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concerne uniquement les versions DE, EN et FR

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**

**(Recast)**

{SEC(2009) 1373}  
{SEC(2009) 1374}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### 1.1. Grounds for and objectives of the proposal

This proposal is a recasting of Council Directive 2004/83/EC of 29 April 2004, on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted<sup>1</sup> (the "Qualification Directive" or "the Directive").

The Hague Programme invited the Commission to conclude the evaluation of the first-phase legal instruments and to submit the second-phase instruments to the Council and the European Parliament with a view to their adoption before the end of 2010. In the Policy Plan on Asylum<sup>2</sup> the Commission proposed the completion of the second phase of the Common European Asylum System (CEAS) through raising the standards of protection and ensuring their consistent application across the EU. The European Pact on Immigration and Asylum ("Pact"), adopted on 16 October 2008, provided further political endorsement and impetus to this objective, by calling for initiatives to complete the establishment of the CEAS with a view to offering a higher degree of protection.

At present, the Commission has at its disposal a large amount of information regarding the implementation of the Directive, including extensive information on the deficiencies concerning the terms of the Directive and the manner in which it is applied in practice.

- In June 2007 the Commission presented a **Green Paper**<sup>3</sup> which aimed at identifying possible options for shaping the second phase of the CEAS. In response to this public consultation, it received **89 contributions from a wide range of relevant stakeholders**, including a significant number of Member States and NGOs<sup>4</sup>, putting across a broad range of ideas on possible amendments to the Directive.
- The Commission has collected information about the transposition and implementation of the Directive through its **regular monitoring activities** and has also taken into account **several studies** produced by UNHCR and different NGOs<sup>5</sup> which evaluate the

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<sup>1</sup> OJ L 304, 30.9.2004, p. 12.

<sup>2</sup> Policy Plan on Asylum 'An integrated approach to protection across the EU' COM(2008) 360

<sup>3</sup> COM(2007) 301

<sup>4</sup> Available at:

[http://ec.europa.eu/justice\\_home/doc\\_centre/immigration/integration/doc/2007/handbook\\_2007\\_en.pdf](http://ec.europa.eu/justice_home/doc_centre/immigration/integration/doc/2007/handbook_2007_en.pdf)

<sup>5</sup> UNHCR, "Asylum in the European Union, A study on the implementation of the Qualification Directive", November 2007; ELENA/ECRE, "The impact of the EU Qualification Directive on International protection", October 2008; France Terre d'Asile, "Asile La protection subsidiaire en Europe: Un mosaïque de droits", Les cahiers du social no 18, Septembre 2008; Dutch Refugee Council/ECRE, 'Networking on the Transposition of the Qualification Directive', December 2008, Nijmegen University, "The Qualification Directive: Central themes, Problem issues, and Implementation in selected MS", Karin Zwaan (ed), 2007

implementation of the Directive as well as a report carried out, on behalf of the Commission, by the academic network Odysseus<sup>6</sup>.

- Further data was collected in response to **detailed questionnaires** addressed by the Commission to all Member States and to civil society.
- Moreover, **an external study** was conducted on behalf of the Commission, analysing the existing evidence and results of consultations and questionnaires, for the purposes of the preparation of the Impact assessment accompanying this proposal<sup>7</sup>.
- Additionally, the Commission organised **several experts' meetings** to discuss possible amendments to the Directive: **a meeting with judges, academics, UNHCR and a selected number of experts from MS** on 26.06.2008; **two meetings with MS** (one at experts' level on 19.11.2008 and another one in the context of the Committee on Immigration and Asylum on 12.12.2008) and **two meetings with NGOs**, on 8.1.2009 and 23.2.2009.

On this basis, the Commission identified as a main problem that the minimum standards adopted are vague and ambiguous. As a result

- they are insufficient to secure full compatibility with the evolving human rights and refugee law standards
- they have not achieved a sufficient level of harmonisation and
- they impact negatively on the quality and efficiency of decision-making.

The same conclusion was drawn with respect to the Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status ("Asylum Procedures Directive")<sup>8</sup>.

This proposal is adopted together with the recast of the Asylum Procedures Directive with the aim to ensure a higher degree of harmonisation and better substantive and procedural standards of protection, on the present legal basis, towards the establishment of a common asylum procedure and a uniform status, as called for by the Hague Programme. The amendments are expected:

- a) to **simplify decision-making procedures and lead to more robust determinations** at first instance, **thus preventing abuse**;
- b) to **streamline procedures for granting rights, thus improving the efficiency** of the asylum process, and

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<sup>6</sup> Available at [http://ec.europa.eu/justice\\_home/doc\\_centre/asylum/studies/wai/doc\\_asylum\\_studies\\_en.htm](http://ec.europa.eu/justice_home/doc_centre/asylum/studies/wai/doc_asylum_studies_en.htm)

<sup>7</sup> GHK, Impact assessment studies on The future development of measures on the qualification and status of third country nationals or stateless persons as persons in need of international protection and on the content of the protection granted, based on Council Directive 2004/83/EC and The future development of measures on procedures in MS for granting and withdrawing refugee status, based on Council Directive 2005/85/EC, Multiple framework service contract JLS/2006/A1/004.

<sup>8</sup> OJ L 326, 13.12.2005, p.13

c) to **ensure coherence with the jurisprudences** of the European Court of Justice (ECJ) and the European Court of Human Rights (ECtHR).

More specifically:

a) As a result of the vagueness and ambiguity inherent in several of the Directive's provisions, decision-makers have difficulties to reach quickly robust decisions, whereas the possibility to interpret concepts in different ways results in intensive recourse to appeals and to subsequent applications, and in high rates of successful appeals against negative decisions. By reducing room for uncertainty and administrative error, **by clarifying the legal concepts and thus simplifying their application**, the proposal strengthens the capacities of the authorities to deal with cases of unfounded and abusive applications and more generally to process claims more rapidly while reaching solid decisions, which are not frequently overturned on appeal, so as to avoid prolonged litigations. This will also lead to quicker access to the rights set out in the Directive for persons genuinely in need of protection while at the same time supporting Member States' efforts to rapidly remove from the territory failed asylum seekers and improving the credibility of the whole process.

b) The proposal seeks **to streamline procedures and reduce administrative costs and burdens associated with maintaining two protection statuses**. As a result of the approximation of the rights granted to the two categories of beneficiaries of protection, the authorities will no longer need to apply distinct conditions and procedures for issuing residence permits and travel documents and for granting access to employment, social welfare, healthcare and benefits for family members and to integration programmes. Relevant administrative procedures will be streamlined and costs associated with creating and maintaining different infrastructures will be reduced.

c) Finally, to the extent that refugee and human rights obligations are the subject of a constantly evolving authoritative interpretation by competent national and international bodies and jurisdictions, the proposal seeks **to ensure the full compatibility of the standards of the EU acquis with the standards developed since the adoption of the Directive** by the case law of the ECJ and the ECtHR.

As concerns the financial and administrative burdens arising from the envisaged measures for those Member States which are faced with specific and disproportionate pressures on their asylum systems, due in particular to their geographical or demographic situation, the resources of the European Refugee Fund will be mobilised to provide adequate support to these Member States and to ensure that the burden will be shared more fairly between all Member States. In addition, the European Asylum Support Office will coordinate and support common action to assist Member States faced with particular pressures, and, more generally, help Member States identify the most cost-efficient ways to implement the envisaged measures through the pooling of good practice and the structured exchange of high-level expertise.

