need of protection', 2016.

<sup>520</sup> In this regard, see for example International Federation of Housing and Planning (IFHP), 'Housing Refugees Report', 2005, available at: <https://bit.ly/1KH9bK>, last accessed on 24 May 2016.

<sup>521</sup> OECD, 'Making integration work', 2016, p. 22.

<sup>522</sup> Ibid.

<sup>523</sup> See the 'Longitudinal Survey of the Integration of First-time Arrivals', ELIPA (*Enquête Longitudinale sur l'Intégration des Primo-Arrivants*), available at <https://bit.ly/2VYFBxH>, last accessed on 21 May 2016.

<sup>524</sup> Département des statistiques, des études et de la documentation, 'ELIPA 2013 : les premiers résultats', Numéro 72-73 – juillet 2014, available at : <https://bit.ly/2FJgw47>, last accessed on 21 May 2016.

<sup>525</sup> Ibid.

départementaux d'action pour le logement des personnes défavorisées).<sup>526</sup> In addition, a framework agreement for access to social housing by refugees was signed in 2012 between the Social Housing Union (*L'Union sociale pour l'habitat*), the Ministry for Employment and Solidarity and the Secretary of State for Housing, and a law on social cohesion was adopted which created priority in accessing social housing for those leaving accommodation and social integration centres (*Centre d'hébergement et de réinsertion sociale*).<sup>527</sup>

Secondly, the State has concluding funding agreements with NGOs working in the area of refugee integration for the provision of housing solutions to beneficiaries of international protection.<sup>528</sup> These projects are often co-financed by the AMIF. The following are two prominent examples:

- The **'Seeking Housing for Refugees' scheme (RELOREF)**, run by the NGO France *terre d'asile*, which aimed to: facilitating access to accommodation, among others by mobilising private housing facilities managed by housing agencies offering apartments on a reduced rent and by mobilising housing guarantees for landlords; developing local partnerships between actors assisting refugees (e.g. reception centres) and private housing providers and raising awareness among public and private actors concerning the issue of refugee housing; and developing practical tools for social workers in accommodation centres (such as training, practical guides, etc.) and refugees (for example "housing guidance classes").<sup>529</sup>
- The **Accelair project** run by the NGO Forum *réfugiés-Cosi*, which was based on a partnership agreement signed in 2013 with the social lessors of the Department of the Rhône. This partnership, redefined every two years, foresaw that the latter would provide a certain number of accommodation options for beneficiaries of international protection. Within this framework, *Accelair* provided individualised support to the target group for six to eighteen months consisting of assistance in the administrative procedures related to searching and securing accommodation, budget management, relations with the sector relevant social partners, regular house visits, etc.<sup>530</sup>

In **Sweden**, targeted accommodation-related support was provided to refugees and beneficiaries of subsidiary protection by the municipalities within the framework of their personal introduction plans developed by the Public Employment Service (*Arbetsförmedlingen*). Support measures for access to housing included the provision of social housing or state-funded housing in the private sector and of financial resources to facilitate access to accommodation.<sup>531</sup> In this regard, the 2010 Introduction Act extended the period during which new arrivals were offered help to find housing from one to six months after the granting of the residence permit.<sup>532</sup> Concerning in-cash support specifically, in

<sup>526</sup> 'Guide méthodologique pour les Plans départementaux d'action pour le logement des personnes défavorisées (PDALPD)', 17 septembre 2013, available at : <https://bit.ly/2AVitqN>, last accessed on 24 May 2016.

<sup>527</sup> French National Contact Point of the European Migration Network, 'Fourth focused study 2015 - Integration of beneficiaries of international protection into the labour market: policies and good practices', January 2016, pp. 30-1. The CHRS' mission is to provide temporary accommodation and social integration assistance to individuals and families with serious financial and social difficulties (see Action-Sociale, 'Centre d'hébergement et de réinsertion sociale (CHRS)', available at: <https://bit.ly/2FA8E5y>, last accessed on 21 May 2016. Temporary accommodation centres for asylum seekers and refugees are considered CHRSs.

<sup>528</sup> French National Contact Point of the European Migration Network, 'Fourth focused study 2015 - Integration of beneficiaries of international protection into the labour market: policies and good practices', January 2016, pp. 30.

<sup>529</sup> Ibid, p. 31; European Commission, 'Reloref: Looking for housing for refugees', European Web Site on Integration, available at: <https://europa.eu/TT43Td>, last accessed on 21 May 2016.

<sup>530</sup> Further information can be accessed at: Forum réfugiés, 'Logement', available at: <https://bit.ly/2Mj0A9U>, last accessed on 22 May 2016.

<sup>531</sup> SE; EMN study integration BIPs

<sup>532</sup> Government of Sweden, Ministry of Integration and Gender Equality, 'Government reform to speed up the introduction of new arrivals in Sweden', December 2009, available at <https://bit.ly/2FwwsXW>, last accessed on 20 May 2016.

addition to the introduction benefit, international protection beneficiaries could apply for a supplementary introduction benefit for housing to the Swedish Social Insurance Agency if they had high rental charges.<sup>533</sup>

A major challenge in Sweden related to housing shortages in many municipalities, which had led to competition between newly arrived migrants and other sectors of the residing population.<sup>534</sup> Against this background, the 2016 Budget Bill envisaged a number of initiatives in the area of housing, including measures to support and accelerate the construction of new housing,<sup>535</sup> as well as higher compensations to the municipalities for receiving new arrivals.<sup>536</sup> Furthermore, in November 2016 the government proposed to establish a mandatory dispersal policy, on which further details are provided in the sections below.

