



Council of the  
European Union

Brussels, 21 February 2017  
(OR. en)

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**Interinstitutional File:  
2016/0223 (COD)**

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5402/1/17  
REV 1

**LIMITE**

**ASILE 2  
CODEC 59**

**NOTE**

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

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At its meetings on 28 October and 8 November 2016, the Asylum Working Party examined the proposal for a Qualification Regulation. At its meeting on 20 December 2016 it examined compromise proposals suggested by the Presidency in relation to Articles 1 and 3 to 12 and to certain recitals relevant for those Articles. At its meeting on 31 January 2017 it examined compromise proposals suggested by the Presidency in relation to all Articles except for Article 2 (placed in square brackets, to be discussed at a later stage, Articles 22(3)-(5), 28(2), 29, 30, 31, 32, 33, 34, 35 and 36 (discussed in the framework of the thematic approach) and the recitals (in square brackets, to be discussed at a later stage).

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

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

- Article 36 (pending comments to be received from delegates);
- the recitals.

Suggested modifications are indicated as follows:

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

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

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2016/0223 (COD)

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

the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted, and amending Council Directive 2003/109/EC [...] concerning the status of third-country nationals who are long-term residents and deleting Council Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted<sup>2</sup>

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

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

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

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

- [(1) A number of substantive changes are to be made to Council Directive 2011/95/EU<sup>3</sup> of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast). To ensure harmonisation and more convergence in asylum decisions and as regards the content of international protection in order to reduce incentives to move within the European Union and ensure an equality of treatment of beneficiaries of international protection that Directive should be repealed and replaced by a Regulation.
- (2) A common policy on asylum, including a Common European Asylum System (CEAS) which is based on the full and inclusive application of the Geneva Convention Relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967 (**hereinafter referred as** Geneva Convention), is a constituent part of the European Union's objective of establishing progressively an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Union. Such a policy should be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States.

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<sup>3</sup> Council Directive 2011/95/EU of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ L 337, 20.12.2011, p. 9).

- (3) The CEAS is based on common standards for asylum procedures, recognition and protection offered at Union level, reception conditions and a system for determining the Member State responsible for asylum seekers. Notwithstanding progress achieved so far in the progressive development of the CEAS, there are still significant disparities between the Member States in the types of procedures used, the recognition rates, the type of protection granted, the level of material reception conditions and benefits given to applicants for and beneficiaries of international protection. These divergences are important drivers of secondary movements and undermine the objective of ensuring that all applicants are equally treated wherever they apply in the Union.
- (4) In its Communication of 6 April 2016,<sup>4</sup> the Commission set out its options for improving the CEAS, namely to establish a sustainable and fair system for determining the Member State responsible for asylum seekers, to reinforce the Eurodac system, to achieve greater convergence in the EU asylum system, to prevent secondary movements within the European Union and **to transform into an agency the European Asylum Support Office** ~~a new mandate for the European Union Agency for Asylum agency~~. That Communication is in line with calls by the European Council on 18-19 February 2016<sup>5</sup> to make progress towards reforming the EU's existing framework so as to ensure a humane and efficient asylum policy. It also proposes a way forward in line with the holistic approach to migration set out by the European Parliament in its own initiative report of 12 April 2016.

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

<sup>5</sup> EUCO 19.02.2016, ST 1/16.

- (5) For a well-functioning CEAS, including of the Dublin system, substantial progress should be made regarding the convergence of national asylum systems with special regard to differing recognition rates and type of protection status in the Member States. In addition, rules on status review should be strengthened to ensure that protection is only granted to those who need it and for so long as it continues to be needed. Moreover, divergent practices regarding the duration of the residence permits should be avoided, and the rights granted to beneficiaries of international protection should be further clarified and harmonised.
- (6) A Regulation is therefore necessary to ensure a more consistent level of harmonisation throughout the Union and to provide a higher degree of legal certainty and transparency.
- (7) The main objective of this Regulation is, on the one hand, to ensure that Member States apply common criteria for the identification of persons genuinely in need of international protection and, on the other hand, to ensure that a common set of rights is available for those persons in all Member States.
- (8) The further approximation of rules on the recognition and content of refugee and subsidiary protection status should moreover help to limit the secondary movement of applicants for international protection and beneficiaries of international protection between Member States, where such movement may have been caused by any differences in the national legal measures taken to transpose the Qualification Directive replaced by this Regulation.
- (9) This Regulation does not apply to other ~~national~~ humanitarian statuses granted by Member States under their national law to those who do not qualify for ~~the~~ refugee status or ~~the~~**for** subsidiary protection status. These statuses, if issued, are to be issued in a way not to entail a risk of confusion with international protection.<sup>6</sup>

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<sup>6</sup> **DE:** clarify "risk of confusion".

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

- (14) The European Union Agency for Asylum (**'the Agency'**) **established by Regulation (EU) XXX/XX [Agency Regulation]** should provide adequate support in the application of this Regulation, in particular by providing experts to assist the Member State authorities to receive, register, and examine applications for international protection, providing updated information regarding third countries, including Country of Origin Information, and other relevant guidelines and tools. When applying this Regulation, Member States' authorities should take into account operational standards, indicative guidelines, and best practices developed by the **Agency** ~~the European Union Agency for Asylum [the Agency]~~. When assessing applications for international protection, Member States' authorities should take particular account of the information, reports, common analysis and guidance on the situation in countries of origin developed at Union level by the Agency and the European networks on country of origin information in accordance with ~~Articles 8 and 10 of~~ Regulation (EU) XXX/XX [**Regulation on the European Union Agency for Asylum**]<sup>7</sup>
- (15) When applying this Regulation the 'best interests of the child' should be a primary consideration, in line with the 1989 United Nations Convention on the Rights of the Child. In assessing the best interests of the child, Member States' authorities should in particular take due account of the principle of family unity, the minor's well-being and social development, safety and security considerations and the views of the minor in accordance with his or her age and maturity.

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<sup>7</sup> 8742/16 + ADD 1.

- (16) The notion of family members should take into account the different particular circumstances of dependency and the special attention to be paid to the best interests of the child. It should also reflect the reality of current migratory trends, according to which applicants often arrive to the territory of the Member States after a prolonged period of time in transit. The notion should therefore include families formed outside the country of origin, but before their arrival on the territory of the Member State.
- (17) This Regulation is without prejudice to the Protocol on asylum for nationals of Member States of the European Union as annexed to the Treaty on European Union (TEU) and the TFEU.
- (18) The recognition of refugee status is a declaratory act.
- (19) Consultations with the United Nations High Commissioner for Refugees may provide valuable guidance for Member States' authorities when determining refugee status according to Article 1 of the Geneva Convention.
- (20) Standards for the definition and content of refugee status should be laid down to guide the competent national bodies of Member States in the application of the Geneva Convention.
- (21) It is necessary to introduce common criteria for recognising applicants for asylum as refugees within the meaning of Article 1 of the Geneva Convention.
- (21a) In order to prevent secondary movements within the Union and abusive asylum applications in Member States, applicants should cooperate with the determining authority and remain present and available throughout the procedure, in accordance with the relevant provisions of the Dublin Regulation, the Asylum Procedures Regulation and the recast Reception Conditions Directive.<sup>8</sup>**

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

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

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

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

- (36) As regards the required proof in relation to the existence of a serious and individual threat to the life or person of an applicant, ~~in accordance with relevant case law of~~ **as confirmed by** the Court of Justice of the European Union [...], determining authorities should not require the applicant to adduce evidence that he is specifically targeted by reason of factors particular to his personal circumstances. However, the level of indiscriminate violence required to substantiate the application is lower if the applicant is able to show that he is specifically affected by reason of factors particular to his personal circumstance. Moreover, the existence of a serious and individual threat should exceptionally be established by the determining authorities solely on account of the presence of the applicant on the territory or relevant part of the territory of the country of origin provided the degree of indiscriminate violence characterising the armed conflict taking place reaches such a high level that there are substantial grounds for believing that a civilian, returned to the country or origin or to the relevant part of country of origin, would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to the serious threat.
- (37) The residence permit and the travel documents issued to beneficiaries of international protection for the first time or renewed following the entry into force of this Regulation should comply with the rules laid down by Regulation (EC) No 1030/2002 and Council Regulation (EC) No 2252/2004 respectively.
- (38) Family members, due to their close relationship to the ~~refugee~~ **beneficiary of international protection**, will normally be vulnerable to acts of persecution in such a manner that could be the basis for international protection. Provided they do not qualify **or apply** for international protection, for the purpose of maintaining family unity, they ~~shall~~ **should** be entitled to ~~claim~~ a residence permit and the same rights accorded to beneficiaries of international protection. Without prejudice to the provisions related to maintaining family unity in this Regulation, where the situation falls within the scope of Directive 2003/86/EC on the right to family reunification and the conditions for reunification set out thereof are fulfilled, family members of the beneficiary of international protection who do not individually qualify **or apply** for such protection should be granted residence permits and rights in accordance with that Directive. This Regulation ~~shall~~ **should** be applied without prejudice to Directive 2004/38/EC.

- (39) With a view to ascertaining whether beneficiaries of international protection are still in need of that protection, determining authorities should review the granted status when the residence permit has to be renewed, for the first time in the case of refugees, and for the first and second time in the case of ~~beneficiaries of~~ **persons eligible for** subsidiary protection, as well as when a significant relevant change in the beneficiaries' country of origin occurs as indicated by common analysis and guidance on the situation in the country of origin provided at Union level by the Agency and the European networks on country of origin information in accordance with ~~Articles 8 and 10 of~~ Regulation (EU) XXX/XX [**Regulation on the European Union Agency for Asylum**]<sup>9</sup> .
- (40) When assessing a change of circumstances in the third country concerned, the competent authorities of the Member States ~~shall~~**should** verify, having regard to the refugee's individual situation, that the actor or actors of protection in that country have taken reasonable steps to prevent the persecution, that they therefore operate, inter alia, an effective legal system for the detection, prosecution and punishment of acts constituting persecution and that the national concerned will have access to such protection if the refugee status ceases to exist.
- (41) When the refugee status or the subsidiary protection status ceases to exist, the application of the decision by which the determining authority of a Member State revokes, ends or does not renew the status should be deferred for a reasonable period of time after adoption, in order to give the third-country national or stateless person concerned the possibility to apply for residence on the basis of other grounds than those having justified the granting of international protection, such as family reasons, or reasons related to employment or to education, in accordance with relevant Union and national law.