## 1.2. General context

During the first phase of the CEAS, the goal set by the Tampere European Council was to harmonise Member States' legal frameworks on the basis of common minimum standards. The Qualification Directive was thus adopted with a view to define common criteria for the identification of persons in need of international protection and to ensure that at least a minimum level of benefits is available for these persons in all Member States.

This proposal aims to address the deficiencies identified during the first-phase of the asylum legislation and to ensure higher and more harmonised standards of protection, thus progressing towards a common asylum procedure and a uniform status, as set out in the Tampere conclusions and reiterated in the Hague programme. Detailed analysis of the problems identified in relation to this Directive and concerning the preparation carried out for its adoption, the identification and assessment of policy options and the identification and assessment of the preferred policy option are included in the Impact Assessment, annexed to this proposal.

### **1.3. Consistency with other policies and objectives of the Union**

This proposal is fully in line with the Tampere European Council Conclusions of 1999 and the Hague programme of 2004 in relation to the establishment of the CEAS.

## **2. CONSULTATION OF INTERESTED PARTIES**

Based on the suggestions put forward in response to the June 2007 Green Paper and on the abovementioned studies evaluating the implementation of the Directive, the Commission drew valuable information regarding the issues to be addressed in the amending proposal. As set out in detail above, the Commission also organised a series of consultations to informally discuss a broad outline of the proposed amendments with Member States, NGOs, UNHCR, refugee law judges and academics.

Parties consulted expressed support for further harmonisation regarding both the grounds and the content of protection. Member States were divided on the question of broadening the definition of family members and regarding an amendment of the definition of a "particular social group". There was general consensus amongst Member States on the need to approximate the rights attached to the refugee status and subsidiary protection, while maintaining two separate statuses. In contrast, UNHCR and civil society favor the establishment of a single uniform status. Stakeholders further stressed the need for clarification of Article 15(c).

The Commission is proposing a pragmatic approach, consisting in broadening the definition of family members to the extent necessary to ensure coherence with the Proposals amending the Dublin Regulation<sup>9</sup> and the Reception Conditions Directive<sup>10</sup>. As to the definition of the ground "membership of a particular social group", the focus is on providing more concrete guidance on the weight to be attached to gender-related aspects. Furthermore, the amendments aim to remove all differences in the treatment of the two categories which cannot be considered as objectively justified, thus progressing towards uniformity of protection while maintaining the distinction between the two statuses.

The requirement of the existence of a "serious and individual threat" in Article 15(c) was interpreted by the ECJ in its judgment of 17 February 2009, C-465/07<sup>11</sup>. The Court defined

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<sup>9</sup> Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (COM (2008) 820 final/2).

<sup>10</sup> Proposal for a Directive of the European Parliament and of the Council laying down minimum standards for the reception of asylum seekers (COM (2008) 815 final/2)

<sup>11</sup> The Court was asked to give a preliminary ruling on whether the existence of a serious and individual threat to the life or person of the applicant for subsidiary protection is subject to the condition that that

the conditions under which such a threat can be exceptionally considered as established in the case of an applicant who is not specifically targeted by reason of factors particular to his/her personal circumstances and provided guidance on the use of the degree of indiscriminate violence characterising the armed conflict as a criterion for assessing the existence of a serious and individual threat. In this context, the Court examined the logic, structure and wording of several provisions of the Directive and found that they all coherently support and validate this interpretation. Moreover, it concluded that this interpretation is fully compatible with the European Convention for the Protection of Human Rights and Fundamental Freedoms ("ECHR"), including the case-law of the ECtHR relating to Article 3. Therefore, *in view of the interpretative guidance provided by this judgment and of the fact that the relevant provisions were found to be compatible with the ECHR, an amendment of Article 15(c) is not considered necessary.*

### 3. LEGAL ELEMENTS OF THE PROPOSAL

#### 3.1. Summary of the proposed action

The main objective of this proposal is to ensure

- **higher protection standards** regarding both the grounds and the content of the protection in line with international standards, and in particular in order to ensure the full and inclusive application of the Geneva Convention relating to the Status of Refugees of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967 ("Geneva Convention") and full respect for ECHR and the EU Charter of Fundamental Rights ("EU Charter"); and
- **further harmonisation of protection standards** in order to reduce secondary movements in so far as these are due to the diversity of national legal frameworks and decision-making practices and to different levels of rights provided in different Member States.

To this effect, the proposal addresses a series of issues presented below. A detailed explanation of the amendments is presented in the Annex to this Proposal.

#### 1. Actors of protection

The lack of clarity of the concept allows for wide divergences and for very broad interpretations which may fall short of the standards set by the Geneva Convention on what constitutes adequate protection. For instance, national authorities interpreting broadly the current definition have considered clans and tribes as potential actors of protection despite the fact that these cannot be equated to States regarding their ability to provide protection. In other instances, authorities have considered non-governmental organisations as actors of protection with regard to women at risk of female genital mutilation and honour killings, despite the fact that such organisations can only provide temporary safety or even only shelter to victims of persecution. In order to prevent such protection gaps and to ensure full compatibility with the Geneva Convention and enhanced quality and efficiency of decision-

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applicant adduce evidence that he is specifically targeted by reason of factors particular to his circumstances and, if not, to indicate the criterion on the basis of which the existence of such a threat can be considered to be established.

making as well as interpretative consistency and coherence with other provisions of the Directive, the proposal clarifies the criteria for assessing the nature of the protection.

Where the Directive establishes indicative lists, it uses terms such as "include" or "inter alia"; therefore, the absence of such terms in Article 7 is already an indication of the exhaustive character of the list. However, for the sake of enhanced clarity, it is useful to explicitly specify that the list of actors of protection is exhaustive.

It is also necessary to specify that protection should be effective and durable and that non-state actors of protection should be willing and able to enforce the rule of law. The notion of "willingness to protect" reflects the requirement already set in Article 7(2) of the Directive, according to which the applicant *should have access to protection*. The mere fact that an entity is able to provide protection is not sufficient; it should also be willing to protect the particular individual. Inversely, mere "*willingness to protect*" is not sufficient in the absence of the "*ability to protect*". Moreover, even actors who are willing and able *in principle* to provide protection but *not providing it in reality* or who can provide protection *only on a transitional or temporary basis* are excluded from the scope of the concept. The reference to the enforcement of the rule of law gives more prominence to a condition already set in Article 7(2), namely *the operation of an effective legal system*.

Finally, the condition that protection should be effective and durable ensures coherence with Article 11(2) of the Directive, which requires, for the purposes of cessation, that the change of circumstances in the country of origin should be *significant and of non-temporary nature*.

## 2. Internal protection

The purpose and content of international protection are not limited to *non-refoulement*. It is necessary thus to specify that it may be withheld only where *protection* is available in at least part of the country of origin. It is also necessary to ensure the compatibility of the concept of internal protection with Article 3 ECHR, as interpreted in a recent judgment of the ECtHR<sup>12</sup>. The current definition not only omits essential requirements flowing from this judgment, but also outright contradicts the conditions set by this Court. The proposal thus:

- introduces verbatim the pre-conditions set out in the above judgment for the applicability of the concept of internal protection, namely that the applicant should be able to travel, gain admittance and settle in the alternative location
- deletes the possibility to apply the internal flight alternative despite technical obstacles as incompatible with the above requirements
- includes a reference to the obligation of the authorities to obtain precise and up-to-date information on the general situation in the country, thus reflecting Article 8(1) of the Asylum Procedures Directive.