In contrast to the cases examined above, in **Slovenia** beneficiaries of international protection could not apply for social housing, as this right was reserved for nationals.<sup>537</sup> However, refugees and persons granted subsidiary protection received a financial allowance of up to EUR 270 per person monthly for private housing for the first three years after recognition. Vulnerable persons such as unaccompanied minors, families, persons with disabilities, mental health problems, etc. could be accommodated at the country's two 'integration houses' located in Ljubljana or Maribor for up to one and a half years. Both the provision of the housing allowance and the administration of the integration houses corresponded to the Ministry of Interior. In addition, integration counsellors (also appointed within the Ministry of the Interior) referred beneficiaries of international protection to a specific civil society organisation in charge of providing integration assistance under a contract with the public sector.<sup>538</sup> This 'assistance provider' helped beneficiaries find a suitable apartment in the private rental market.

In addition to the institutionalised initiatives reviewed above, in recent years there have been innovative civil society initiatives in the domain of housing. A notable example has been the platform '**Refugees Welcome**' (*Flüchtlinge Willkommen*), founded in Germany in 2014. The platform, which relied on the methods of the so-called 'collaborative economy', put in touch refugees in need of accommodation with local residents who were willing to offer a flat-share. Flat-shares were financed through various methods, including micro-donations from family and friends, crowdfunding and public donations.<sup>539</sup> The platform had spread to nine countries besides Germany, namely Austria, Greece, Portugal, Spain, Sweden, the Netherlands, Poland, Italy and Canada, and supported groups in more than 20 countries with setting up local "Refugees Welcome" platforms.<sup>540</sup> At the time of writing, Refugees Welcome had helped nearly 500 refugees find accommodation.<sup>541</sup>

<sup>533</sup> Swedish Public Employment Service, 'Introduction benefit- for you who are newly arrived in Sweden', available at: <https://bit.ly/2T47tP4>, last accessed on 20 May 2016.

<sup>534</sup> International Federation of Housing and Planning (IFHP), Housing Refugees Report, 2015; EMN Focused Study 2015, 'Integration of beneficiaries of international/humanitarian protection into the labour market: policies and good practices – Sweden', pp. 48-9.

<sup>535</sup> EMN Focused Study 2015, 'Integration of beneficiaries of international/humanitarian protection into the labour market: policies and good practices – Sweden', pp. 48-9.

<sup>536</sup> Government of Sweden, The Budget Bill for 2016 – Investing in Sweden's future, 21 September 2015, available at: <https://bit.ly/1FXgsE2>, last accessed on 20 May 2016.

<sup>537</sup> EMN Focused Study 2015, 'Integration of beneficiaries of international/humanitarian protection into the labour market: policies and good practices – Slovenia', pp. 20-21.

<sup>538</sup> Since September 2013 this programme/project has been implemented by Association ODNOS, <http://odnos.si/>

<sup>539</sup> Further information is available at: <http://www.refugees-welcome.net/>, last accessed on 22 May 2016.

<sup>540</sup> Ibid.

<sup>541</sup> European Commission, 'Innovative Solutions to Housing Refugees', available at: <https://europa.eu/!PU43ut>, last accessed on 22 May 2016.

### ***Devising effective dispersal policies allowing for a better distribution of settlement-related responsibilities across the country and taking into account integration prospects***

A number of Member States restrict the ability of beneficiaries of international protection to choose their place of residence. As noted above, imposing such restrictions has been justified by the aims to prevent concentrations of persons of the same origin in large urban centres, which tends to lead to segregation and delays the integration process; facilitate access to appropriate housing; and share the costs of receiving new arrivals more fairly nation-wide.<sup>542</sup>

For over 20 years, **the Netherlands** has had a compulsory dispersal policy in place.<sup>543</sup> According to the Housing Allocation Act the municipalities were under the obligation to offer housing to beneficiaries of international protection, who were categorised as a priority group for accessing accommodation. Every six months, the Ministry of Interior and Kingdom Relations specified the number of beneficiaries to be housed per municipality. This was based on the number of expected admittances, divided by the proportion of the population residing in each municipality to the whole Dutch population. Within two weeks of an asylum seeker being granted protection, the Central Agency for the Reception of Asylum Seekers (COA) compiled an information profile of the beneficiary. On the basis of the target 'quota' established by the central government, the profile of the beneficiary, the housing supply, and taking into account any possible programme backlogs, COA matched a beneficiary to a specific municipality. In order to meet demand for housing, local authorities entered into agreements with local housing corporations specifying the number and pace at which the houses was to become available. The programme target allowed six months to find suitable accommodation, although the aim was to complete the process within six weeks. Beneficiaries of international protection were required to accept the house on offer, although once housed they were free to find alternative accommodation and move. However, the right to priority housing only applied the first time. Civil society organisations were also engaged in the housing process, in cooperation with the local authorities, by providing guidance to beneficiaries of international protection. In addition, beneficiaries were eligible for a furnishing credit by the municipality.

Every municipality in the Netherlands was required to participate in the housing programme and the general policy framework stipulated sanctions for failing to do so. Local corporations were compensated through a fund of EUR 1,000 for social inclusion actions for every housed refugee. While it was acknowledged that, within a context of housing shortages, the prioritisation of beneficiaries of international protection in access to housing had caused some tensions, the fact that all the municipalities equally shared the responsibility of housing refugees had helped maintain the system in operation.<sup>544</sup> In addition, a number of reforms were introduced in 2015 to adjust the dispersal policy framework to a context marked by the high number of new arrivals. These are further reviewed in the section on policy changes below.