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

- (42) Beneficiaries of international protection should reside in the Member State which granted them protection. Those beneficiaries who are in possession of a valid travel document and a residence permit issued by a Member State applying the Schengen acquis in full, should be allowed to enter into and move freely within the territory of the Member States applying the Schengen acquis in full, for a period up to 90 days in any 180-day period in accordance with Schengen Borders Code<sup>10</sup> and with Article 21 of the Convention implementing the Schengen Agreement<sup>11</sup>. Beneficiaries of international protection can equally apply to reside in a Member State other than the Member State which granted protection, in accordance with relevant ~~EU~~ **Union** rules, notably on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment<sup>12</sup> and national rules; however, this does not imply any transfer of the international protection and related rights.
- (43) In order to prevent secondary movements within the ~~European~~ **Union**, beneficiaries of international protection, if found in a Member State other than the ~~Member State~~ **one** having granted them protection without fulfilling the conditions of stay or reside, should be taken back by the Member State responsible in accordance with the procedure laid down by Regulation (EU) [~~xxx/xxxx~~ **New Dublin Regulation**].<sup>13</sup>
- (44) In order to discourage secondary movements within the European Union, ~~the Long Term Residence Council~~ **Council** Directive 2003/109/EC should be amended to provide that the 5-year period after which beneficiaries of international protection are eligible for the **long term resident** ~~Long Term Residence~~ status should be restarted each time the person is found in a Member State, other than the one that granted international protection, without a right to stay or to reside there in accordance with relevant ~~Union,~~ ~~or~~ national **or international** law.

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

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

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

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

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

- (50) Equal treatment should be provided for beneficiaries of international protection with nationals of the Member State granting protection as regards social security.
- (51) In addition, especially to avoid social hardship, it is appropriate to provide beneficiaries of international protection with social assistance without discrimination. However, as regards ~~beneficiaries of~~ **persons eligible for** subsidiary protection, Member States should be given some flexibility, to limit such rights to core benefits, which is to be understood as covering at least minimum income support, assistance in the case of illness, or pregnancy, and parental assistance, in so far as those benefits are granted to nationals under national law. In order to facilitate their integration, Member States should be given the possibility to make the access to certain type of social assistances specified in national law, for both refugees and ~~beneficiaries of~~ **persons eligible for** subsidiary protection, conditional on the effective participation of the beneficiary of international protection in integration measures.
- (52) Access to healthcare, including both physical and mental healthcare, should be ensured to beneficiaries of international protection.
- (53) In order to facilitate the integration of beneficiaries of international protection into society, beneficiaries of international protection ~~shall~~ **should** have access to integration measures, modalities to be set by the Member States. Member States may make the participation in such integration measures, such as language courses, civic integration courses, vocational training and other employment-related courses compulsory.
- (54) The effective monitoring of the application of this Regulation requires that it be evaluated at regular intervals.

- (55) In order to ensure uniform conditions for the implementation of the provisions of this Regulation in respect of the form and content of the information to be provided, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers<sup>14</sup>.
- (56) Since the objectives of this Regulation, namely to establish standards for the granting of international protection to third-country nationals and stateless persons by Member States, for a uniform status for refugees or for persons eligible for subsidiary protection[...] and for the content of the protection granted, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Regulation, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the TEU. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives
- (57) [In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, those Member States have notified their wish to take part in the adoption and application of this Regulation]

OR

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

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<sup>14</sup> OJ L 55, 28.2.2011, p. 13.

OR

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

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

OR

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

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

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

HAVE ADOPTED THIS REGULATION:

## CHAPTER I

### GENERAL PROVISIONS <sup>15</sup>

#### *Article 1*

#### *Subject matter*

This Regulation lays down standards for:

- (a) the qualification of third-country nationals or stateless persons as beneficiaries of international protection;
- (b) a uniform status for refugees ~~or~~ **and a uniform status** for persons eligible for subsidiary protection<sup>16</sup>;
- (c) the content of the international protection granted.

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<sup>15</sup> **SK:** reservation on the proposal.

<sup>16</sup> **IT:** "*beneficiaries of subsidiaries protection*" instead of "*persons eligible for subsidiary protection*". **NL:** delete addition (text in bold). **SE:** scrutiny reservation; redraft as follows: "*a uniform status for refugees and beneficiaries for subsidiary protection respectively.*"

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

**Material scope**<sup>17</sup>

1. **This Regulation applies to the qualification of third-country nationals or stateless persons as beneficiaries of international protection and to the content of the international protection granted.**
2. **Paragraph 1 is without prejudice to the possibility of issuing national humanitarian statuses for persons who do not qualify for international protection pursuant to this Regulation**<sup>18</sup>.

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<sup>17</sup> **BG:** scrutiny reservation related to an inquiry made to the National Assembly of the Republic of Bulgaria. **CZ, SE:** scrutiny reservation. **FR:** move this after Art. 2.

<sup>18</sup> **AT, DE:** MS should be able to grant such statuses to family members according to national law. **COM:** such persons get protection as family members (derived status) entailing the same rights; they do not get refugee/subsidiary protection status. **FI, SK:** align with recital (9). **SE:** replace "*paragraph 1*" with "*This Regulation*".

*Article 2*  
*Definitions*<sup>19</sup>

- (1) ‘international protection’ means refugee status and<sup>20</sup> subsidiary protection status as defined in points (4) and (6);
- (2) ‘beneficiary of international protection’ means a person who has been granted refugee status or subsidiary protection status as defined in points (4) and (6);<sup>21</sup>

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<sup>19</sup> **LV:** need for alignment of definitions between all proposals. **NL:** a definition of ‘public order’ is missing.  
Art. 14(4) of the QD is based on Art. 33(2) of the Geneva Convention, according to which, the fact that a refugee has been convicted by final judgment of a particularly serious crime is sufficient in itself to conclude that the person constitutes a danger to the community. In other words, the disturbance of public order which the infringement of the law involves, is sufficient in itself to allow for the termination of the legal residence. NL thinks it is undesirable that the QD or the QR would go beyond the Geneva Convention in this respect. The criterion set out by the Court is, in its effect, more stringent than Article 14 (1e) of the QD. The case law of the Court, based on Directive 2013/32, raises the question whether there is a difference in which definitions are applied between refusing a residence permit and the withdrawal of such permit. The new Regulation should leave no doubt that there is only one definition for both situations that should be applied in the same manner.

This delegation suggests two possible options:

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

<sup>20</sup> **BE, NL:** "or" instead of "and". **COM:** "and" does not imply "at the same time"; "and" because it covers both types of protection. **NL:** modify as follows: "*international protection' means the [...] status as defined in points (4) and (6);*".

<sup>21</sup> **NL:** modify the definition as follows: "*beneficiary of international protection' means a person who has been granted international protection[...];*".

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

[(9) 'family members' means, in so far as the family already existed before the applicant arrived on the territory of the Member States<sup>22</sup>, the following members of the family of the beneficiary of international protection who are present in the same Member State in relation to the application for international protection:

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

(10) 'minor' means a third-country national or stateless person below the age of 18 years;<sup>23</sup>

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<sup>22</sup> Scrutiny reservations (**DE, HU, PT**) and reservations (**AT, BG, CZ, FI, IE, SI**) on the extension of the scope of the definition of 'family members'. **BG**: the expansion of the definition would be a precondition for abuse with the right of international protection and would complicate the implementation of checks. Such a situation should be regulated by the procedure for family reunification. **CZ**: definition to be aligned with other instruments (the definition is not the same as in Dublin). **AT**: suggests to read the definition as follows: "*'family members' means, in so far as the family already existed in the country of origin [...], the following members ...*". **SI**: the extension of the scope will make more difficult the proof of family membership. **FI**: the definition of a 'family member' is already stabilised in Finland and it is the same for all migrant groups. Different definitions for different migrant groups would cause problems on how to apply them and would add costs. **SE**: welcomes the extension but suggests to specify on when the family members referred to shall be present in the MS, at the time of application for asylum or at the time of the decision?

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

- (11) ‘unaccompanied minor’ means a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such a person, including a minor who is left unaccompanied after he or she has entered the territory of the Member States;]
- (12) ‘residence permit’ means any ~~permit or~~ authorisation issued by the authorities of a Member State, in a **uniform** format ~~provided by~~ **as laid down in** Council Regulation (EC) No 1030/2002<sup>24</sup>, allowing a third-country national or stateless person to reside **legally** on its territory;<sup>25</sup>
- (13) ‘country of origin’ means the country or countries of nationality or, for stateless persons, of former habitual residence;
- (14) ‘withdrawal of international protection’ means the decision by ~~a competent~~ **the determining** authority to revoke, end or refuse to renew the refugee **status** or **the** subsidiary protection status;<sup>26</sup>

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<sup>24</sup> OJ L157, 15.6.2002, p.1.

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

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

- (15) ~~'subsequent application' means a further application for international protection made in any Member State after a final decision has been taken on a previous application, including where the applicant has explicitly withdrawn his or her application or where the determining authority has rejected an application as abandoned following its implicit withdrawal;~~
- [(16) 'determining authority' means any quasi-judicial or administrative body in a Member State responsible for examining applications for international protection and competent to take decisions at ~~first instance~~ **an administrative level in such cases;**<sup>27]</sup>
- (17) 'social security' means the branches of social security as defined in **Article 3 (1) and (2) of** Regulation (EC) No 883/2004 of the European Parliament and of the Council<sup>28</sup> ~~covering sickness benefits; maternity and equivalent paternity benefits; invalidity benefits; old age benefits; survivors' benefits; benefits in respect of accidents at work and occupational diseases; death grants; unemployment benefits, pre-retirement benefits and family benefits;~~<sup>29</sup>

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<sup>27</sup> **BE, PT:** clarify "at first instance" **COM:** better to say "administrative stage". **SE:** not entirely in line with Art. 4(2)(e) in APR.