## 3. The "causal link" requirement

In many cases where the persecution emanates from non-State actors, such as militia, clans, criminal networks, local communities or families, the act of persecution is not committed for reasons related to a Geneva Convention ground but, for instance, with criminal motivations or

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<sup>12</sup> Judgment of 11 January 2007, Salah Sheekh v. the Netherlands, paragraph 141

for private revenge. However, it often happens in such cases that the State is unable or unwilling to provide protection to the individual concerned *because of a reason related to the Geneva Convention* (for example religion, gender, ethnicity etc). To address potential protection gaps, the proposal makes explicit that the requirement of a connection between the acts of persecution and the reasons for persecution is also fulfilled where there is a connection between the acts of persecution and the absence of protection against such acts.

#### 4. Membership of a particular social group

Gender as such is normally not sufficient as a criterion for the definition of a particular social group; it is generally used in combination with other factors, such as class, marital status, ethnic or clan affiliation. However, women may form a particular social group in some societies, as evidenced by discrimination in their fundamental rights. The ambiguous wording of the last phrase of Article 10(1)(d) allows for protection gaps and for very divergent interpretations. In order to provide clear and useful guidance and ensure consistency, the amendment specifies that gender should be given due consideration for the purposes of defining a particular social group.

#### 5. Cessation of refugee and subsidiary protection status

References to the exceptions to the “ceased circumstances” cessation clauses, set out in Articles 1C(5) and 1C(6) of the Geneva Convention, have been omitted from the Qualification Directive. These exceptions provide for the continuation of protection for "compelling reasons arising out of previous persecution" and are interpreted as reflecting a general humanitarian principle. The proposal introduces these exceptions with regard both to refugee status and to subsidiary protection.

#### 6. Differentiation regarding the content of the two protection statuses

An amendment expected to significantly simplify and streamline procedures and to reduce administrative costs is aimed at approximating the rights granted to the two categories of beneficiaries of protection. When subsidiary protection was introduced, it was assumed that this status was of a temporary nature. As a result, the Directive allows Member States the discretion to grant them a lower level of rights in certain respects. However, practical experience acquired so far has shown that this initial assumption was not accurate. It is thus necessary to remove any limitations of the rights of beneficiaries of subsidiary protection which can no longer be considered as necessary and objectively justified. Such an approximation of rights is necessary to ensure full respect of the principle of non-discrimination, as interpreted in recent case law of the ECtHR<sup>13</sup>, and of the UN Convention on the Rights of the Child. It responds moreover to the call of the Hague Programme for the creation of a uniform status of protection.

#### 7. Content of protection

To ensure the effective exercise of the rights formally granted to beneficiaries of protection, it is necessary to address the specific integration challenges they face.

a) Recognition of qualifications: In order to address the practical difficulties flowing from their inability to provide documentary evidence and their limited financial capacities, the

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<sup>13</sup> Judgments of 15 February 2006 in cases *Niedzwiecki v Germany* and *Okpisz v Germany*.

proposal encourages Member States to adopt alternative appropriate procedures and exempt them from the fees involved or grant them financial assistance, where necessary.

b) Access to vocational training and employment: Beneficiaries of protection are often unable to work for years or they are unfamiliar with labour market requirements and recruitment practices. The proposal obliges Member States to offer them access to training courses to upgrade their skills and to counselling services offered by employment offices.

c) Access to integration facilities: The effective integration opportunities of beneficiaries of protection would be significantly enhanced if the different educational and professional backgrounds or other specificities of their situation were adequately taken into account in the integration facilities. The proposal requires Member States to develop in their integration policies the response that they consider appropriate to meet those specific needs.

d) Access to accommodation: Many beneficiaries of protection experience direct and indirect discrimination in the housing market. In line with the approach advocated in the Handbook on Integration<sup>14</sup>, the proposal calls on Member States to put in place policies aimed at preventing discrimination and achieving equality of opportunity.

e) Possibilities for reduction of benefits in cases of "manufactured" claims: These possibilities are not conducive to integration and raise concerns from the perspective of the principle of non-discrimination. Furthermore, their limited use in practice points to their limited added value. It is thus proposed to delete these possibilities.

## 8. Family members

The definition of family members is extended so as to take into account the case where the beneficiary of protection is a minor and the wide range of situations where a minor might be dependent, while ensuring that the decisive criterion is the best interest of the child.

### **3.2. Legal basis**

This proposal amends Directive 2004/83/EC and uses the same legal base as that act, namely points 1(c), 2(a) and 3(a) of the first paragraph of Article 63 of the EC Treaty.

Article 1 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, states that Ireland and the UK may 'opt in' to measures establishing a Common European Asylum System. In accordance with Article 3 of this Protocol, the United Kingdom and Ireland had given notice of their wish to take part in the adoption and application of the current Directive. However, the position of these Member States with regard to the current directive does not affect their possible participation with regard to the new directive.

In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not bound by the Directive nor is subject to its application.

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<sup>14</sup> Second Edition, available at [http://ec.europa.eu/justice\\_home/doc\\_centre/immigration/integration/doc/2007/handbook\\_2007\\_en.pdf](http://ec.europa.eu/justice_home/doc_centre/immigration/integration/doc/2007/handbook_2007_en.pdf), pp. 32-36

### 3.3. Subsidiarity Principle

Title IV of the EC Treaty ('TEC') on visas, asylum, immigration and other policies related to free movement of persons confers certain powers on these matters on the European Community. These powers must be exercised in accordance with Article 5 TEC.

Due to the transnational nature of the problems related to asylum, the EU is well placed to propose solutions, in particular with regard to issues concerning the qualification and status of beneficiaries of protection. Although an important level of harmonization was reached by the adoption of the current Directive, further EU action is necessary to attain higher and more harmonised standards of protection and to take further steps towards a uniform status. In particular, further efforts towards the achievement of a level-playing field are urgently called for with a view to ensuring that the Dublin System can operate in a fair and efficient manner. As stressed in the Policy Plan, to address the concerns regarding the operation of this system, it is necessary to ensure that asylum seekers falling under it have equal access to protection.

In the Pact, the European Council highlighted its concern that considerable disparities remain between one Member State and another concerning the grant of protection and the forms that protection takes and called for new initiatives to complete the establishment of a CEAS, provided for in the Hague Programme, and thus to offer a higher degree of protection, as proposed by the Commission in its Policy Plan.

### 3.4. Proportionality Principle

The relevant impact assessment assessed each option envisaged as a solution to the problems identified so as to represent an ideal proportion between practical value and efforts needed and concluded that opting for EU action does not go beyond what is necessary to achieve the objective of solving those problems.

### 3.5. Impact on fundamental rights

This proposal was subject to an in-depth scrutiny with a view to ensuring that its provisions are fully compatible with i) fundamental rights flowing from general principles of Community law, which, themselves, are the result of constitutional traditions common to the Member States and the ECHR, as enshrined, moreover, in the EU Charter, and ii) obligations stemming from international law, in particular from the Geneva Convention, and from the UN Convention on the Rights of the Child.

The proposal will increase *access to protection and justice*: by clarifying the grounds for protection it will reduce protection gaps and diverse recognition practices and will lead to an overall improvement of the quality of the decision-making. It will also increase *access to social protection, to the labour market and overall integration*, to the extent that it raises the level of rights of beneficiaries of subsidiary protection and more generally of beneficiaries of international protection and their family members (by approximating the rights of the two statuses, raising the overall level of rights granted to beneficiaries of protection, broadening the definition of family members and eliminating the possibility to reduce benefits in case of "manufactured" claims). The approximation of rights and the enhancement of the access to protection for women (amendments to the "nexus requirement" and the "particular social group") *will reinforce the principle of non-discrimination*. Finally, several amendments aimed at broadening the definition of family members and increasing the rights granted to beneficiaries of protection and their family members will also have positive impacts in terms of *enhancing the rights of the child*.