On the other hand, various studies have highlighted the need to find a balance between a fair sharing of the 'burden' of accommodating new arrivals and the availability of jobs.<sup>545</sup> The experience of the dispersal policy implemented by Sweden from 1985 to 1994 showed, for instance, that eight years after settlement refugees who had been dispersed to areas with limited economic opportunities

<sup>542</sup> European Parliament, 'Labour Market Integration of Refugees: Strategies and good practices', 2016, p. 30; OECD, 'Making Integration Work - Refugees and others in need of protection', 2016.

<sup>543</sup> The description below is based on the following sources: EMN Focused Study 2015, 'Integration of beneficiaries of international/humanitarian protection into the Dutch labour market: policies and good practices', February 2016; EMN, 'Ad-Hoc Query on allocation of refugees to municipalities for integration purposes', 27 May 2013, available at <https://europa.eu/!nr39bt>, last accessed on 22 May 2016.

<sup>544</sup> See EMN, 'Ad-Hoc Query on allocation of refugees to municipalities for integration purposes', 27 May 2013.

<sup>545</sup> European Parliament, 'Labour Market Integration of Refugees: Strategies and good practices', 2016; International Monetary Fund (IMF), 'The Refugee Surge in Europe: Economic Challenges', January 2016; OECD, 'Making integration work', 2016.

earned on average 25% less, showed employment levels that were 6 to 8 percentage points lower, and were 40% more welfare dependent than refugees who had not been settled through a dispersal policy.<sup>546</sup>

To prevent this kind of negative impacts, some Member States take into account economic considerations in their dispersal policy.<sup>547</sup> The housing policies established in **Sweden** in the mid-1990s constitute a paramount example of this type of approach. Dispersals were regulated through voluntary agreements between the municipalities and the central government which, through the Swedish Migration Agency, produced regular prognoses of the number of newly arrived migrants. The dispersal mechanism was based on the following criteria: 1) availability of housing; 2) size of the municipality; 3) concentration of foreign-born and/or humanitarian migrants in the dispersal area; 4) employment rate; and 5) individual employment prospects.<sup>548</sup> The PES was responsible for assisting individuals in their search for housing and cooperated with the county administrative boards and the municipalities in order to help individuals settle in a region where labour market opportunities matched the person's specific skills and competences.<sup>549</sup> Each beneficiary of international protection received one housing offer from the PES that he/she could accept or reject; in the latter case the person needed to arrange accommodation on their own. Irrespective of the dispersal policies, the option of beneficiaries of international protection finding housing independently was considered as a perfectly acceptable possibility and encouraged whenever possible.<sup>550</sup> Swedish municipalities received compensation from the state for each received beneficiary of international protection. Such compensation was intended to cover for the various kinds of expenses linked to the reception of refugees and beneficiaries of SP, such as the provision of language training and civic orientation courses.<sup>551</sup>

While according to a number of recent studies employment-related dispersal policies are to be encouraged,<sup>552</sup> it has also been acknowledged that these may also entail considerable upfront costs in relation to the provision of housing in certain areas.<sup>553</sup> In this regard, the OECD has noted that the housing supply and the provision of integration services should remain important elements in settlement decisions.<sup>554</sup> Moreover, within a context of large inflows employment-based dispersal has become increasingly difficult to implement and finance. For instance, the lack of capacity of the current system has recently led Sweden to move back to a policy where the municipalities are required to settle beneficiaries of international protection. These changes are reviewed in further detail in the section below.

### **Examples of recent changes introduced to housing policies to cope with large inflows**

A number of Member States have recently introduced adjustments to their housing policies for beneficiaries of international protection in order to better tackle capacity shortages within the current context of large numbers of arrivals of asylum seekers. The case study examined the examples of the Netherlands and Sweden.

<sup>546</sup> European Parliament, 'Labour Market Integration of Refugees: Strategies and good practices', 2016, p. 30.

<sup>547</sup> According to the OECD, these are: Estonia, Denmark, Finland, Portugal and Sweden. See OECD, 'Making integration work', 2016, p. 23.

<sup>548</sup> OECD, 'Making integration work', 2016, p.29.

<sup>549</sup> EMN Focused Study 2015, 'Integration of beneficiaries of international/humanitarian protection into the labour market: policies and good practices – Sweden', p.30.

<sup>550</sup> Ibid, p. 47.

<sup>551</sup> Ibid, p. 47.

<sup>552</sup> European Parliament, 'Labour Market Integration of Refugees: Strategies and good practices', 2016; IMF, 'The Refugee Surge in Europe: Economic Challenges', January 2016 OECD, 'Making integration work', 2016.

<sup>553</sup> OECD, 'Making integration work', 2016, p. 24.

<sup>554</sup> Ibid.

In the **Netherlands**, the government has expressed the intention to explore the possibility of amending the priority position of beneficiaries of international protection in the Housing Allocation Act.<sup>555</sup> In addition, in November 2015 the government concluded an administrative agreement with the municipalities and provinces on the housing of refugees and beneficiaries of SP. This committed the various stakeholders involved, namely the central government, the municipalities and the housing corporations, to create housing facilities for 14,000 beneficiaries through the adoption of three kinds of measures:<sup>556</sup>

- The creation of a subsidy scheme for landlords so that new housing facilities became available. Under this scheme, from 1 February 2016, landlords would be given a financial contribution of EUR 6,250 per beneficiary accommodated.
- The easing of existing regulations so that housing corporations were facilitated in accommodating beneficiaries. It was foreseen that a legislative proposal would be submitted at the beginning of 2016 to enable housing corporations to rent, maintain and adapt buildings belonging to third parties.
- The introduction of a possibility for municipalities to lease government premises to house beneficiaries under the Vacant Property Act.