<sup>28</sup> Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (*OJ L 166, 30.4.2004, p. 1*).

<sup>29</sup> **AT, FI, IE, IT, LV, NL, SE:** scrutiny reservation. **BG:** persons who are subject to equal treatment should be covered by Reg (EC) 883/2004 and Reg (EU) 1231/2010, regarding issues of coordination of social security systems. **DE:** the term "social security" needs to be (more) clearly distinguished from the term "social assistance". This applies in particular to special non-contributory cash benefits, which, by definition pursuant to Art. 70 (1) of Reg 883/2004, have characteristics both of the social security legislation and of social assistance. DE cannot accept a provision in which the term "social security" covers special non-contributory cash benefits. It should be clarified that social security benefits granted in accordance with Art. 2 (17) cover neither benefits having characteristics of both social security and social assistance, nor active benefits granted for the purpose of improving integration and financed from public funds. **LV:** list not useful since there are different situations in MSs. Will refugees/beneficiaries of subsidiary protection have access to benefits which are not based on contributions (see Reg 883/2004)?

(18) 'social assistance' means benefits granted in addition to or beyond social security benefits as defined in point (176), with the objective of ensuring that the basic needs of those who lack sufficient resources are met;<sup>30</sup>

[(19) 'guardian' means a person or an organisation appointed by the competent bodies in order to assist and represent an unaccompanied minor in procedures provided for in this Regulation with a view to ensuring the best interests of the child and exercising legal capacity for the minor where necessary.]<sup>31</sup>

### *Article 3*

#### *Material scope*

~~1. This Regulation applies to the qualification of third country nationals or stateless persons as beneficiaries of international protection and to the content of the international protection granted.~~

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<sup>30</sup> **AT, BG, FI, HU, IE, IT, LV, SE:** scrutiny reservation. **DE:** clarify that this assistance is granted by public bodies and is not conditional upon the beneficiary's own contributions. **NL:** delete "in addition to or". **PT:** clarify what does 'social assistance' cover and how it fits in this text. **FI:** the wording seems to be in contradiction to the usual practice; usually the social assistance benefits are of last resort, whereas here it means benefits granted in addition to or beyond social security benefits.

<sup>31</sup> **AT, BG, FI:** scrutiny reservation. **BG:** see position on Article 36. **DE:** clarify what is meant by "organisation". In addition, keep the term "legal representative"; MS should remain free to decide how representation is practised, especially in order to take sufficient account of practical requirements. The concept of "representation" without the immediate requirement of appointing a guardian ensures that the unaccompanied minor is legally represented already at an early stage at which for a lack of time alone a guardian could not have been appointed yet. Also, the question of the appropriate regulatory place should be discussed. **ES:** does "guardian" apply to national realities? **FR:** "tuteur" (in French) to be translated by "representative" instead of "guardian" in English. **LU:** substantial reservation on the term "guardian"; prefers "representative" like in the current Directive. **HU:** to be aligned with APR definition. **NL:** 'guardian' is different from 'legal representative' who has a separate role in NL. **FI:** still examining; probably the term "representative" should be used in exchange for "guardian". **SE:** the description of the guardian's role has changed compared to the current Directive; does this mean greater requirements? **COM:** in the framework of this proposal, "guardian" is a representative for a person who has already received international protection; in the APR, "representative" is for a person who does not have protection yet; thus, different moments, different obligations.

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

## CHAPTER II

# ASSESSMENT OF APPLICATIONS FOR INTERNATIONAL PROTECTION

### *Article 4*

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

1. The applicant shall submit all the elements available to him or her which substantiate the application for international protection. **For that purpose, he** ~~He~~ or she shall cooperate with the determining authority and shall remain present and available, throughout the procedure, **in the territory of the Member State responsible for examining his or her application.**<sup>32</sup>

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<sup>32</sup> **SK:** scrutiny reservation, Do such condition (shall remain present and available) apply without exceptions? How we should proceed in cases, where the person has e.g. temporary residence in MS or he/she is a beneficiary of subsidiary protection and applies for asylum – these people have a right, for a certain period of time, move freely to other MS. Has this person right to move freely or he/she will have to stay in the MS responsible? **LU:** the obligation for the applicant to remain "present and available" throughout the whole procedure might need some derogations/exceptions to cover cases like illness, minors in school trip, etc. **NL:** this text should be used in APR too. **AT:** continue to allow that temporary accomodation in another MS (bilateral negotiation) is still possible.

2. The elements referred to in paragraph 1 shall consist of the applicant's statements **regarding the reasons for applying for international protection**, and all the documentation at the applicant's disposal regarding ~~the applicant's~~ **his or her** age, background, including that of **family members and other** relevant relatives, identity, nationality(ies), country(ies) and place(s) of previous residence, previous applications [for international protection and results of any expedited resettlement procedure as defined by Regulation (EU) no XXX/XX [Resettlement regulation]], travel routes **and**, travel documents ~~and the reasons for applying for international protection~~.<sup>33</sup>
3. The determining authority shall assess the relevant elements of the application **for international protection** in accordance with Article 33 of Regulation (EU)XXX/XXX [Procedures regulation.].
4. The fact that an applicant has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, shall be considered a serious indication of the applicant's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.
5. Where aspects of the applicant's statements are not supported by documentary or other evidence, no additional evidence shall be required in respect of those aspects where the following conditions are met:<sup>34</sup>
  - (a) the applicant has made a genuine effort to substantiate his or her application **for international protection**;

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<sup>33</sup> **SE:** scrutiny reservation. **CZ, LV:** scrutiny reservation on the reference to the Resettlement Regulation proposal. **FR:** reservation, not favourable to the expedited procedure. **IT:** redraft as follows: "*the applicant's statements regarding the reasons for applying for international protection*" (and delete this in the last sentence); add "*and any other document necessary to substantiate the application*" after "*travel documents*". **IE:** can support the inclusion of the text on family members (subject to ongoing discussion on the definition of 'family members' in Article 2. We do not support extending the definition of 'family members'); scrutiny reservation on the reference to the 'expedited' procedure linked to the discussions ongoing on the Union Resettlement Framework proposal.

<sup>34</sup> **FI, SE:** scrutiny reservation on para 5.

- (b) all relevant elements at the applicant's disposal have been submitted, and a satisfactory explanation has been given regarding any lack of other relevant elements;
- (c) the applicant's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant's case;
- (d) the applicant has applied for international protection at the earliest possible time, unless the applicant can demonstrate good reason for not having done so;
- (e) the general credibility of the applicant has been established.

*Article 5*

***International protection needs arising sur place***<sup>35</sup>

~~1.~~ A well-founded fear of being persecuted or a real risk of suffering serious harm may be based on events which have taken place since the applicant left the country of origin, **or** ~~A well-founded fear of being persecuted or a real risk of suffering serious harm may be based on~~ activities which the applicant has engaged in since he or she left the country of origin, in particular where it is established that the activities relied upon constitute the expression and continuation of convictions or orientations held in the country of origin.

~~2a.~~ **When examining an application for international protection, the determining authority shall take into account whether the activities that the applicant has engaged in since leaving the country of origin were carried out by the applicant for the sole or main purpose of creating the necessary conditions for applying for international protection, so as to assess whether those activities would expose the applicant to persecution or serious harm if returned to that country.**

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<sup>35</sup> **SI:** scrutiny reservation on the article.

3. ~~Without prejudice to the Geneva Convention and the European Convention on Human Rights an applicant who files, **When assessing** a subsequent application in accordance with Article 42 of Regulation (EU) XXX/XXX [Procedure Regulation] **the determining authority** shall not normally be granted refugee status or subsidiary protection status **grant international protection to the applicant if it is established that** the risk of persecution or the serious harm is based on circumstances which the applicant has created by his or her own decision since leaving the country or origin **for the sole or main purpose of being granted international protection.**~~

#### *Article 6*

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

Actors of persecution or serious harm can only be:

- (a) the State;
- (b) parties or organisations controlling the State or a substantial part of the territory of the State;
- (c) non-State actors, if it can be demonstrated that the actors referred to in ~~points (a) and (b),~~ **Article 7(1) including international organisations** are unable or unwilling to provide protection against persecution or serious harm ~~as referred to in Article 7.~~

*Article 7*  
*Actors of protection*

1. Protection against persecution or serious harm can only be provided by the following actors :
  - (a) the State;
  - (b) parties or organisations, including international organisations, controlling the State or a substantial part of the territory of the State,

provided they are ~~willing-able~~ and ~~able-willing~~ to ~~offer~~ **provide** protection in accordance with paragraph 2.<sup>36</sup>

2. Protection against persecution or serious harm shall be effective and of a non-temporary nature. That protection shall be considered to be provided when the actors referred to in paragraph 1 take reasonable steps to prevent the persecution or suffering of serious harm, among others, by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and when the applicant has access to that protection.

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<sup>36</sup> **CZ:** scrutiny reservation on para (1), not viable to say "*provide*".