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**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular points 1(c), 2(a) and 3(a) of the first paragraph of Article 63 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee<sup>15</sup>,

Having regard to the opinion of the Committee of the Regions<sup>16</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>17</sup>,

Whereas:

- (1) A number of substantive changes are to be made to Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted<sup>18</sup>. In the interests of clarity, that Directive should be recast.
- (2) A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of progressively establishing an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Community.

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<sup>15</sup> OJ C [...], [...], p. [...].

<sup>16</sup> OJ C [...], [...], p. [...].

<sup>17</sup> OJ C [...], [...], p. [...].

<sup>18</sup> OJ L 304, 30.9.2004, p. 12

- (3) The European Council at its special meeting in Tampere on 15 and 16 October 1999 agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention of 28 July 1951 relating to the Status of Refugees ("Geneva Convention"), as supplemented by the New York Protocol of 31 January 1967 (Protocol), thus affirming the principle of non-refoulement and ensuring that nobody is sent back to persecution.
- (4) The Geneva Convention and Protocol provide the cornerstone of the international legal regime for the protection of refugees.
- (5) The Tampere Conclusions provide that a Common European Asylum System should include, in the short term, the approximation of rules on the recognition of refugees and the content of refugee status.
- (6) The Tampere Conclusions also provide that rules regarding refugee status should be complemented by measures on subsidiary forms of protection, offering an appropriate status to any person in need of such protection.
- (7) The first phase in the creation of a Common European Asylum System has now been achieved. The European Council of 4 November 2004 adopted The Hague Programme, which sets the objectives to be implemented in the area of freedom, security and justice in the period 2005-2010. In this respect the Hague Programme invited the European Commission to conclude the evaluation of the first-phase legal instruments and to submit the second-phase instruments and measures to the Council and the European Parliament, with a view to their adoption before the end of 2010. In accordance with the Hague programme, the objective to be pursued for the creation of the Common European Asylum System is the establishment of a common asylum procedure and a uniform status valid throughout the Union.
- (8) In the European Pact on Immigration and Asylum, adopted on 16 October 2008, the European Council noted that considerable disparities remain between one Member State and another concerning the grant of protection and the forms that protection takes and called for new initiatives to complete the establishment of a Common European Asylum System, provided for in the Hague Programme, and thus to offer a higher degree of protection.
- (9) In the light of the results of the evaluations undertaken, it is appropriate, at this stage, to confirm the principles underlying Directive 2004/83/EC as well as to seek to achieve a higher level of approximation of the rules on the recognition and content of international protection on the basis of higher standards, with a view to progressing towards the establishment of a uniform protection status valid throughout the Union, in accordance with the objective set by the Hague Programme.

- (10) The resources of the European Refugee Fund and of the European Asylum Support Office should be mobilised to provide adequate support to the Member States' efforts relating to the implementation of the standards set in the second phase of the Common European Asylum System, in particular to those Member States which are faced with specific and disproportionate pressures on their asylum systems, due in particular to their geographical or demographic situation.
- (11) The main objective of this Directive is, on the one hand, to ensure that Member States apply common criteria for the identification of persons genuinely in need of international protection, and, on the other hand, to ensure that a minimum level of benefits is available for these persons in all Member States.
- (12) The approximation of rules on the recognition and content of refugee and subsidiary protection status should help to limit the secondary movements of applicants for international protection between Member States, where such movement is purely caused by differences in legal frameworks.
- (13) It is in the very nature of minimum standards that Member States should have the power to introduce or maintain more favourable provisions for third country nationals or stateless persons who request international protection from a Member State, where such a request is understood to be on the grounds that the person concerned is either a refugee within the meaning of Article 1(A) of the Geneva Convention, or a person who otherwise needs international protection.
- (14) Those third country nationals or stateless persons, who are allowed to remain in the territories of the Member States for reasons not due to a need for international protection but on a discretionary basis on compassionate or humanitarian grounds, fall outside the scope of this Directive.
- (15) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union<sup>19</sup>. In particular this Directive seeks to ensure full respect for human dignity and the right to asylum of applicants for asylum and their accompanying family members and to promote the application of Articles 1, 7, 14, 15, 16, 18, 21, 24, 34 and 35 of the Charter and should be implemented accordingly.

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<sup>19</sup> OJ C 364, 18.12.2000, p. 1

- (16) With respect to the treatment of persons falling within the scope of this Directive, Member States are bound by obligations under instruments of international law to which they are party .
- (17) The "best interests of the child" should be a primary consideration of Member States when implementing this Directive , in line with the 1989 United Nations Convention on the Rights of the Child .
- (18) It is necessary to broaden the notion of family members, taking into account the different particular circumstances of dependency and the special attention to be paid to best interests of the child.
- (19) This Directive is without prejudice to the Protocol on asylum for nationals of Member States of the European Union as annexed to the Treaty Establishing the European Community.
- (20) The recognition of refugee status is a declaratory act.
- (21) Consultations with the United Nations High Commissioner for Refugees may provide valuable guidance for Member States when determining refugee status according to Article 1 of the Geneva Convention.
- (22) Minimum standards for the definition and content of refugee status should be laid down to guide the competent national bodies of Member States in the application of the Geneva Convention.
- (23) It is necessary to introduce common criteria for recognising applicants for asylum as refugees within the meaning of Article 1 of the Geneva Convention.
- (24) In particular, it is necessary to introduce common concepts of protection needs arising sur place; sources of harm and protection; internal protection; and persecution, including the reasons for persecution.
- (25) Protection can be provided not only by the State but also by parties or organisations, including international organisations, meeting the conditions of this Directive, which

control a region or a larger area within the territory of the State and are willing and able to enforce the rule of law. Such protection should be effective and of a durable nature .

- (26) Internal protection should be effectively available to the applicant in a part of the country of origin where he or she can safely and legally travel, gain admittance and settle.
- (27) It is necessary, when assessing applications from minors for international protection, that Member States should have regard to child-specific forms of persecution.
- (28) One of the conditions for qualification for refugee status within the meaning of Article 1(A) of the Geneva Convention is the existence of a causal link between the act of persecution and reasons of race, religion, nationality, political opinion or membership of a particular social group. Where the persecution emanates from a non-State actor, it suffices if a causal link exists between the absence of State protection against the act of persecution and one of these reasons.
- (29) It is equally necessary to introduce a common concept of the persecution ground "membership of a particular social group". For the purposes of defining a particular social group, issues arising from an applicant's gender should be given due consideration.
- (30) Acts contrary to the purposes and principles of the United Nations are set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations and are, amongst others, embodied in the United Nations Resolutions relating to measures combating terrorism, which declare that "acts, methods and practices of terrorism are contrary to the purposes and principles of the United Nations" and that "knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations".
- (31) As referred to in Article 14, "status" can also include refugee status.
- (32) Minimum standards for the definition and content of subsidiary protection status should also be laid down. Subsidiary protection should be complementary and additional to the refugee protection enshrined in the Geneva Convention.