In addition, the Accelerated Municipal Housing Scheme (GVA) was established which offered the possibility for municipalities to temporarily house 10,000 beneficiaries. If no (permanent) housing was available, municipalities could accommodate beneficiaries in temporary housing through the accelerated municipal housing scheme for a maximum period of two years. For this type of housing municipalities would receive EUR 50 every week per accommodated adult and EUR 25 per accommodated child.

As noted above, **Sweden** was planning to reintroduce a compulsory dispersal scheme. In January 2016, the Swedish Parliament approved a new law requiring municipalities to host beneficiaries of international protection as of March 2016.<sup>557</sup> The bill aimed to solve the bottlenecks caused by the refugee crisis, which had led to high numbers of beneficiaries of international protection staying in reception centres for long periods of time after they had been granted status.<sup>558</sup> The assignment of beneficiaries to municipalities was to be based on each municipality's respective situation and capacities, the local labour market, characteristics of the population and integration/reception services provided.<sup>559</sup> The new law did however not affect the possibility for beneficiaries of international protection to find a place on their own.<sup>560</sup>

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<sup>555</sup> EMN Focused Study 2015, 'Integration of beneficiaries of international/humanitarian protection into the Dutch labour market: policies and good practices', February 2016, pp. 33-34, available at: <https://bit.ly/2RxfiA1>, last accessed on 24 May 2016.

<sup>556</sup> Ibid.

<sup>557</sup> EMN Focused Study 2015, 'Integration of beneficiaries of international/humanitarian protection into the labour market: policies and good practices – Sweden', p. 48.

<sup>558</sup> European Commission – European Web Site on Integration, 'Sweden: Parliament approves new law that forces municipalities to settle migrants', 28 January 2016, available at: <https://europa.eu/!pD87uN>, last accessed on 24 May 2016.

<sup>559</sup> EMN Bulletin, 14th Edition, January-March 2016.

<sup>560</sup> European Commission – European Web Site on Integration, 'Sweden: Parliament approves new law that forces municipalities to settle migrants', 28 January 2016.



## **A3.5 Case study 5- Access to procedures for recognition of qualifications (Article 28)**

### **A3.5.1 Introduction**

#### **A3.5.1.1 Aim of the case study**

The overall aim of this case study was to complement the analysis presented in the Evaluation report by providing information and additional examples with regard to:

- Member States having a particularly well working mechanism / practices in place which set a high standard;
- Recent changes or introduction of new systems, institutions or mechanisms;
- The existence of other good practice or lessons-learnt in relation to the above.

#### **A3.5.1.2 Content of the case study**

The case study looks at practices of Member States have in place for beneficiaries of international protection to access procedures for recognition of qualification (Article 28 (1)) and for skills assessment of those who cannot provide documentary evidence of their qualifications (Article 28(2)).

The Evaluation report identified a number of specific obstacles for beneficiaries of international protection who wanted to have their qualifications recognised in a Member State and for those who could not provide evidence of their qualifications and wanted their skills to be assessed. Such obstacles ranged from linguistic barriers to an overall lack of awareness of institutions and procedures for the recognition of their qualifications.

The case study examined specific mechanisms and practices, set up within Member States as well as at EU level, to support beneficiaries of international protection in overcoming such barriers. The case study explored both institutionalised mechanisms/initiatives (i.e. developed nationally by public bodies and institutions) as well as non-institutionalised approaches led by NGOs and other organisations. In addition, some interesting examples of transnational practices aiming at further streamlining and harmonising the procedures for recognition of qualifications for international protection beneficiaries were also identified and examined.

The information collected overall showed that the introduction of the provisions of Article 28 triggered some changes in the Member States' policies and legislation. While most of the countries already had similar provisions in their national laws, others had to adapt their legislation to comply with the new requirements of the Recast QD (more information is provided in the Evaluation report).

However, many practical mechanism and approaches in this field were already in place before the transposition of the Recast QD. These were either: (1) based on national legislation in force prior to the Directive; (2) implemented to comply with Article 7 of the Lisbon Convention on the Recognition of Qualifications concerning Higher Education in the European Region<sup>561</sup> or (3) implemented by NGOs and other associations with the aim of filling a gap at national/institutional level.

In recent years, new mechanisms and approaches have also been put in place to better cope with the mass influx of third-country nationals. From this it can be understood that, while the transposition of Article 28 helped in further promoting the recognition of qualifications of beneficiaries of

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<sup>561</sup> "Each Party shall take all feasible and reasonable steps within the framework of its education system and in conformity with its constitutional, legal, and regulatory provisions to develop procedures designed to assess fairly and expeditiously whether refugees, displaced persons and persons in a refugee-like situation fulfil the relevant requirements for access to higher education, to further higher education programmes or to employment activities, even in cases in which the qualifications obtained in one of the Parties cannot be proven through documentary evidence". More information on the Lisbon Convention available here: [http://www.coe.int/t/dg4/highereducation/recognition/lrc\\_EN.asp](http://www.coe.int/t/dg4/highereducation/recognition/lrc_EN.asp)

international protection, it was however not a pre-condition for the development of practices in this field.

Finally, it is important to note that most of the practices identified in this case study did not specifically target beneficiaries of international protection but third country nationals overall, as most Member States consider that the needs of the former are very similar to the wider group. Nevertheless, Member States which had adopted a specific approach, such as the Netherlands as well as international institutions implementing target projects, such as the ENIC-NARIC networks considered that specific approaches targeting refugees, displaced persons and persons in a refugee-like situation were needed in the light of the high number of refugees across the EU.