3. When assessing whether **parties or organisations, including** international organisations, ~~controls~~ **control** a State or a substantial part of its territory, and ~~provides~~ **provide** protection as referred to in paragraph 2, ~~the~~ determining authority~~ies~~ shall ~~shall base themselves on any guidance provided in relevant Union law, in particular available Union level country of origin information and the common analysis of country of origin information~~ **take into account precise and up-to-date information on countries of origin obtained from relevant and available national, Union and international sources, and where available the common analysis on the situation in specific countries of origin and the guidance notes** referred to in Articles 8 and 10 of Regulation (EU) No XXX/XX [Regulation on the European Union Agency for Asylum], as well as **information and guidance issued by the United Nations High Commissioner for Refugees.**<sup>37</sup>

**This is without prejudice to the competence of the determining authority to decide on individual applications for international protection.**

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<sup>37</sup> **BE:** reference to sources of information to be put in APR instead. **BG, SK:** in order to ensure the harmonization between the current regulation and the Regulation on the EUAA, suggestion to add the following text in the end of par. 3: “[...] *without prejudice to their competence for deciding on individual applications*” in compliance with art. 10, par. 2a of the EUAAR. **HU:** it is important to keep the national list of countries of origin; therefore cannot support the proposal. Taking into account information at Union level might influence excessively the discretion of the authority. **PL:** maintains its reservation on the need to take account of EASO information. **COM:** “*base*” was replaced by “*take into account*” to reflect the current wording of EASO. **NL** (supported by **SK**): delete “*and guidance*” from the last line. **SK:** the whole reference to UNHCR can be deleted as well, since it is already covered under relevant and available international sources (also in view of EP AMs). This applies also for Articles: 8(3), 11(2)b, 17(2)b. **BE:** delete guidance from UNHCR, keep only information. **CZ:** add “*without prejudice to the possibility of deciding on individual applications*”. **AT:** delete the reference to guidance notes. **FI:** we should have a common position regarding how much authority we ascribe to documents issued by UNHCR.

Article 8

***Internal protection alternative***<sup>38</sup>

1. As part of the assessment of the application for international protection, **once it has been established that the qualification criteria would otherwise apply**, the determining authority shall<sup>39</sup> determine that an applicant is not in need of international protection if he or she can safely and legally travel to and gain admittance to a part of the country of origin and can reasonably be expected to settle there and if, in that part of the country, he or she:
  - (a) has no well-founded fear of being persecuted or is not at real risk of suffering serious harm; or
  - (b) has access to protection against persecution or serious harm.<sup>40</sup>
  
2. ~~The assessment of the availability of internal protection shall be carried out once it has been established by the determining authority that the qualification criteria would otherwise apply. The burden of demonstrating the availability of internal protection shall rest on the determining authority. The applicant shall not be required to prove that, before seeking international protection, he or she has exhausted all possibilities to obtain protection in his or her country of origin.~~

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<sup>38</sup> **CZ:** scrutiny reservation on the article.

<sup>39</sup> **FR, IE, IT:** scrutiny reservation. The examination for internal protection has to remain optional in order to ensure that requests are assessed according to their own characteristics.

**SK:** "may" instead of "shall".

<sup>40</sup> **DE:** scrutiny reservation on (b)

3. In examining whether an applicant has a well-founded fear of being persecuted or is at real risk of suffering serious harm, or has access to protection against persecution or serious harm in a part of the country of origin in accordance with paragraph 1, **the determining authorities** shall at the time of taking the decision on the application **for international protection** have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant in accordance with Article 4. To that end, the determining authorities shall ~~ensure that~~ **take into account** precise and up-to-date information is obtained from ~~all relevant~~ **and available national, Union and international** sources, **and where available** ~~including available Union level country of origin information and the common analysis of country of origin information~~ **the common analysis on the situation in specific countries of origin and the guidance notes** referred to in Articles 8 and 10 of Regulation (EU) No XXX/XX [Regulation on the European Union Agency for Asylum], as well as information and guidance issued by the United Nations High Commissioner for Refugees.<sup>41</sup>

**This is without prejudice to the competence of the determining authority to decide on individual applications for international protection.**

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<sup>41</sup> **BG:** in relation to its position on art. 7(3), proposes the addition of the following text in the end of par. 3: "[...] *without prejudice to their competence for deciding on individual applications*" in compliance with art. 10, par. 2a of the EUAAR. **HU:** it is important to keep the national list of countries of origin; therefore it does not support the proposal. Taking into account information at Union level might influence excessively the discretion of the authority. **AT:** why is UNHCR mentioned? **PL:** reservation on the need to include guidelines from EASO and UNHCR. **COM:** "obtain" is part of the acquis. There is a general reference and, in addition, a specific reference to the EUAA products. Reference to UNHCR is acquis, no new addition.

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

When considering **the** personal circumstances of the applicant, **the determining authority shall take into account factors such as** health, age, gender, ~~sexual orientation including~~ gender identity and ~~and social status shall in particular be taken into account together with an assessment of whether living in the part of the country of origin regarded as safe would not impose undue hardship on the applicant.~~ **sexual orientation, and the social status of the applicant.**<sup>42</sup>

**When considering whether an applicant can be reasonably expected to settle in another part of the country of origin, the determining authority shall also take into account whether he or she would be able to cater for his or her own basic needs in relation to food, hygiene and shelter.**<sup>43</sup>

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<sup>42</sup> **SE:** from Art 8 (3) it is understood that the personal circumstances referred to in Art. 8 (4), second sub-para shall be considered in connection with the assessment of whether the proposed IPA location is safe for the individual concerned, i.e. the assessment of whether or not there is a reasonable risk of persecution/real risk of serious harm in the proposed area of IPA. Art 33 (2) (d) APR also contains a list of circumstances to take into consideration when assessing whether certain treatment may amount to persecution or serious harm. The list in art 8 (4), second sub-para is however not identical to the one in art 33 (2) (d) APR. The personal considerations mentioned in 8.4 para 2. do not represent a closed list of what needs to be considered when examining whether a person could lead a life without undue hardship, alternatively cater for his or her basic needs in the proposed IPA area. Other factors that need to be taken into account in a reasonableness analysis include the existence of past persecution, ethnicity, religion and the existence of specific needs.

<sup>43</sup> **AT, DE, FR, IE, LU, SI:** scrutiny reservation the last subparagraph. **NL:** replace "to cater" with "to provide", add "in accordance with local standards" in the end. **AT, IE, SE, SI:** unclear what "basic needs" means. **IT:** complicated for the authorities to investigate this, NL proposal would lead to difficulties. **CZ:** reservation on the last subparagraph, not clear if the list is exhaustive, not clear how the authorities will investigate this (difficult to implement). **SE:** scrutiny reservation on para (4); it is not clear what the word "also" refers to. If what is meant is that the personal circumstances contained in second sub-para shall also be taken into account when assessing reasonableness in the third sub-para, then this has to be clearly spelled out in art 8 (4).

## CHAPTER III

### QUALIFICATION FOR BEING A REFUGEE

#### *Article 9*

#### *Acts of persecution*

1. An act shall be regarded as an act of persecution within the meaning of Article 1(A) of the **Geneva** Convention ~~relating to the Status of Refugees done at Geneva on 28 July 1951, as amended by the New York Protocol of 31 January 1967 (hereinafter referred as Geneva Convention)~~, where:
  - (a) it is sufficiently serious by its nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; or
  - (b) it is an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as referred to in point (a).
2. Acts of persecution as qualified in paragraph 1 may, among others, take the form of:
  - (a) acts of physical or mental violence, including acts of sexual violence;
  - (b) legal, administrative, police, ~~and~~ or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner;
  - (c) prosecution or punishment which is disproportionate or discriminatory;

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

#### *Article 10*

#### ***Reasons for persecution***

1. The following elements shall be taken into account when assessing the reasons for persecution:
- (a) the concept of race shall, in particular, include considerations of colour, descent, or membership of a particular ethnic group;
  - (b) the concept of religion shall, in particular, include the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief;
  - (c) the concept of nationality shall not be confined to citizenship or lack thereof but shall, in particular, include membership of a group determined by its cultural, ethnic, or linguistic identity, common geographical or political origins or its relationship with the population of another State;

- (d) the concept of **membership of** a particular social group shall include, in particular<sup>44</sup>, **membership of** a group ~~where~~:
- **whose** members share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and
  - ~~that group~~ **which** has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society.;

Depending on the circumstances in the country of origin, ~~the that~~ concept ~~might~~ **may** include **membership of** a group based on a common characteristic of sexual orientation ~~(a term which cannot be understood to include. Acts considered to be criminal in accordance with the national law of the Member State)~~ **State responsible for examining the application for international protection shall not be considered to fall under sexual orientation.**; Gender-related aspects, including gender identity, shall be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group;<sup>45</sup>

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

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<sup>44</sup> **BE:** reservation on (d).

<sup>45</sup> **CZ, DE:** scrutiny reservation (also on recital (28a)). **EL:** considers the original phrasing as being more accurate. **DE:** not clear why the reference to specific groups is necessary. **SE:** scrutiny reservation; replace the second sentence in the last supara with the following: "*Sexual orientation cannot be understood to be solely based on acts considered to be criminal in accordance with national law of the Member States.*"

2. When assessing if an applicant has a well-founded fear of being persecuted it is immaterial whether the applicant actually possesses the racial, religious, national, social or political characteristic which attracts the persecution, provided that such a characteristic is attributed to the applicant by the actor of persecution.<sup>46</sup>
3. When assessing if an applicant has a well-founded fear of being persecuted, the determining authority cannot reasonably expect an applicant to ~~behave discreetly~~ **exercise reserve** or abstain from certain practices, where such behaviour or practices are inherent to his or her identity, to avoid the risk of persecution in his or her country of origin.<sup>47</sup>

*Article 11*  
**Cessation**<sup>48</sup>

1. A third-country national or a stateless person shall cease to be a refugee where one or more of the following apply:
  - (a) the person has voluntarily re-availed<sup>49</sup> himself or herself of the protection of the country of nationality;
  - (b) having lost his or her nationality, the person has voluntarily re-acquired it;
  - (c) the person has acquired a new nationality, and enjoys the protection of the country of his or her new nationality;

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<sup>46</sup> **SI:** scrutiny reservation.

<sup>47</sup> **CZ, ES:** not clear what "*exercise reserve*" means. **IT:** reservation, "*exercise reserve*" is unclear.