- (33) It is necessary to introduce criteria on the basis of which applicants for international protection are to be recognised as eligible for subsidiary protection. Those criteria should be drawn from international obligations under human rights instruments and practices existing in Member States.
- (34) Risks to which a population of a country or a section of the population is generally exposed do normally not create in themselves an individual threat which would qualify as serious harm.
- (35) Family members, merely due to their relation to the refugee, will normally be vulnerable to acts of persecution in such a manner that could be the basis for refugee status.
- (36) The notion of national security and public order also covers cases in which a third country national belongs to an association which supports international terrorism or supports such an association.
- (37) It is necessary to ensure full respect for the principle of non-discrimination, while responding to the call of the Hague programme for the establishment of a uniform status. To that effect, and with the exception of derogations which are necessary and objectively justified, beneficiaries of subsidiary protection should be granted the same rights and benefits as refugees, and should be subject to the same conditions of eligibility.
- (38) 2004/83/EC recital 30 Within the limits set out by international obligations, Member States may lay down that the granting of benefits with regard to access to employment, social welfare, health care and access to integration facilities requires the prior issue of a residence permit.
- (39) In order to enhance the effective exercise of the rights and benefits laid down in the Directive by beneficiaries of international protection, it is necessary to take into account their specific needs and the particular integration challenges they are confronted with.
- (40) In that context, efforts should be made in particular to address the problems related to the financial constraints which prevent beneficiaries of international protection from effective access to employment-related educational opportunities and vocational training.

- (41) This Directive does not apply to financial benefits from the Member States which are granted to promote education .
- (42) Special measures need to be considered with a view to effectively addressing the practical difficulties encountered by beneficiaries of international protection concerning the authentication of their foreign diplomas, certificates or other evidence of formal qualifications, in particular due to the lack of documentary evidence and their inability to meet the costs related to the recognition procedures.
- (43) Especially to avoid social hardship, it is appropriate, for beneficiaries of international protection , to provide without discrimination in the context of social assistance the adequate social welfare and means of subsistence.
- (44) Access to health care, including both physical and mental health care, should be ensured to beneficiaries of international protection .
- (45) The specific needs and particularities of the situation of beneficiaries of international protection should be taken into account, as far as possible, in the integration programmes provided to them.
- (46) The implementation of this Directive should be evaluated at regular intervals, taking into consideration in particular the evolution of the international obligations of Member States regarding non-refoulement, the evolution of the labour markets in the Member States as well as the development of common basic principles for integration.
- (47) Since the objectives of the proposed Directive, namely to establish minimum standards for the granting of international protection to third country nationals and stateless persons by Member States and the content of the protection granted, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the Directive, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

- (48) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.
- (49) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with the earlier Directive. The obligation to transpose the provisions which are unchanged arises under the earlier Directive.
- (50) This Directive should be without prejudice to the obligations of the Member States relating to the time-limit for transposition into national law of the Directive set out in Annex I, Part B,

HAVE ADOPTED THIS DIRECTIVE:

## *CHAPTER I*

### **General provisions**

#### *Article 1*

#### **Purpose**

The purpose of this Directive is to lay down minimum standards for the qualification of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted.

#### *Article 2*

#### **Definitions**

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

- (a) "international protection" means refugee status and subsidiary protection status as defined in (e) and (g);

- (b) "beneficiaries of international protection" means persons who have been granted refugee status or subsidiary protection status as defined in (e) and (g);
- (c) "Geneva Convention" means the Convention relating to the status of refugees done at Geneva on 28 July 1951, as amended by the New York Protocol of 31 January 1967;
- (d) "refugee" means a third country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 does not apply;
- (e) "refugee status" means the recognition by a Member State of a third country national or a stateless person as a refugee;
- (f) "person eligible for subsidiary protection" means a third country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) do not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country;
- (g) "subsidiary protection status" means the recognition by a Member State of a third country national or a stateless person as a person eligible for subsidiary protection;
- (h) "application for international protection" means a request made by a third country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status, and who does not explicitly request another kind of protection, outside the scope of this Directive, that can be applied for separately;
- (i) "applicant" means a third country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken;
- (j) "family members" means, in so far as the family already existed in the country of origin, the following members of the family of the beneficiary of international protection who are present in the same Member State in relation to the application for international protection:
- the spouse of the beneficiary of international protection or his or her unmarried partner in a stable relationship, where the legislation or

practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to aliens;

- the minor children of the couples referred to in the first indent or of the beneficiary of international protection, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under the national law;
- the married minor children of the couples referred to in the first indent or of the beneficiary of international protection, regardless of whether they were born in or out of wedlock or adopted as defined under the national law, where it is in their best interests to reside in the same country as the beneficiary;
- the father, mother or another adult relative responsible for the beneficiary of international protection whether by law or by custom, when the latter is a minor and unmarried, or when he/she is a minor and married but it is in his/her best interests to reside in the same country as his/her father, mother or other adult relative responsible;
- the minor unmarried siblings of the beneficiary of international protection, when the latter is a minor and unmarried, or when the beneficiary of international protection or his/her siblings are minors and married but it is in the best interests of one or more of them that they reside in the same country;

- (k) "minor" means a third-country national or stateless person below the age of 18 years;
- (l) "unaccompanied minor" means a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him/her whether by law or custom, and for as long as he/she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he/she has entered the territory of the Member States;
- (m) "residence permit" means any permit or authorisation issued by the authorities of a Member State, in the form provided for under that State's legislation, allowing a third country national or stateless person to reside on its territory;
- (n) "country of origin" means the country or countries of nationality or, for stateless persons, of former habitual residence.

### *Article 3*

#### **More favourable standards**

Member States may introduce or retain more favourable standards for determining who qualifies as a refugee or as a person eligible for subsidiary protection, and for determining the content of international protection, in so far as those standards are compatible with this Directive.

### *CHAPTER II*

#### **Assessment of applications for international protection**

### *Article 4*

#### **Assessment of facts and circumstances**

1. Member States may consider it the duty of the applicant to submit as soon as possible all elements needed to substantiate the application for international protection. In cooperation with the applicant it is the duty of the Member State to assess the relevant elements of the application.
2. The elements referred to in of paragraph 1 consist of the applicant's statements and all documentation at the applicants disposal regarding the applicant's age, background, including that of relevant relatives, identity, nationality(ies), country(ies) and place(s) of previous residence, previous asylum applications, travel routes, identity and travel documents and the reasons for applying for international protection.
3. The assessment of an application for international protection is to be carried out on an individual basis and includes taking into account:
  - (a) all relevant facts as they relate to the country of origin at the time of taking a decision on the application; including laws and regulations of the country of origin and the manner in which they are applied;
  - (b) the relevant statements and documentation presented by the applicant including information on whether the applicant has been or may be subject to persecution or serious harm;
  - (c) the individual position and personal circumstances of the applicant, including factors such as background, gender and age, so as to assess whether, on the basis of the applicant's personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious harm;
  - (d) whether the applicant's activities 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, so as to assess whether these activities

will expose the applicant to persecution or serious harm if returned to that country;

- (e) whether the applicant could reasonably be expected to avail himself of the protection of another country where he could assert citizenship.
4. The fact that an applicant has already been subject to persecution or serious harm or to direct threats of such persecution or such harm, is a serious indication of the applicant's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.
  5. Where Member States apply the principle according to which it is the duty of the applicant to substantiate the application for international protection and where aspects of the applicant's statements are not supported by documentary or other evidence, those aspects shall not need confirmation, when the following conditions are met:
    - (a) the applicant has made a genuine effort to substantiate his application;
    - (b) all relevant elements, at the applicant's disposal, have been submitted, and a satisfactory explanation regarding any lack of other relevant elements has been given;
    - (c) the applicant's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant's case;
    - (d) the applicant has applied for international protection at the earliest possible time, unless the applicant can demonstrate good reason for not having done so; and
    - (e) the general credibility of the applicant has been established.