### **A3.5.1.3 Practices identified and examined as part of the case study**

In the context of this case study, the following practices were identified and further examined:

- **Institutionalised initiatives and mechanisms which provided tailored support to beneficiaries of international protection/migrants in the recognition of their qualifications** – the case study examined practices in:
  - the **Netherlands, France** and **Sweden**, which have developed specific initiatives for migrants/beneficiaries of international protection ; and
  - The **Netherlands, Sweden, Denmark** and **Norway**, which have specific recognition mechanisms where documents attesting the qualifications of migrants are missing<sup>562</sup>;
- **Non-institutionalised practices ran by NGOs and other associations, which provided practical support to migrants wishing to have their qualifications recognised in a Member State.** The case study examined practices in:
  - **Portugal and Spain** where NGOs and associations provide migrants with information on the validation/recognition process and personal support in the procedure; and
  - **Finland and Italy**, where NGOs and other organisations help migrants to have their informal and non-formal competences validated;
- **Cross-border projects, guidance and exchange of best practice aiming at further harmonising recognition procedures across the EU** – the case study examined the guidance/support currently developed by the **ENIC-NARIC networks** with regard to the recognition of qualifications held by refugees as well as other EU wide projects like the **European Area of Recognition** project.
- **Recently introduced policy/legislative changes** to speed up the process of recognition of foreign qualifications as well as to facilitate full access to recognition for applicants without documents attesting their qualifications– the case study examined recent developments in **Finland, Germany** and **Poland**.

### **A3.5.2 Access to procedures for the recognition of foreign qualifications (Article 28(1))**

Most Member States' legislation ensured the same treatment of beneficiaries of international protection as nationals with regard to the recognition of their qualifications. However, in practice one of the main issues identified in the evaluation was that if beneficiaries of international protection were offered 'only' the same treatment, this might hinder the extent to which they could effectively obtain full recognition, as often more support was needed, for example, to address language barriers and to help them understand and access the procedure. As part of the case study, several interesting

<sup>562</sup> Denmark and Norway, even if not covered by the recast Directive, were identified as having interesting practices in this field, as further explained below

initiatives to address this have been identified, some at Member State level, i.e. institutionalised and offered nationwide, while others were offered by non-state stakeholders at a more limited scale.

### ***Forging new partnerships to find new solutions***

Institutionalised initiatives specifically targeting beneficiaries of international protection in the context of recognition of qualifications were limited. However, an interesting example of such type of initiatives was identified in **the Netherlands** and in **France**.

In **the Netherlands**, the initiative consisted of the development of a Higher Education Refugees Task Force in September 2015, led by the Ministry of Education, Culture and Science, to look into issues such as how to remove bottlenecks in the admission of refugees to Dutch higher education. The task force consisted of a consortium formed for the purpose, consisting of the Foundation for Refugee Students, EP-Nuffic,<sup>563</sup> the Dutch Ministry of Education, Culture and Science, the Netherlands Association of Universities of Applied Sciences and the Association of Universities in the Netherlands.

The taskforce was created by the increasing need perceived by the higher education sector, to remove obstacles for refugees who wanted to access higher education in the Netherlands, in particular in view of the strong migratory influx witnessed in recent years. To put this into a context, in the period 2012-2015, the number of refugee status granted in the Netherlands increased from 630 to 6,660. Five 'action lines' were identified by the taskforce: (1) Identify the educational needs of refugees; (2) Scale-up the offer of (high level) language courses and preparatory academic courses; (3) Student support before, during and after study; (4) Diploma recognition and recognition of prior learning; and (5) Support and streamline local initiatives.

In the context of the activities developed, targeted information for refugees was also provided by EP-Nuffic. A special webpage<sup>564</sup> provided the following:

- Information on the practical steps towards requesting credential evaluation;
- Information on the processing of requests;
- Information on required permission to practise professions (for example, doctors, etc.);
- Information on Syrian diplomas and study programmes, and their equivalents in the Netherlands.

The approach was considered as particularly innovative by the responsible authorities because it was a joint effort between different institutional and non-institutional actors, who came together for the first time to discuss possible solutions to improve the admission of refugees to higher education from different perspectives/angles, including the facilitation or recognition of qualifications.

In **France**, following the high influx of migrants witnessed in recent years, the government urged universities to speed up and improve the procedures for the recognition of qualification of refugees. The total number of refugee status granted increased from 7,070 to almost 12,000 in the period 2012-2014. In this context, a "partnership" between French universities and the national ENIC-NARIC centre started up in the beginning of 2016.<sup>565</sup> A first conference was organised in March 2016 (and other seminars are scheduled for the next future) in order to discuss the current bottlenecks with regard to recognition procedures. The final aim of this cooperation is not only to improve the effectiveness of recognition procedures for refugees but also to further harmonise such procedures and practices across the country.