<sup>48</sup> **BG:** reservation on the whole article, in conjunction with Art. 14 and 26. Additional resources might be necessary for the review which could be difficult. Maintains its reservation on this article in relation to the inquiry made to the National Assembly of the Republic of Bulgaria on art. 1a. **AT:** scrutiny reservation. **IT:** this Art. is linked with Art. 8 and 14. Review creates administrative burden; establish a time-limit after which review cannot take place.

<sup>49</sup> **CZ:** scrutiny reservation; specify the term "re-availed" so it could lead to a better application of the criteria for cessation.

- (d) the person has voluntarily re-established himself or herself in the country which he or she left or outside which he or she remained owing to fear of persecution;
- (e) the person can no longer, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of nationality;
- (f) being a stateless person, the person is able, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, to return to the country of former habitual residence.

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

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

- (a) ~~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;

- (b) ~~shall base itself on~~ **take into account** precise and up-to-date information obtained from all relevant **and available national, Union and international** sources, **and where available**~~including Union level country of origin information and common analysis of country of origin information~~ **the common analysis on the situation in specific countries of origin and the guidance notes** referred to in Articles 8 and 10 of Regulation (EU) No XXX/XX [Regulation on the European Union Agency for Asylum] ~~or~~, **as well as** information and guidance issued by the United Nations High Commissioner for Refugees.<sup>50</sup>

**This is without prejudice to the competence of the determining authority to decide on individual applications for international protection.**

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

*Article 12*  
***Exclusion***<sup>51</sup>

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

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<sup>51</sup> **AT:** scrutiny reservation on the whole Article. **BG:** include two other grounds for exclusion, which are provided in Art. 14(1)(d) and (e) as grounds for revocation of, ending of or refusal to renew refugee status. If the determining authority can revoke refugee status on these grounds, then it should be able to employ them to reject an application and refuse refugee status in the first place. The addition is necessary in order to preserve the inner logic of the Regulation. Therefore, the proposition is as follows:

- To add a letter (c) to par. 1:  
(c) he or she, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the Member State in which he or she is present;
- To add a letter (d) to par. 2:  
(d) he or she is a danger to the security of the Member State in which he or she is present.

**AT:** add further grounds for exclusion.

- 1a. When considering whether the protection or assistance from organs and agencies as referred to in point (a) of paragraph 1 has ceased to exist, the determining authority shall ascertain whether the person concerned was forced to leave their area of operation ~~for reasons beyond his or her will~~, due to a situation where his or her personal safety was at serious risk and such organs or agencies were unable to ensure his or her minimum living conditions in accordance with their mandate.<sup>52</sup>
2. A third-country national or a stateless person shall be excluded from being a refugee where there are serious reasons for considering that:
- (a) he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
  - (b) he or she has committed a serious non-political crime outside the country of refuge prior<sup>53</sup> to his or her admission as a refugee, which means the time of issuing a residence permit based on the granting of refugee status; particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes;<sup>54</sup>
  - (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.

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<sup>52</sup> **CZ, DE, FR:** scrutiny reservation. **CZ:** "*reasons beyond his will*", "*minimum living conditions*" could be problematic. **SE:** "*minimum living conditions*" - not the exact terminology from the case-law.

<sup>53</sup> **EL:** in accordance with the Geneva Convention the serious non-political crimes leading to exclusion from the refugee status are those committed outside the country of refuge. Serious non-political crimes committed within the country of refuge are to be dealt with in accordance with the penal system of the host country and should not lead to exclusion from international protection. This issue has been dealt with (by Greece) when transposing the recast Directive 2011/95 and a different phrasing was adopted, closer to the meaning of Art. 1 F of the Geneva Convention. It suggests that this provision is rephrased as follows: "[...] outside the country of refuge prior to his or her admission as a refugee."

<sup>54</sup> **FI:** scrutiny reservation.

3. Paragraph 2 shall apply to persons who incite or otherwise participate in the commission of the crimes or acts mentioned therein.
4. ~~When considering whether the protection pursuant to point (a) of paragraph 1 has ceased to exist, the determining authority shall ascertain whether the person concerned was forced to leave the area of operations of the relevant organ or agency. This shall be the case where that person's personal safety was at serious risk and it was impossible for that organ or agency to guarantee that his or her living conditions in that area would be commensurate with the mission entrusted to that organ or agency.~~
5. ~~For the purposes of points (b) and (c) of paragraph 2, the following acts shall be classified as serious non-political crimes **shall include in particular:**~~
  - (a) ~~particularly cruel actions when the act in question is disproportionate to the alleged political objective,~~
  - (b) ~~terrorist acts, which are characterised by their violence towards civilian populations, even if committed with a purportedly political objective.~~
6. The exclusion of a person from refugee status shall depend exclusively on whether the conditions set out in paragraphs (1) to (5) are met and shall not be subject to any additional proportionality assessment in relation to the particular case.<sup>55</sup>

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<sup>55</sup> **FI:** scrutiny reservation. In Finland an asylum seeker, who is excluded from international protection, is issued with a temporary residence permit, if he/she cannot be returned because of the principle of non-refoulement. It seems that such residence permit could be issued under national law even after entry into force of this regulation. **SE:** scrutiny reservation. **COM:** this paragraph is based on Case-law C-57/2009 (point 3(111)) (not an *a posteriori* assessment).

## CHAPTER IV

### REFUGEE STATUS

#### *Article 13*

#### *Granting of refugee status<sup>56</sup>*

The determining authority shall grant refugee status to a third-country national or a stateless person who qualifies as a refugee in accordance with Chapters II and III.

#### *Article 14*

#### *~~Revocation of, ending of or refusal to renew~~ Withdrawal of refugee status<sup>57</sup>*

1. The determining authority shall<sup>58</sup> ~~revoke, end or refuse to renew~~ **withdraw** the refugee status of a third-country national or stateless person where:
  - (a) he or she has ceased to be a refugee in accordance with Article 11;
  - (b) he or she should have been or is excluded from being a refugee in accordance with Article 12;

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<sup>56</sup> **SE:** scrutiny reservation on the article.

<sup>57</sup> **SE:** scrutiny reservation on the whole article. **SI:** reservation on the whole article. **BE:** to consider whether Art 11 on cessation should be moved under this Chapter. **FR:** reservation on the periodic review as it is too burdensome. **LT:** in order to avoid excessive administrative burden, a time-limit for the revocation of, ending of or refusal to renew the refugee status should be applied as of the date of granting.

<sup>58</sup> **DE:** scrutiny reservation on this new obligation. **ES:** reservation on "shall".

- (c) his or her misrepresentation or omission of facts, including the use of false documents, was decisive for the granting of refugee status;
  - (d) there are reasonable grounds for regarding him or her as a danger to the security of the Member State in which he or she is present;<sup>59</sup>
  - (e) he or she, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the Member State in which he or she is present;<sup>60</sup>
  - (f) Article 23(2) is applied.<sup>61</sup>
2. In situations referred to in points (d) to (f) of paragraph 1, the determining authority may decide not to grant **refugee** status ~~to a refugee, where such a decision has not yet been taken.~~<sup>62</sup>
  3. Persons to whom points (d) to (f) of paragraph 1 or paragraph 2 apply shall be entitled to **the** rights set out in, or similar to, those set out in Articles 3, 4, 16, 22, 31, 32 and 33 of the Geneva Convention in so far as they are present in the Member State **responsible that examined their application or granted them international protection.**<sup>63</sup>

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<sup>59</sup> **FI:** scrutiny reservation. **DE:** point (d) is not clear. **FR:** revocation for public order - pooling of information between MS.

<sup>60</sup> **DE:** point (e) is not clear. **AT:** should read as follows "(e) he or she, having been convicted by a final judgment of a particularly serious crime, *or repeated crimes that may* constitutes a danger to *individuals or* the community of the Member State in which he or she is present;".

<sup>61</sup> **DE:** point (f) is not clear. **FI:** scrutiny reservation. Applying Art. 23(2) has not been possible so far in Finland. The principle of non-refoulement is unconditional in the Constitution of Finland. **SE:** scrutiny reservation on (b), (d), (e) and (f) as long as scrutiny reservation remains for Article 12 and Article 23 (2).

<sup>62</sup> **SE:** scrutiny reservation.

<sup>63</sup> **SE:** scrutiny reservation. **FR, ES:** "responsible" is confusing because the person is not a refugee anymore so Dublin doesn't apply.

4. Without prejudice to the duty of the refugee in accordance with Article 4(1) to disclose all relevant facts and provide all relevant documentation at his or her disposal, the determining authority which has granted refugee status shall, on an individual basis, demonstrate that the person concerned has ceased to be **a refugee** or **should have** ~~has~~ never been **granted** refugee **status** for the reasons set out in paragraph 1 of this Article.<sup>64</sup>
5. ~~Decisions~~**The decision** of the determining authority ~~revoking, ending or refusing to renew~~ **to withdraw the** refugee status **for reasons specified in points (e) or (f) of Article 11(1)** pursuant to point (a) of paragraph 1 shall ~~only take effect three months after the decision is adopted, in order to provide the~~ **be without prejudice to the possibility for a** third-country national or stateless person ~~with the opportunity~~ to apply for residence in the Member State **responsible that granted him or her international protection** on other grounds in accordance with relevant Union and national law.<sup>65</sup>

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<sup>64</sup> **SE:** scrutiny reservation. **EL:** this paragraph refers to the determining authority's demonstration that a person "has ceased to be or has never been a refugee" for the reasons set out in para 1. A third scenario needs to be included in Art 14(4), i.e. when an applicant has been initially recognised as a refugee but where he or she commits an excludable crime in the country of asylum following recognition. As a result she/he becomes unworthy of international protection and revocation applies. Furthermore, it is noted that the paragraph spells out the placement of the burden of proof in cases of cessation or cancellation of refugee status. The reference to the placement of the burden of proof is however not consistently referred to throughout the proposal and this may lead to diverse interpretation by MS.