#### *Article 5*

#### **International protection needs arising sur place**

1. A well-founded fear of being persecuted or a real risk of suffering serious harm may be based on events which have taken place since the applicant left the country of origin.
2. A well-founded fear of being persecuted or a real risk of suffering serious harm may be based on activities which have been engaged in by the applicant since he left the country of origin, in particular where it is established that the activities relied upon constitute the expression and continuation of convictions or orientations held in the country of origin.
3. Without prejudice to the Geneva Convention, Member States may determine that an applicant who files a subsequent application shall normally not be granted refugee

status, if the risk of persecution is based on circumstances which the applicant has created by his own decision since leaving the country of origin.

#### *Article 6*

#### **Actors of persecution or serious harm**

Actors of persecution or serious harm include:

- (a) the State;
- (b) parties or organisations controlling the State or a substantial part of the territory of the State;
- (c) non-State actors, if it can be demonstrated that the actors mentioned in (a) and (b), including international organisations, are unable or unwilling to provide protection against persecution or serious harm as defined in Article 7.

#### *Article 7*

#### **Actors of protection**

1. Protection against persecution or serious harm must be effective and durable and can only be provided by:
  - (a) the State; or
  - (b) parties or organisations, including international organisations, controlling the State or a substantial part of the territory of the State and which are willing and able to enforce the rule of law .
2. Effective and durable protection is generally provided when the actors mentioned in paragraph 1 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, and the applicant has access to such protection.
3. When assessing whether an international organisation controls a State or a substantial part of its territory and provides protection as described in paragraph 2, Member States shall take into account any guidance which may be provided in relevant Council acts.

## *Article 8*

### **Internal protection**

1. As part of the assessment of the application for international protection, Member States may determine that an applicant is not in need of international protection if he or she has access to protection against persecution or serious harm as defined in Article 7 in a part of the country of origin and he or she can safely and legally travel, gain admittance and settle in that part of the country.
2. In examining whether an applicant has access to protection against persecution or serious harm in a part of the country of origin in accordance with paragraph 1, 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 this end, Member States shall ensure that precise and up-to-date information is obtained from various sources, such as the United Nations High Commissioner for Refugees (UNHCR) and the European Asylum Support Office.
- 3.

## *CHAPTER III*

### **Qualification for being a refugee**

## *Article 9*

### **Acts of persecution**

1. In order to be regarded as an act of persecution within the meaning of Article 1 A of the Geneva Convention, an act must:
  - (a) be sufficiently serious by its nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; or
  - (b) be an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as mentioned in (a).
2. Acts of persecution as qualified in paragraph 1, can inter alia take the form of:
  - (a) acts of physical or mental violence, including acts of sexual violence;
  - (b) legal, administrative, police, and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner;

- (c) prosecution or punishment, which is disproportionate or discriminatory;
  - (d) denial of judicial redress resulting in a disproportionate or discriminatory punishment;
  - (e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling under the exclusion clauses as set out in Article 12(2);
  - (f) acts of a gender-specific or child-specific nature.
3. In accordance with Article 2 (c), there must be a connection between the reasons mentioned in Article 10 and the acts of persecution as qualified in paragraph 1 or the absence of protection against such acts .

### *Article 10*

#### **Reasons for persecution**

1. Member States shall take the following elements into account when assessing the reasons for persecution:
- (a) the concept of race shall in particular include considerations of colour, descent, or membership of a particular ethnic group;
  - (b) the concept of religion shall in particular include the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief;
  - (c) the concept of nationality shall not be confined to citizenship or lack thereof but shall in particular include membership of a group determined by its cultural, ethnic, or linguistic identity, common geographical or political origins or its relationship with the population of another State;
  - (d) a group shall be considered to form a particular social group where in particular:
    - 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; and
    - that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society.

Depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sexual orientation. Sexual orientation cannot be understood to include acts considered to be criminal in accordance with national law of the Member States. Gender related aspects should

be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group .

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

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

### *Article 11*

#### **Cessation**

1. A third country national or a stateless person shall cease to be a refugee, if he or she:
  - (a) has voluntarily re-availed himself or herself of the protection of the country of nationality; or
  - (b) having lost his or her nationality, has voluntarily re-acquired it; or
  - (c) has acquired a new nationality, and enjoys the protection of the country of his or her new nationality; or
  - (d) 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; or
  - (e) can no longer, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of nationality; or
  - (f) being a stateless person , he or she is able, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, to return to the country of former habitual residence.
2. In considering points (e) and (f) of paragraph 1, Member States shall have regard to whether the change of circumstances is of such a significant and non-temporary nature that the refugee's fear of persecution can no longer be regarded as well-founded.
3. Points (e) and (f) of paragraph 1 shall not apply to a refugee who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality or, being a stateless person , of the country of former habitual residence.

## *Article 12*

### **Exclusion**

1. A third country national or a stateless person is excluded from being a refugee, if:
  - (a) he or she falls within the scope of Article 1 D of the Geneva Convention, relating to protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees. When such protection or assistance has ceased for any reason, without the position of such persons being definitely settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Directive;
  - (b) he or she is recognised by the competent authorities of the country in which he or she 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.
2. A third country national or a stateless person is excluded from being a refugee where there are serious reasons for considering that:
  - (a) he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
  - (b) he or she has committed a serious non-political crime outside the country of refuge prior to his or her admission as a refugee; which means the time of issuing a residence permit based on the granting of refugee status; particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes;
  - (c) he or she has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations.
3. Paragraph 2 applies to persons who instigate or otherwise participate in the commission of the crimes or acts mentioned therein.

## CHAPTER IV

### Refugee Status

#### *Article 13*

#### **Granting of refugee status**

Member States shall grant refugee status to a third country national or a stateless person, who qualifies as a refugee in accordance with Chapters II and III.

#### *Article 14*

#### **Revocation of, ending of or refusal to renew refugee status**

1. Concerning applications for international protection filed after the entry into force of Directive 2004/83/EC, Member States shall revoke, end or refuse to renew the refugee status of a third country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body, if he or she has ceased to be a refugee in accordance with Article 11.
2. Without prejudice to the duty of the refugee in accordance with Article 4(1) to disclose all relevant facts and provide all relevant documentation at his/her disposal, the Member State, which has granted refugee status, shall on an individual basis demonstrate that the person concerned has ceased to be or has never been a refugee in accordance with paragraph 1 of this Article.
3. Member States shall revoke, end or refuse to renew the refugee status of a third country national or a stateless person, if, after he or she has been granted refugee status, it is established by the Member State concerned that:
  - (a) he or she should have been or is excluded from being a refugee in accordance with Article 12;
  - (b) his or her misrepresentation or omission of facts, including the use of false documents, were decisive for the granting of refugee status.
4. Member States may revoke, end or refuse to renew the status granted to a refugee by a governmental, administrative, judicial or quasi-judicial body, when:
  - (a) there are reasonable grounds for regarding him or her as a danger to the security of the Member State in which he or she is present;
  - (b) he or she, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that Member State.
5. In situations described in paragraph 4, Member States may decide not to grant status to a refugee, where such a decision has not yet been taken.

6. Persons to whom paragraphs 4 or 5 apply are entitled to rights set out in or similar to those set out in Articles 3, 4, 16, 22, 31 and 32 and 33 of the Geneva Convention insofar as they are present in the Member State.

## *CHAPTER V*

### **Qualification for subsidiary protection**

#### *Article 15*

#### **Serious harm**

Serious harm consists of:

- (a) death penalty or execution; or
- (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.