<sup>563</sup> The Dutch Ministry of Education, Culture and Science has appointed EP-Nuffic to serve as the national information centre for credential evaluation

<sup>564</sup> "Information for refugees" on the website EP-Nuffic - <https://bit.ly/1MiPEzv>

<sup>565</sup> La reconnaissance des diplômes des réfugiés : quel dispositif pour une reconnaissance souple et adaptée. 10 March 2016. Organised by the Département reconnaissance des diplômes, Centre ENIC-NARIC France

### ***Taking a highly individualised approach involving different stakeholders***

Another remarkable institutional approach was developed in **Sweden**, before the entry into force of the Recast QD (and based on the Introduction Act of 2010). For each migrant, an “introductory plan” would be developed, focussed on helping them in accessing the national labour market. The Public Employment Service (Arbetsförmedlingen) was responsible for coordinating the activities set out in the introduction plans, which also included support measures directly connected to the recognition of qualifications. For instance, Arbetsförmedlingen would undertake a first mapping of the individual’s skills and competences. They would also examine whether the person had documents or certificates that needed to be translated and/or validated (evaluated) and, if this was the case, they would assist the person to submit these to the right authority. Different kinds of validating measures could also be a part of an introduction plan, e.g. an evaluation/trial of a person’s professional competence at an actual workplace, carried out by actual employers. The trial could take up to three weeks and would result in a document describing the person’s ability and potential need for additional training. The employer undertaking the evaluation received compensation from Arbetsförmedlingen.<sup>566</sup>

The case study also examined practices developed and implemented by NGOs and other organisations at a smaller scale, for example, targeting a particular region or professional sector. These illustrate the important role that civil society and other relevant institutions can play in the process of getting the qualifications of migrants recognised and their prior learning validated. The organisations, through EU and nationally-funded programmes and projects, were particularly involved in the provision of information on the practical elements of the procedures, the responsible authorities to contact, etc., as well as in the provision of personal support provided to the applicant (in terms of translation of documents, support with the costs, etc.).

As mentioned above, one of the challenges faced by international protection beneficiaries was the lack of awareness of the system/procedures as well as of the institutions involved. In **Spain**, the Association for the Integration of Immigrant Professionals developed a project (in 2010), which aimed to address this information gap.<sup>567</sup> The project’s target population consisted of migrants in possession of degrees or qualifications issued by a foreign country who wanted their diploma or degree title recognised by the Spanish system. Most of these people were unemployed or working in jobs requiring low qualifications. The project provided guidance on the process of recognition of academic qualifications by Spanish government bodies, through:

- Information workshops for staff working in immigration services, integration services, associations, etc. on the qualification validation/recognition process; and
- Personal interviews with migrants to analyse their individual needs and give advice on, amongst others, the recognition of diplomas and degrees.

The evaluation also highlighted that some beneficiaries of international protection faced particular problems in relation to the recognition of some regulated professions (i.e. professions for which a specific degree must be held or registration with a professional body is needed before the profession can be practiced) as well as challenges linked to the absence of bilateral agreements with specific third countries. A particularly interesting practice was identified in **Portugal**, where between 2002 and 2007, the Jesuit Refugee Service implemented a project aimed to facilitate the recognition of qualifications of immigrant doctors, so that they could also practice in Portugal. The target group consisted in 120 immigrant doctors, coming from countries which did not sign an agreement with Portugal for the automatic recognition of equivalent qualifications. The project supported the beneficiaries in the process of registration with the Medical Council and well as in their subsequent professional integration, as well as with practical steps (e.g. translation of diploma, support with the

<sup>566</sup> EMN ad hoc query - <https://bit.ly/2FyHFHv>

<sup>567</sup> <https://europa.eu/luf48ud>

application, payment of fees, etc.). A success rate of about 90% was achieved which represents 106 fully integrated doctors who are practicing medicine in several health institutions across the country.

Thanks to this project and its follow-up,<sup>568</sup> it was also possible to create a permanent support office (Support for Qualified Migrants Office) for the recognition of qualifications, which allowed the JRS to respond efficiently to a much wider group of immigrants seeking to have their qualifications recognised. In addition, they launched a project called “Supportive migrants” (*Imigrantes Solidários*) in 2010, which provided financial support to migrants who had started the process for recognition of qualifications, to bear the costs related to translations of their qualifications, authentication of documents, enrolment in colleges and professional associations, as well as general support with job searching.<sup>569</sup>

### A3.5.3 Facilitation of full access for beneficiaries of international protection who cannot provide documentary evidence (Article 28(2))

One of the key obstacles encountered by beneficiaries of international protection is that they often cannot provide documentary evidence, as they did not have the opportunity to take any certificates with them when leaving their country or as these were lost during the flight. The evaluation showed that, when beneficiaries of international protection could not provide documentary evidence or when they did not have formal qualifications, several Member States put in place mechanisms and schemes to assess, validate and accredit prior learning, in line with Article 28(2).

With regard to institutionalised mechanisms, evidence showed that, in the absence of documents, state actors mainly focussed on assessing whether the qualification, as described by the third-country nationals, exist in their country of origin and whether the information provided by the third-country national on the qualification is consistent and plausible. Following such assessment, they also provided information on the equivalent level of education in the Member State. Finally, some national authorities also undertook assessments to verify whether indeed the applicant possesses the expected knowledge and skills that come with the qualification they claimed to have.

#### *Different approaches to assessing the qualifications of migrants*

In the **Netherlands**, as of January 2015, beneficiaries of international protection who were unable to provide documentary evidence of their qualifications could apply for a so-called “indication of education level” (ION), free of charge. The ION procedure was carried out by EP-Nuffic (higher education) and the Samenwerkingsorganisatie Beroepsonderwijs Bedrijfsleven (Cooperation Organisation for Vocational Education, Training and the Labour Market). Based on information provided by the applicant on his/her level of education, EP-Nuffic country specialists would assess whether this was consistent with the situation in the country of origin and provide the equivalent educational level in the Netherlands. They would then issue a certificate stating the absence of the documentary evidence and the educational level, which would be signed by the migrant. Educational institutes could then still decide to undertake a ‘light’ assessment to test the knowledge and skills of the applicant before taking a final admission decision.<sup>570</sup>