<sup>65</sup> **AT, FI, LV, PT, SE:** scrutiny reservation. **CZ:** reservation on the content of this provision due to principle of subsidiarity and the temporary nature of the international protection status; proposes to delete it. MS know how to make legal a further stay for certain categories, so this regulation is not necessary. **IT:** supports the present drafting of Articles 14 and 20, allowing the possibility to apply for residence on other grounds, where a third country national or stateless person is not willing to return to his/her country of origin following revocation of, ending of or refusal to renew, respectively, refugee status and subsidiary protection status. In fact, the TC national or SP concerned may be well integrated in the MS of residence (e.g., having found a job or formed a family) and a possible removal may turn out in a violation of fundamental rights as laid down in the European Charter. Moreover, the investment made by MS in putting in place integration measures would be nullified in case of removal. The latter might even be detrimental to the MS and its citizens in case the TC national or SP concerned is an employer.

~~To this effect, the Member State responsible shall allow the A person whose status has been withdrawn by the determining authority for reasons specified in points (e) or (f) of Article 11 (1), and has applied for residence on other grounds, shall be allowed to remain on its the territory of the Member State that granted him or her international protection for a period not exceeding three months following the notification of the withdrawal.~~<sup>66</sup>

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<sup>66</sup> **AT, LV:** unclear what the status will be during this period. **FI:** unclear if during this period the person stays with no documents. **IE:** reservation on the 3 months period, delete it. **HU:** not necessary. **HU:** cannot support the suggested modifications; applying for international protection can be submitted also during the aliens policing procedure. Therefore allowing the person whose status has been withdrawn to remain on its territory for a period not exceeding three months is unjustifiable. **SK:** Scrutiny reservation. Still assessing the added value of this provision and whether it doesn't contribute to further abuses. Beneficiaries should be duly informed about the possibility to withdraw the status and also about the possibilities to be granted residence permit on different grounds. This provision is too vague. It should be clearly stated when this period of three months starts to run (whether from the date, when the decision of determining authority was delivered to that person or from the date of court's decision on the appeal against determining authority decision). The three months period only makes sense if it starts to run from the date of delivery of administrative decision (notification). Moreover, the appeal against this decision should not have suspensive effect. We deem it is necessary to clarify the status of the concerned person during the "grace period". Same comment for Article 20 (3).

*Article 15*  
*Review of refugee status*<sup>67</sup>

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<sup>67</sup> **FI, IE:** scrutiny reservation on the whole article. **BE:** the *acquis* should be revised in order to take into account the readmission agreements. **COM:** it is another question whether a person is returnable or not. **BE, DE, SE:** clarify whether the review is individual or as a group. **COM:** review should take place on an individual basis; however, if there is information on a significant change in a specific country of origin, review would apply for all persons coming from this country of origin. **BG** reservation: the introduction of regular review of the status is justified, but it is related to the provision of additional resources by the MS and additional administrative burden. The mandatory nature of these provisions at this stage would significantly impede the national asylum systems. **CZ:** this provision is too vague. APR seems not to consider these aspects. Clarify who should review (a judicial body?). **DE:** clarify the implications for the administration. **PT:** "may" instead of "shall". **ES:** scrutiny reservation on the obligatory nature of the review (administrative burden). **FR:** delete this Article. The obligatory periodic review of the status, in particular when reviewing the residence permit, would entail a disproportionate administrative burden for the determining authorities. **LU:** the obligation to review is not a priority given the administrative burden involved. **AT:** broadly positive on the Art. but scrutiny reservation because of possible administrative burden implications. **FI:** it is very important to develop ways to pay more attention to the cessation of the need for international protection; supports the goals for reviewing the need for protection, i.e. preventing misuse and pull factors in asylum procedure. **NL:** delete para (5).

In order to apply Article 14(1), the determining authority shall<sup>68</sup> review the refugee status, in particular ~~when~~ (a) ~~— where Union level country of origin information and the~~ where available common analysis of ~~country of origin information~~ on the situation in specific countries of origin and the guidance notes as referred to in Articles 8 and 10 of Regulation (EU) No XXX/XX [Regulation on the European Union Agency for Asylum]<sup>69</sup>, indicate a significant change<sup>70</sup> in the country of origin which is relevant for the protection needs of the applicant refugee. This is without prejudice to review the refugee status on the basis of national and international sources, including information and guidance issued by the United Nations High Commissioner for Refugees.

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

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<sup>68</sup> **ES:** reservation on "*shall*". **IE:** "may" provision instead.

<sup>69</sup> **DE, NL:** would like to retain the possibility to work on the basis of national information/analyse. **EL:** is the national analysis also included?

<sup>70</sup> **DE:** clarify "significant change".

<sup>71</sup> **FI:** need to consider more thoroughly the different treatment of beneficiaries belonging to the two categories of international protection. In Finland the first residence permit for all beneficiaries of international protection is currently issued for four years (as a fixed-term permit). **CZ:** reservation on the deletion of point (b).

## CHAPTER V

### QUALIFICATION FOR SUBSIDIARY PROTECTION<sup>72</sup>

#### *Article 16*

#### *Serious harm*

Serious harm as referred to in Article 2 (5), consists of:

- (a) the death penalty or execution; or
- (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or
- (c) a serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

#### *Article 17*

#### *Cessation*

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

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<sup>72</sup> **BG:** reservation on the whole chapter V.

2. The determining authority **shall**:

- (a) ~~shall~~ have regard **to** whether the change in circumstances is of such a significant and non-temporary nature that the ~~person eligible for~~ **beneficiary of** subsidiary protection **status** no longer faces a real risk of serious harm<sup>73</sup>;
- (b) ~~shall base itself on~~ **take into account** precise and up-to-date information obtained from ~~all~~ relevant **and available national, Union and international** sources, **and where available** ~~including Union level country of origin information and the common analysis on country of origin information as~~ **the common analysis on the situation in specific countries of origin and the guidance notes** referred to in Articles 8 and 10 of Regulation (EU) No XXX/XX [Regulation on the European Union Agency for Asylum] ~~or~~, **as well as** information and guidance issued by the United Nations High Commissioner for Refugees.<sup>74</sup>

**This is without prejudice to the competence of the determining authority to decide on individual applications for international protection.**

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

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<sup>73</sup> **IT:** switch (a) and (b).

<sup>74</sup> **LT:** scrutiny reservation. **DE:** make sure the references are correct. Why this distinction? We should base on more prudent criteria **PL:** same comment as in Article 11(2)(b).

*Article 18*  
*Exclusion*

1. A third-country national or a stateless person shall be excluded from being eligible for subsidiary protection where there are serious reasons for considering that:
  - (a) he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
  - (b) he or she has committed a serious crime;<sup>75</sup>
  - (c) he or she has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations;
  - (d) he or she constitutes a danger to the community or to the security of the Member State in which he or she is present;<sup>76</sup>

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<sup>75</sup> **RO:** the elimination of the term “common law” needs further clarification.

<sup>76</sup> **DE:** we should use the same criteria. **PL:** in order to ensure the security of the Schengen Area, the risk to the other MS' security and public order should be also usable for a ground when excluding a person from being eligible for subsidiary protection. **COM:** pending further confirmation, it is the actual MS which is concerned, not other MS. **SE:** scrutiny reservation on (1); para (1)(a-d) replicates the wording of the Directive but need further clarification. According to para 1(a) third-country nationals or a stateless person shall be excluded from being eligible for subsidiary protection where there are serious reasons for considering that he or she constitutes a danger to the community. In Art. 14(1)(d) however, it is stated that refugee status shall be revoked/ended/refused if there is reasonable ground for regarding him or her as a danger. Clarification needed on the differences in legal thresholds applied in exclusion from subsidiary protection (serious considerations) vis-a-vis that for revocation ending/refusal of refugee status (reasonable grounds). **COM:** it corresponds to the *acquis*.

(e) ~~he or she, prior to his or her admission to the Member State concerned, has committed one or more crimes outside the scope of points (a), (b) and (c) which would be punishable by imprisonment if they been committed in the Member State concerned, and if he or she left his or her country of origin solely in order to avoid sanctions resulting from those crimes.~~

2. ~~Points (a) to (d) of Paragraph 1 shall apply to persons who incite or otherwise participate in the commission of the crimes or acts mentioned therein.~~

2a. ~~Member States may exclude a~~ **A third-country national or a stateless person may be excluded from being eligible for subsidiary protection if he or she, prior to his or her admission to the Member State concerned, has committed one or more crimes outside the scope of points (a), (b) and (c) of paragraph 1 which would be punishable by imprisonment if they had been committed in the Member State concerned, and if he or she left his or her country of origin solely in order to avoid sanctions resulting from those crimes.**<sup>77</sup>

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<sup>77</sup> **SE:** scrutiny reservation; why is Art. 18 (2a) placed under exclusion grounds? If a person leaves his or her country of origin solely in order to avoid sanctions resulting from certain crimes, and these sanctions do not in and by themselves give rise to persecution or serious harm, then the application should be rejected for lack of well founded fear or lack of risk of serious harm rather than because of exclusion. What type of crimes and sanctions are envisaged to fall under Art. 18 (2a)? The Commission has clarified that the principle of proportionality is to be taken into account when applying the article. However, it is not clear from the current proposal.

## CHAPTER VI

### SUBSIDIARY PROTECTION STATUS<sup>78</sup>

#### Article 19

#### *Granting of subsidiary protection status<sup>79</sup>*

The determining authority shall grant subsidiary protection status to a third-country national or a stateless person who is eligible<sup>80</sup> for subsidiary protection in accordance with Chapters II and V.