#### *Article 16*

#### **Cessation**

1. A third country national or a stateless person shall cease to be eligible for subsidiary protection when the circumstances which led to the granting of subsidiary protection status have ceased to exist or have changed to such a degree that protection is no longer required.
2. In applying paragraph 1, Member States shall have regard to whether the change of circumstances is of such a significant and non-temporary nature that the person eligible for subsidiary protection no longer faces a real risk of serious harm.
3. Paragraph 1 shall not apply to a beneficiary of subsidiary protection who is able to invoke compelling reasons arising out of previous serious harm for refusing to avail himself of the protection of the country of nationality or, being a stateless person with no nationality, of the country of former habitual residence.

## *Article 17*

### **Exclusion**

1. A third country national or a stateless person is excluded from being eligible for subsidiary protection where there are serious reasons for considering that:
  - (a) he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
  - (b) he or she has committed a serious crime;
  - (c) he or she has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations;
  - (d) he or she constitutes a danger to the community or to the security of the Member State in which he or she is present.
2. Paragraph 1 applies to persons who instigate or otherwise participate in the commission of the crimes or acts mentioned therein.
3. Member States may exclude a third country national or a stateless person from being eligible for subsidiary protection, if he or she prior to his or her admission to the Member State has committed one or more crimes, outside the scope of paragraph 1, which would be punishable by imprisonment, had they been committed in the Member State concerned, and if he or she left his or her country of origin solely in order to avoid sanctions resulting from these crimes.

## *CHAPTER VI*

### **Subsidiary Protection Status**

## *Article 18*

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

Member States shall grant subsidiary protection status to a third country national or a stateless person eligible for subsidiary protection in accordance with Chapters II and V.

## *Article 19*

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

1. Concerning applications for international protection filed after the entry into force of this Directive, Member States shall revoke, end or refuse to renew the subsidiary protection status of a third country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body, if he or she has ceased to be eligible for subsidiary protection in accordance with Article 16.
2. Member States may revoke, end or refuse to renew the subsidiary protection status of a third country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body, if after having been granted subsidiary protection status, he or she should have been excluded from being eligible for subsidiary protection in accordance with Article 17(3).
3. Member States shall revoke, end or refuse to renew the subsidiary protection status of a third country national or a stateless person, if:
  - (a) he or she, after having been granted subsidiary protection status, should have been or is excluded from being eligible for subsidiary protection in accordance with Article 17(1) and (2);
  - (b) his or her misrepresentation or omission of facts, including the use of false documents, were decisive for the granting of subsidiary protection status.
4. Without prejudice to the duty of the third country national or stateless person in accordance with Article 4(1) to disclose all relevant facts and provide all relevant documentation at his/her disposal, the Member State, which has granted the subsidiary protection status, shall on an individual basis demonstrate that the person concerned has ceased to be or is not eligible for subsidiary protection in accordance with paragraphs 1, 2 and 3 of this Article.

## *CHAPTER VII*

### **Content of international protection**

## *Article 20*

### **General rules**

1. This Chapter shall be without prejudice to the rights laid down in the Geneva Convention.
2. This Chapter shall apply both to refugees and persons eligible for subsidiary protection unless otherwise indicated.

3. When implementing this Chapter, Member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children , victims of trafficking, persons with mental health problems and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.
4. Paragraph 3 shall apply only to persons found to have special needs after an individual evaluation of their situation.
5. The best interest of the child shall be a primary consideration for Member States when implementing the provisions of this Chapter that involve minors.

#### *Article 21*

#### **Protection from refoulement**

1. Member States shall respect the principle of non-refoulement in accordance with their international obligations.
2. Where not prohibited by the international obligations mentioned in paragraph 1, Member States may refoule a refugee, whether formally recognised or not, when:
  - (a) there are reasonable grounds for considering him or her as a danger to the security of the Member State in which he or she is present; or
  - (b) he or she, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that Member State.
3. Member States may revoke, end or refuse to renew or to grant the residence permit of (or to) a refugee to whom paragraph 2 applies.

#### *Article 22*

#### **Information**

Member States shall provide beneficiaries of international protection, as soon as possible after the respective protection status has been granted, with access to information, in a language that they are reasonably supposed to understand , on the rights and obligations relating to that status.

### *Article 23*

#### **Maintaining family unity**

1. Member States shall ensure that family unity can be maintained.
2. Member States shall ensure that family members of the beneficiary of international protection, who do not individually qualify for this protection, are entitled to claim the benefits referred to in Articles 24 to 34, in accordance with national procedures and as far as it is compatible with the personal legal status of the family member.
3. Paragraphs 1 and 2 are not applicable where the family member is or would be excluded from international protection pursuant to Chapters III and V.
4. Notwithstanding paragraphs 1 and 2, Member States may refuse, reduce or withdraw the benefits referred therein for reasons of national security or public order.
5. Member States may decide that this Article also applies to other close relatives who lived together as part of the family at the time of leaving the country of origin, and who were wholly or mainly dependent on the beneficiary of international protection at that time.

### *Article 24*

#### **Residence permits**

1. As soon as possible after their status has been granted, Member States shall issue to beneficiaries of international protection a residence permit which must be valid for at least three years and renewable unless compelling reasons of national security or public order otherwise require, and without prejudice to Article 21(3).

Without prejudice to Article 23(1), the residence permit to be issued to the family members of the beneficiaries of international protection may be valid for less than three years and renewable.

### *Article 25*

#### **Travel document**

1. Member States shall issue to beneficiaries of refugee status travel documents in the form set out in the Schedule to the Geneva Convention, for the purpose of travel outside their territory unless compelling reasons of national security or public order otherwise require.

2. Member States shall issue to beneficiaries of subsidiary protection status who are unable to obtain a national passport, documents which enable them to travel outside their territory, unless compelling reasons of national security or public order otherwise require.

#### *Article 26*

##### **Access to employment**

1. Member States shall authorise beneficiaries of international protection to engage in employed or self-employed activities subject to rules generally applicable to the profession and to the public service, immediately after protection has been granted.
2. Member States shall ensure that activities such as employment-related education opportunities for adults, vocational training, including training courses for upgrading of skills, practical workplace experience and counselling services afforded by employment offices are offered to beneficiaries of international protection, under equivalent conditions as nationals.
3. Member States shall endeavour to facilitate the access of beneficiaries of international protection to the employment-related education opportunities and vocational training referred to in paragraph 2 through measures such as the provision, where necessary, of maintenance grants and loans or of the possibility to work and study part-time.
- new4. The law in force in the Member States applicable to remuneration, access to social security systems relating to employed or self-employed activities and other conditions of employment shall apply.

#### *Article 27*

##### **Access to education**

1. Member States shall grant full access to the education system to all minors granted international protection, under the same conditions as nationals.
2. Member States shall allow adults granted international protection access to the general education system, further training or retraining, under the same conditions as third country nationals legally resident.

## *Article 28*

### **Access to procedures for recognition of qualifications**

1. Member States shall 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.
2. Member States shall endeavour to ensure that beneficiaries of international protection who cannot provide documentary evidence of their qualifications have access to appropriate schemes for the assessment, validation and accreditation of their prior learning. Any such measures shall respect Articles 2(2) and 3(3) of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications<sup>20</sup>.
3. Member States shall endeavour to ensure that beneficiaries of international protection are not prevented from seeking either recognition of their foreign diplomas, certificates or other evidence of formal qualifications or accreditation of their prior learning because of the costs involved.