Similar to the Netherlands, in **Sweden**, if documentation is missing and no new documentation can be issued, such as in cases of ongoing conflict in the country of education, the Swedish Council for Higher Education could prepare a background paper with a description of a qualification, based its knowledge of the education system in the particular country, a “sworn statement” from the applicant

<sup>568</sup> The follow up project called “Migrant Doctors” was launched in 2008, <http://jrportugal.pt/conteudo.php?AHIBYFMz=AEEBUVMV&AGYBZFMgUTVRaQM9=ADEBOQtela9Xr1tela9Xr1&AHIBYFM9=ADABN1Nt>

<sup>569</sup> It is called “Supportive Migrants” because the migrant, who first receives the financial support to get their qualifications recognised, will then devolve the fund received by helping other migrants in having their recognitions recognised or in searching a job. <https://bit.ly/2QUStat>

<sup>570</sup> EMN ad-hoc query - <https://bit.ly/2FyHFHv>

and available supporting documents. While the Swedish Council for Higher Education does not collect statistics on the status of the residence permit of its applicants, it was believed probably a majority of those who were unable to provide (sufficient) documentation were indeed beneficiaries of international protection (nationals of Syria, Iran and Iraq were the three major groups applying for evaluation of formal qualifications at Swedish Council for Higher Education in 2014).<sup>571</sup>

Along the same lines, **Denmark**<sup>572</sup> was also often cited as another good example, <sup>573</sup> offering third-country nationals the possibility to apply for a background report, which was a description or reconstruction of the academic achievements, based on:

- Detailed information provided by the applicant, regarding the content, extent and level of education as well as professional experience if relevant to the applicant's education;
- Supporting evidence provided by the applicant; (educational documents, testimonials of work experience or any other evidence which may help to confirm the information given in the application;
- General knowledge of the educational system in the country in question.

The Recognition Procedure for Persons without Verifiable Documentation (UVD-procedure) implemented in **Norway**<sup>574</sup> was indicated as a good practice by the ENIC-NARIC networks. The procedure, carried out by the Norwegian Agency for Quality Assurance in Education (NOKUT) is based on five main steps:<sup>575</sup>

- Application for general recognition and referral to recognition procedure for persons without verifiable documentation;
- Mapping and assessment of applicant's background;
- NOKUT's first assessment of the information received;
- Second assessment by an expert committee appointed by NOKUT; and
- NOKUT's decision on recognition

### ***Participating in the assessment, validation and certification of qualifications process***

The case study also identified a few interesting non-institutionalised practices, sometimes put in place to address the lack of a national mechanism. The practices all provided direct support and guidance to third-country nationals in accessing and participating in assessment, validation and certification processes and helped to build the capacity of those carrying out these processes.

For example, ISOK was an Eastern **Finnish** co-operation project, coordinated by Savo Consortium for Education in North Savo region,<sup>576</sup> to promote and develop efficient validation of non-formal and informal learning tools and procedures for migrants and to train trainers and guidance counsellors involved in the validation process. The validation procedure developed for the migrants included individual guidance, assistance with compiling their portfolio, interviews and monitoring. The candidates were interviewed by a professional trainer to verify the level of skills and competences. The candidates, in most cases, were offered an on-the-job training position in the field of their main experience, which helped testing their competences. The counsellor, professional trainer and the work

<sup>571</sup> EMN ad-hoc query - <https://bit.ly/2FyHFHv>

<sup>572</sup> Not covered by the recast Qualification Directive

<sup>573</sup> <https://bit.ly/2Mm9zXV>

<sup>574</sup> Not covered by the recast Qualification Directive

<sup>575</sup> <https://bit.ly/2RHvTa>

<sup>576</sup> <https://europa.eu/lpy48yq>

place tutor would all assess the candidates according to learning-outcome based criteria related to the vocational area in which they had worked. They were subsequently given a certificate in which their competences were described in terms of learning outcomes. As a result of the project, many migrants found employment and were able to shorten the period of study for formal qualifications, as their prior learning had been validated.

In 2014, eight offices for migrants were opened in the province of Grosseto, in *Italy*, to support the validation and certification of skills obtained outside the formal education and training channels and to overcome the cultural and linguistic obstacles faced by migrants when taking part in validation and certification processes. The offices offered guidance and practical support through the creation of a file (including the information provided by the migrant) which served as a basis for the final assessment and recognition. More than 600 migrants were involved in the project and 200 of them completed the validation process of their informal competences. Ninety-three migrants managed to get their competences formally approved, in terms of credits and the issuance of a final certificate.<sup>577</sup>

### **Harmonising procedures and practices across the EU**

At transnational level, some recent cross-border projects aimed to further promote harmonisation of practices across the EU in relation to recognition of qualifications of beneficiaries of refugees. More specifically, such practices intended to provide guidance to credential evaluators on the procedures to put in place to ensure an effective recognition of qualifications as well as exchange best practices and put forward recommendations for further enhancing recognition.

An interesting cross-border project in this area is the project led by the **ENIC-NARIC networks** “recognise qualifications held by refugees – guide for credential evaluators”.<sup>578</sup> In the context of this project, the ENIC-NARIC networks cooperated to promote best practices by suggesting guidelines for institutions tasked with the recognition of qualifications held by refugees, displaced persons and/or persons in a refugee-like situation.