#### Article 20

#### ~~Revocation of, ending of or refusal to renew~~ Withdrawal of subsidiary protection status<sup>81</sup>

1. The determining authority shall ~~revoke, end or refuse to renew~~ **withdraw** the subsidiary protection status of a third-country national or a stateless person where:
  - (a) he or she has ceased to be eligible for subsidiary protection in accordance with Article 17;
  - (b) after having been granted subsidiary protection status, he or she should have been or is excluded from being eligible for subsidiary protection in accordance with Article 18;<sup>82</sup>

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<sup>78</sup> **BG:** reservation on the whole chapter VI.

<sup>79</sup> **SE:** this article is placed in Chapter VI while the definition of who qualifies for subsidiary protection is placed in Chapter I. This is illogical and impractical. Also, the definition of who qualifies for subsidiary protection is found in Chapter I, not II and V. Reference should therefore be to Chapter I.

<sup>80</sup> **SE:** replace "is eligible" with "qualifies".

<sup>81</sup> **BG, FI, SE:** scrutiny reservation. **FR:** reservation. **BE, ES, FR, SE:** same comments as in Art. 14. **CZ:** this article is acceptable for us from the material (substantial) point of view. **SK:** It possible to keep national legislation concerning refusal to renew the subsidiary protection status? For practical reasons, we strongly prefer the previous formulation from Qualification Directive – it reflects more the temporary character of subsidiary protection.

<sup>82</sup> **SE:** scrutiny reservation regarding (b) and (d) as long as scrutiny reservation remains for Art. 12 and on Art. 23 (2).

- (c) his or her misrepresentation or omission of facts, including the use of false documents, was decisive for the granting of subsidiary protection status;
- (d) Article 23(2) is applied.<sup>83</sup>
2. Without prejudice to the duty of the third-country national or stateless person ~~pursuant to~~ **in accordance with** Article 4(1) to disclose all relevant facts and provide all relevant documentation at his or her disposal, ~~the Member State~~ **the determining authority** which has granted subsidiary protection status shall, on an individual basis, demonstrate that the person concerned has ceased to be ~~or is not~~ **eligible for subsidiary protection or should have never been granted** subsidiary protection status in accordance with ~~for the reasons set out in~~ paragraph 1 of this Article.<sup>84</sup>
3. ~~Decisions~~ **The decision** of the determining authority ~~revoking, ending or refusing to renew~~ **to withdraw the** subsidiary protection status pursuant to **point (a) of** paragraph 1 ~~(a)~~ shall ~~only take effect three months after the decision is taken, in order to provide the~~ **be without prejudice to the possibility for a** third-country national or stateless person ~~with the opportunity to apply for residence in the Member State~~ **responsible that granted him or her international protection** on other grounds in accordance with relevant Union and national law.<sup>85</sup>

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<sup>83</sup> **DE:** scrutiny reservation on the whole paragraph 1. **FI:** scrutiny reservation on (1)(d). Applying Article 23(2) has not been possible so far in Finland. The principle of non-refoulement is unconditional in the Constitution of Finland.

<sup>84</sup> **DE:** scrutiny reservation.

<sup>85</sup> **AT, BG, CZ, DE, ES, FI, IE, LV, NL, PL, SE:** see comments on Art. 14(5). **SE:** scrutiny reservation on para (3). **RO:** linguistic reserve for the Romanian version of the proposal in terms of translating the term "residence". Furthermore, clarify: why was a period of three months chosen? What if the alien contests the conclusion of decision-making authority? Does the 3 month term continue to flow or is its flow suspended until a final decision?

~~To this effect, the Member State responsible shall allow the A person whose status has been withdrawn by the determining authority for reasons specified in Article 17 and has applied for residence on other grounds, shall be allowed to remain on its the territory of the Member State that granted him or her international protection for a period not exceeding three months following the notification of the withdrawal<sup>86</sup>.~~

*Article 21*

*Review of the subsidiary protection status*<sup>87</sup>

1. In order to apply Article 20(1), the determining authority shall review the subsidiary protection status, ~~in particular (a) where Union level country of origin information and the~~ **where available** common analysis of ~~country of origin information as~~ **on the situation in specific countries of origin and the guidance notes as referred to** in Articles 8 and 10 of Regulation (EU) No XXX/XX [Regulation on the European Union Agency for Asylum] indicate a significant change in the country of origin which is relevant for the protection needs of the applicant **beneficiary of subsidiary protection status. This is without prejudice to review the refugee status on the basis of national and international sources, including information and guidance issued by the United Nations High Commissioner for Refugees.**

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<sup>86</sup> **CZ:** scrutiny reservation to this paragraph. Does it mean that we can keep our legislation precisising the conditions of this provision? We can manage it in the situation that the person concerned makes an application personally (1) + lodges a second instance appeal (cassation appeal) (2) . The time limit seems to be reasonable, but we are still analysing it. **HU:** cannot support the suggested modifications; applying for international protection can be submitted also during the aliens policing procedure therefore allowing the person whose status has been withdrawn to remain on its territory for a period not exceeding three months is unjustifiable.

<sup>87</sup> **AT, BE, BG, CZ, DE, EL, ES, FI, FR, IE, LT, LU, NL, PL, SE:** see comments on Art. 15. **COM:** took note of the MS' concerns on increased administrative burden; nevertheless, stressed that MS should ensure that when reviewing the residency permit the protection need still persists. **HU:** it is important to keep the national list of countries of origin therefore Hungary does not support the proposal. Taking into account information at Union level might influence excessively the discretion of the authority.

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

## CHAPTER VII

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

### SECTION I

#### *COMMON PROVISIONS*

##### *Article 22*

##### *General rules*<sup>88</sup>

1. Refugees and ~~persons who have been granted~~ **beneficiaries of** subsidiary protection status shall have the rights and obligations laid down in this Chapter. This ~~Chapter~~ shall be without prejudice to the rights and obligations laid down in the Geneva Convention.
2. ~~This Chapter shall apply both to refugees and persons eligible for subsidiary protection unless otherwise indicated.~~

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

3. ~~Within the limits set by international obligations, granting of benefits with regard to access to employment, social security shall require the prior issuing of a residence permit~~ **Beneficiaries of international protection shall have access to rights under this Chapter related to information, free movement within the Member State that granted them protection, movement within the Union, employment, education, recognition of qualification and validation of skills, social security, health care, access to accommodation and access to integration measures as soon as once international protection is granted.**<sup>89</sup>
4. ~~When applying the provisions of this Chapter, the specific situation of p~~ **Where an individual evaluation establishes that a Ppersons with who have special needs, ~~determined on the basis of an individual evaluation of their situation~~, such as a minors, an unaccompanied minors, disabled people a person with a disability, elderly people an elderly person, a pregnant women, a single parents with a minor children, a victims of human trafficking in human beings, a persons with a mental disorders and a persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such person shall be ~~are~~ **entitled to have his or her their specific situation shall be taken into account in the application of the provisions of this Chapter** ~~provided an individual evaluation of their situation establishes that they have special needs.~~<sup>90</sup>**
5. When applying the provisions of this Chapter that involve minors the best interests of the child shall be a primary consideration to the competent authorities.

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<sup>89</sup> **IE, EL, FI:** scrutiny reservation. **DE:** reservation, delete para (3), it is unnecessary and confusing. Paragraph 1 is sufficient. We oppose explicitly listing various rights, because it is unclear whether this will lead to unintended legal consequences. **IE:** the access to social security should be examined further. **EL:** the wording is binding while in the current Directive there was discretion for MS; how to apply this provision in conjunction with Art. 26(2)(c) (not renewal of the residence permit)? **COM:** see Case-Law C-373/13: possibility to revoke the residence permit without affecting the rights. The Directive allowed for legal uncertainty; Regulation tries to remedy that. **FI:** the meaning of it is unclear.

<sup>90</sup> **CZ:** redundant.

Article 23

*Protection from refoulement*<sup>91</sup>

1. ~~Member States shall respect the principle of non-refoulement in accordance with their international obligations.~~
2. Where not prohibited by the international obligations referred to in paragraph 1, **a refugee in accordance with the Geneva Convention, a person eligible for** ~~or a beneficiary of subsidiary protection~~ **or a beneficiary of international protection status, whether formally recognised or not,** may be refouled<sup>92</sup> ~~whether formally recognised or not~~ when **provided that:**
  - (a) there are reasonable grounds for considering him or her as a danger to the security of the Member State in which he or she is present; **or**
  - (b) he or she, having been convicted by a final judgment of a particularly serious crime constitutes a danger to the community of ~~that~~ **the Member State in which he or she is present.**

In those cases the refugee status or the subsidiary protection status shall also be withdrawn in accordance with Article 14 or Article 20 respectively.<sup>93</sup>

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<sup>91</sup> **SE:** scrutiny reservation on the Article.

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

<sup>93</sup> **DE:** scrutiny reservation on the last subparagraph.

*Article 24*  
***Information***

The competent authorities shall provide beneficiaries of international protection with information on the rights and obligations relating to refugee status or subsidiary protection status, as soon as possible after that has been granted. That information, **as specified in Annex II**, shall be provided in a language that the beneficiary can understand or is reasonably supposed to understand and shall make explicit references to the consequences of not complying with the obligations outlined in Article ~~29~~ 28 on movement within the Union.

~~The form and content of that information shall be determined by the Commission by means of implementing acts adopted in accordance with the examination procedure referred to in Article 58(1) of Regulation (EU) XXX/XXX [Procedures regulation].~~

Article 25

*Maintaining family unity*<sup>94</sup>

1. Family members of a beneficiary of international protection who do not individually **apply or** qualify for such protection shall be entitled to ~~claim~~ a residence permit **in the Member State that granted international protection to the beneficiary** in accordance with **this Article and with** national procedures and insofar as this is compatible with the personal legal status of the family member.<sup>95</sup>

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<sup>94</sup> **DE:** reservation on the whole article. **AT, BG, CZ, FI, FR, IE, SE:** scrutiny reservation on the whole article. **AT, BG, CZ, DE, IE:** against the extended scope of the definition of "family members". **EL:** clarify what would happen in case of changes in the family (e.g. death, divorce, adulthood). Is this regulated by the national legislation? **FI, PL:** need to analyse further the consequences since this art. is attached to the residence permits and rights issued to family members of a beneficiary of international protection, who are not eligible for international protection themselves. **CZ:** need to clarify. Does this provision relate to the asylum or subsidiary protection status for a purpose to family reunification? If yes, it is acceptable, but the wording of this article seems to refer to other form of status and residence permit. To prevent confusion, the following reformulation is suggested: delete "apply or" (first line), "this Article and" (third line) and add "remaining on the same territory" in the end.