## *newArticle 29*

### **Social Welfare**

1. Member States shall ensure that beneficiaries of international protection receive, in the Member State that has granted such protection, the necessary social assistance, as provided to nationals of that Member State.
- 2.

## *Article 30*

### **Health care**

1. Member States shall ensure that beneficiaries of international protection have access to health care under the same eligibility conditions as nationals of the Member State that has granted such protection.
2. Member States shall provide, under the same eligibility conditions as nationals of the Member State that has granted the status, adequate health care, including mental health care when needed, to beneficiaries of international protection who have

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<sup>20</sup> OJ L 255, 30.9.2005, p. 22

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.

### *Article 31*

#### **Unaccompanied minors**

1. As soon as possible after the granting of international protection Member States shall take the necessary measures, to ensure the representation of unaccompanied minors by legal guardianship or, where necessary, by an organisation responsible for the care and well-being of minors, or by any other appropriate representation including that based on legislation or Court order.
2. Member States shall ensure that the minor's needs are duly met in the implementation of this Directive by the appointed guardian or representative. The appropriate authorities shall make regular assessments.
3. Member States shall ensure that unaccompanied minors are placed either:
  - (a) with adult relatives; or
  - (b) with a foster family; or
  - (c) in centres specialised in accommodation for minors; or
  - (d) in other accommodation suitable for minors.

In this context, the views of the child shall be taken into account in accordance with his or her age and degree of maturity.

4. As far as possible, siblings shall be kept together, taking into account the best interests of the minor concerned and, in particular, his or her age and degree of maturity. Changes of residence of unaccompanied minors shall be limited to a minimum.
5. Member States shall establish procedures for tracing the members of the unaccompanied minor's family as soon as possible after the granting of international protection, whilst protecting the minor's best interests. In cases where there may be a threat to the life or integrity of the minor or his or her close relatives, particularly if they have remained in the country of origin, care must be taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis.
6. Those working with unaccompanied minors shall have had and continue to receive appropriate training concerning their needs.

*Article 32*

**Access to accommodation**

The Member States shall ensure that beneficiaries of international protection have access to accommodation under equivalent conditions as other third country nationals legally resident in their territories. Member States shall endeavour to implement policies aimed at preventing discrimination of beneficiaries of international protection and at ensuring equal opportunities regarding access to accommodation.

*Article 33*

**Freedom of movement within the Member State**

Member States shall allow freedom of movement within their territory to beneficiaries of international protection, under the same conditions and restrictions as those provided for other third country nationals legally resident in their territories.

*Article 34*

**Access to integration facilities**

1. In order to facilitate the integration of beneficiaries of international protection into society, Member States shall ensure access to integration programmes which they consider to be appropriate so as to take into account the specific needs of beneficiaries of international protection or create pre-conditions which guarantee access to such programmes.
2. Those integration programmes could include introduction programmes and language training tailored as far as possible to the needs of beneficiaries of international protection.

*Article 35*

**Repatriation**

Member States may provide assistance to beneficiaries of international protection who wish to repatriate.

## *CHAPTER VIII*

### **Administrative cooperation**

#### *Article 36*

#### **Cooperation**

Member States shall each appoint a national contact point and communicate its address to the Commission. The Commission shall communicate that information to the other Member States.

Member States shall, in liaison with the Commission, take all appropriate measures to establish direct cooperation and an exchange of information between the competent authorities.

#### *Article 37*

#### **Staff**

Member States shall ensure that authorities and other organisations implementing this Directive have received the necessary training and shall be bound by the confidentiality principle, as defined in the national law, in relation to any information they obtain in the course of their work.

## *CHAPTER IX*

### **Final provisions**

#### *Article 38*

#### **Reports**

1. By [...] , the Commission shall report to the European Parliament and the Council on the application of this Directive and shall propose any amendments that are necessary. Member States shall send the Commission all the information that is appropriate for drawing up that report by [...].
2. After presenting the report, the Commission shall report to the European Parliament and the Council on the application of this Directive at least every five years.

## *Article 39*

### *Transposition*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles [...] [The Articles which have been changed as to the substance by comparison with the earlier Directive] by [...] at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the directive repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

2. Member States shall communicate to the Commission the text of the main provisions of national law covered by this Directive and a correlation table between those provisions and this Directive.

## *Article 40*

### **Repeal**

Directive 2004/83/EC is repealed with effect from [day after the date set out in the first subparagraph of paragraph 1 of Article ... of this Directive], without prejudice to the obligations of the Member States relating to the time-limit for transposition into national law of the Directive set out in Annex I, Part B.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex II.

## *Article 41*

### *Entry into force*

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

Articles [...] shall apply from [day after the date set out in the first subparagraph of paragraph 1 of Article ...].

*Article 42*

*Addressees*

This Directive is addressed to the Member States .

Done at [...]

*For the European Parliament*  
*The President*  
[...]

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

**ANNEX I**

**Part A**

**Repealed Directive**  
(referred to in Article 40)

Council Directive 2004/83/EC

(OJ L 304, 30.9.2004, p. 12)

**Part B**

**Time-limit for transposition into national law**  
(referred to in Article 39)

Directive	Time-limit for transposition
2004/83/EC	10 October 2006

## ANNEX II

### CORRELATION TABLE

Directive 2004/83/EC	This Directive
Article 1	Article 1
Article 2, introductory words	Article 2, introductory words
Article 2(a)	Article 2(a)
-	Article 2(b)
Article 2(b) – (g)	Article 2(c) – (h)
-	Article 2 (i)
Article 2 (h)	Article 2 (j) first and second indent
-	Article 2 (j) third, fourth and fifth indent
-	Article 2(k)
Article 2(i)	Article 2(l)
Article 2 (j)	Article 2 (m)
Article 2(k)	Article 2(n)
Article 3	Article 3
Article 4	Article 4
Article 5	Article 5
Article 6	Article 6
Article 7	Article 7
Article 8 (1) (2)	Article 8 (1) (2)
Article 8 (3)	-
Article 9	Article 9
Article 10	Article 10
Article 11(1) (2)	Article 11 (1) (2)
-	Article 11 (3)

Article 12	Article 12
Article 13	Article 13
Article 14	Article 14
Article 15	Article 15
Article 16 (1) (2)	Article 16 (1) (2)
-	Article 16 (3)
Article 17	Article 17
Article 18	Article 18
Article 19	Article 19
Article 20 (1) – (5)	Article 20 (1) – (5)
Article 20 (6) (7)	-
Article 21	Article 21
Article 22	Article 22
Article 23 (1)	Article 23 (1)
Article 23 (2) first subparagraph	Article 23 (2) first subparagraph
Article 23 (2) second subparagraph	-
Article 23 (2) third subparagraph	-
Article 23 (3) - (5)	Article 23 (3) - (5)
Article 24 (1)	Article 24 (1)
Article 24 (2)	-
Article 25	Article 25
Article 26(1) - (3)	Article 26(1) - (3)
Article 26 (4)	-
Article 26 (5)	Article 26 (4)
Article 27 (1) (2)	Article 27 (1) (2)
Article 27 (3)	Article 28 (1)
-	Article 28 (2) (3)

Article 28 (1)	Article 29(1)
Article 28 (2)	-
Article 29 (1)	Article 30(1)
Article 29(2)	-
Article 29 (3)	Article 30(2)
Article 30	Article 31
Article 31	Article 32
Article 32	Article 33
Article 33	Article 34
Article 34	Article 35
Article 35	Article 36
Article 36	Article 37
Article 37	Article 38
Article 38	Article 39
-	Article 40
Article 39	Article 41
Article 40	Article 42
-	Annex I
-	Annex II