The guidelines provide information on the processes to put in place in case an application from a refugee, with or without documentation of the qualifications obtained, is received by the competent institution. They included advice on how to determine whether the meets the main requirements to enter a programme, how to communicate to potential students arriving as refugees and where to find more information on legal obligations. The main steps described are as follows:

- **Set up a fair and transparent recognition procedure and policy within the institution** - To establish a standardised, accessible, fair and transparent process for applicants without documentation, institutions may: prepare a background paper using the Diploma Supplement<sup>579</sup>; evaluate qualifications based upon the background paper; organise an examination/test, perform an interview and/or use a sworn statement, as a document officialised by a legal authority; complete the evaluation process; issue and official document;
- **Publish information on the recognition procedure and policy for documented and undocumented applicants** - Relevant and transparent information about the institution’s procedure and policy for documented and undocumented qualifications may include: how to apply; required documents; applicable fees, if any; expected timelines for processing; how to appeal the evaluation outcome decision.
- **Consult additional resources to support the recognition policy and procedures.**

<sup>577</sup> [http://librettocompetenze.it/lfc/scheda\\_pratica.php?pro\\_id=8681](http://librettocompetenze.it/lfc/scheda_pratica.php?pro_id=8681)

<sup>578</sup> <http://www.enic-naric.net/recognise-qualifications-held-by-refugees.aspx>

<sup>579</sup> The Diploma Supplement is a document accompanying a higher education diploma, providing a standardised description of the nature, level, context, content and status of the studies completed by its holder. It is produced by the higher education institutions according to standards agreed by the European Commission, the Council of Europe and UNESCO.

Similarly, under the **European Area of Recognition project**,<sup>580</sup> co-funded by the Lifelong Learning Programme, a recognition manual was produced which contains standards and guidelines on all aspects of the international recognition of qualifications. Chapter 12 of the manual includes information on refugees and, more specifically, suggestions on how to assess qualifications in case some of the documentation is missing. Some recommendations were also included:

- Respect the right of refugees to have their qualifications assessed – Member States should always respect the right of refugees to have their qualifications assessed by a competent recognition authority;
- Determine the purpose of recognition - When reconstructing the educational background credential evaluators should take into account the purpose of recognition. Different procedures could be followed depending on if the applicant wishes to work or to pursue further studies;
- Create and use “background paper” as an assessment tool - To facilitate the assessment of the qualifications of refugees, displaced persons or persons in a refugee-like situation with insufficient documentation, credential evaluators should create a “background paper”.

#### A3.5.4 Examples of recent policies introduced to improve the recognition of foreign qualifications for beneficiaries of international protection

As a consequence of the introduction of Article 28, eight Member States (AT, BG, DE, EL, IT, LT, MT and PL) introduced new legislation while most of the Member States already had similar legislative provisions in place. The changes, as also illustrated by the two examples below, aimed to provide more flexibility to beneficiaries of international protection especially in the absence of documentary evidence.

In **Germany**, a resolution was introduced in December 2015 with regard to the recognition of qualifications of applicants who were unable to provide evidence of a higher education qualification obtained in their home country.<sup>581</sup> After status determination, applicants are invited to present any documentation they may have in relation to their qualification, which are subsequently subjected to a plausibility check. If applicants were unable to present any documentation, they are requested to undergo an examination or an assessment, the content of which is decided by each individual *Länder*.<sup>582</sup>

In August 2015, the **Polish** Ministry of Science and Higher Education issued a new law on diploma recognition for foreigners which also covered refugees.<sup>583</sup> This regulation made it not only easier for foreigners to get their diploma recognised but also allowed them to get recognition of their qualifications in the absence of official documents, thus responding to the needs of people who had lost or did not have an opportunity to obtain any official documents confirming higher education due to the political situation in their country of origin. The law stipulated the procedures to be followed for recognition of qualifications, identified the bodies responsible for the recognition, listed the type of documents to be provided and set out the requirements on the time and costs linked to the procedure. Third-country nationals who do not have diplomas can indeed present other documents,

<sup>580</sup> <http://eurorecognition.eu/>

<sup>581</sup> Access and Admission to Institutions of Higher Education for Applicants who are Unable to Provide Evidence of a Higher Education Entrance Qualification Obtained in their Home Country on Account of their Flight (Resolution of the Standing Conference of the Ministers of Education and Cultural Affairs dated 3 December 2015. <https://bit.ly/2DomOob>

<sup>582</sup> Only persons with a specific residency status are covered by the scope of section 1 of the resolution of the Standing Conference of the Ministers of Education and Cultural Affairs of 3 December 2015.

<sup>583</sup> Poz. 1467, Rozporządzenie Ministra Nauki i Szkolnictwa Wyższego z dnia 19 sierpnia 2015 r. w sprawie nostryfikacji dyplomów ukończenia studiów wyższych uzyskanych za granicą oraz w sprawie potwierdzenia ukończenia studiów wyższych na określonym poziomie kształcenia. More information available at: <https://bit.ly/1gTxMDh>



such as student record books (summarising the grades and credits obtained throughout the studies), certifying the completion of their studies. The changes in legislation were triggered by the transposition of the Recast QD.<sup>584</sup> In **Finland**, in November 2015, the Ministry of Employment and the Economy released an action plan, which emphasised the importance of early identification of immigrants' skills and their access to employment.<sup>585</sup> According to the action plan, the professional skills of asylum seekers would be already be assessed while waiting for asylum decisions in reception centres. After being granted international protection, a broader assessment of their skills would be made. To help identify the skills and work experience of an asylum seeker, the reception centres were provided with a questionnaire, and an electronic self-assessment for asylum seekers.

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<sup>584</sup> <https://bit.ly/2DpAIGA>

<sup>585</sup> EMN Ad-hoc query - <https://bit.ly/2FyHFHv>