<sup>95</sup> **PL:** what does it mean: *compatible with the personal legal status of the family member*? **IE, SK:** scrutiny reservation on "apply" - expands the scope of the Article. **NL:** redraft as follows: "If family members of a beneficiary of international protection who do not individually apply or qualify for such protection are entitled to a residence permit in accordance with national procedures and insofar as this is compatible with the personal legal status of the family member, this article shall apply."

2. A residence permit issued pursuant to paragraph 1 shall have the same duration of validity as the residence permit issued to the beneficiary of international protection and shall be renewable for as long as the residence permit issued to the beneficiary of international protection is renewed. The period of validity of the residence permit granted to the family member shall in principle not extend beyond the date of expiry of the residence permit held by the beneficiary of international protection. <sup>96</sup>
3. No residence permit shall be issued **under this Article** ~~for to~~ a family member ~~where that~~ family member **who** is or would be excluded from international protection pursuant to Chapters III and V. <sup>97</sup>
4. Where reasons of national security or public order so require, a residence permit shall not be issued ~~for to~~ a family member, and such residence permits which have already been issued shall be withdrawn or shall not be renewed.

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<sup>96</sup> **SE:** scrutiny reservation; this provision might involve practical difficulties in terms of implementation linked to the temporary residence permit (it makes possible for family members to get residence permit for just a few months while it is normally issued for a 12 month period. **COM:** Article 26 (residence permit) is not applicable to them; the residence permit might be indeed shorter than that of the beneficiary of international protection. Their rights derive from those of the beneficiary. **SE:** this could be problematic in practice.

<sup>97</sup> **FR:** doubts: there is a confusion between what comes under international protection and what comes under Family Law.

5. Family members who are issued a residence permit pursuant to paragraph 1 shall be entitled to the rights referred to in Articles ~~287~~ to **35 and 37 to 39**.<sup>98</sup>
6. ~~Member States may decide that this article also applies to other close relatives who lived together as part of the family at the time of leaving the country of origin or before the applicant arrived on the territory of the Member States, and who were wholly or mainly dependent on the beneficiary of international protection at the time.~~

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<sup>98</sup> **PL** (supported by **CZ**): this provision is too liberal; what if the family member is a citizen of a safe third country of origin? Not all of the rights the beneficiaries of international protection are entitled for should be available for their family members. Such limitation refers to Article 27. – Paragraph 1; we opposition to granting so called "Geneva passports" to members of family of refugee, because it is a privilege of persons recognized as refugees only. If they (the family members) do not express a fear of prosecution, they should get their travel documents at diplomatic post or at the right office in their country of origin. Paragraph 2 –also oppose granting travel documents to family members of beneficiaries of subsidiary protection, like in the case of refugees (they should apply for them to their own authorities). Such issues should be regulated by a domestic law. Article 29 par. 2 – implementing the Dublin Regulation in regard to family members, who are not beneficiaries of international protection and had not seek for it might be problematic, because according to art. 1 of amended version of Dublin Regulation it establishes criteria and mechanisms of determining a Member State responsible for examining an application for international protection lodged in one of the Member State by third country citizen or stateless person; Article 36 – we ask to describe an added value of applying this regulation to family members of beneficiaries of international protection. Was an analogical regulation of QD applied in any MS in practice? It seems unreal for a member of a family of beneficiary of international protection to be unaccompanied minor.

## SECTION II

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

#### *Article 26*

#### *Residence permits*<sup>99</sup>

1. **As soon as possible after international protection has been granted, and within 45 60 days from the notification of the decision at the latest, ~~No later than 30 days after international protection has been granted~~ a residence permit shall be issued using the uniform format as laid down in Regulation (EC) No 1030/2002 and shall have the following validity periods:<sup>100</sup>**
  - a) For beneficiaries of refugee status, the ~~The~~ residence permit shall have a period of validity of **between three and five years** and be renewable thereafter ~~for periods of three years~~.<sup>101</sup>

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<sup>99</sup> **FR:** reservation. **BG, FI, IE, SE, SK:** scrutiny reservation. **FI:** see comment on Art. 15(b). **SE:** a temporary residence permit has real negative consequences on integration prospects; there could be a gap between one permit and the following one with possible negative effects for the person. Therefore, a permanent residence permit should be granted.

<sup>100</sup> **BG:** against the link between the residence permit and the status; there should not be any obligation to issue a residence permit. **DE:** since this provision is linked with Art. 22(3), scrutiny reservation. **IE:** regarding the format, IE does not participate in Reg 1030/2002 and thus is not bound. **FR:** should be 90 days like in other migration instruments. **LU:** prefers "as soon as possible". **CZ, SK:** prefer the COM proposal: validity of 3 years in case of beneficiaries of refugee status (+ 3 + 3 years) and validity of 1 year for beneficiaries of subsidiary protection (+ 2 years + 2 years).

<sup>101</sup> **FR,** supported by **IT:** in France the residence permit is issued for a ten-year period; therefore, three years would be a minimum, with the possibility for MS to grant for a longer duration if they want. Read "(...) *at least three years and be renewable thereafter for periods of at least three years*". **LV:** currently longer validity period at national level. **PT:** the validity period could be increased. **AT, DE:** scrutiny reservation on the extension of the validity period for subsidiary protection. **FI:** still need to consider more thoroughly the different treatment of beneficiaries belonging to the two categories of international protection. In Finland the first residence permit for all beneficiaries of international protection is currently issued for four years (as a fixed-term permit).

- b) For beneficiaries of subsidiary protection status, the residence permit shall have a period of validity of **between one and three** years and be renewable thereafter ~~for periods of two years~~<sup>102</sup>

~~1a. When renewing the residence permit of a beneficiary of international protection, the competent authorities shall take into account whether there have been any substantial changes in the country of origin which would trigger a review of the status granted.~~

2. A residence permit shall not be renewed or shall be revoked ~~in the following cases~~ where:

- a) ~~where competent authorities revoke, end or refuse to renew~~ **withdraw** the refugee status of a ~~third-country national~~ in accordance with Article 14 ~~and or~~ the subsidiary protection status in accordance with Article 20;<sup>103</sup>

- b) ~~where~~ Article 23(2) is applied;<sup>104</sup>

- c) ~~where reasons of national security or public order so require.~~<sup>105</sup>

3. ~~When applying Article 14(5) and 20(3), the residence permit shall only be revoked after the expiry of the three month period referred to in those provisions.~~

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<sup>102</sup> **EL, IE, NL:** reservation on the distinction between the two types of statuses as far as the period of validity of the residence permit is concerned. **EL, FI, IE, IT:** at national level, both statuses are harmonised as regards the validity period. **EL:** this provision would create excessive administrative burden; would like to maintain the possibility to have the current period of time (3 years) according to the Greek law for both statuses. **IT:** review can be done even if the residence permit has longer validity. **NL:** in link with its comment on Articles 15 and 21, favours the same duration of the validity of the residence permits, regardless of the status granted.

<sup>103</sup> **SE:** clarify the relation between the requirement to withdraw a residence permit in cases of cessation or exclusion and Member States' international obligations, not least Art 3 of the ECHR and the related right to remain.

<sup>104</sup> **SE:** See comments in Art. 23.

<sup>105</sup> **DE:** scrutiny reservation on this para (2) given the interaction with national law to be examined further.

*Article 27*  
***Travel document***<sup>106</sup>

1. Competent authorities shall issue travel documents to beneficiaries of refugee status, in the form set out in the Schedule to the Geneva Convention and with the minimum security features and biometrics outlined in Council Regulation (EC) No 2252/2004<sup>107</sup>. Those travel documents shall be valid for at least one year.
2. Competent authorities shall issue travel documents with the minimum security features and biometrics outlined in Regulation (EC) No 2252/2004 to beneficiaries of subsidiary protection status who are unable to obtain **or renew** a national passport. Those **travel** documents shall be valid for at least one year.
3. The documents referred to in paragraphs 1 and 2 shall not be issued where compelling reasons of national security or public order so require.

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<sup>106</sup> **BG, FI, SE:** scrutiny reservation. **FI:** only the maximum duration of travel documents is currently regulated in Finland. In addition, an alien's passport may be issued for a foreigner who is abroad only for one month.

<sup>107</sup> Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for in passports and travel documents issued by Member States (OJ L 385, 29.12.2004, p. 1).

Article 28

*Freedom of movement within the Member State*<sup>108</sup>

1. Beneficiaries of international protection shall enjoy freedom of movement within the territory of the Member State that granted international protection, including the right to choose their place of residence in that territory, under the same conditions and restrictions as those provided for other third-country nationals legally resident in their territories who are in a comparable situation.
2. Within the limits set by international obligations, residence conditions may be imposed on a beneficiary of international protection who receives certain specific social security or social assistance benefits only where those residence conditions are necessary to facilitate the integration of the beneficiary in the Member State that has granted ~~that~~ him or her international protection.<sup>109</sup>

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<sup>108</sup> **FR, SE:** scrutiny reservation. **FR:** to check the compatibility of this provision with Art. 26 of the Geneva Convention which foresees a right for refugees to choose their place of residence.

<sup>109</sup> **DE:** scrutiny reservation on the second paragraph. The beneficiary's lasting integration into society should be the only purpose for assigning a certain place of residence. Beneficiaries taking part in training or education or wishing to take up employment to a meaningful extent, should be exempted from residence restrictions – even if they receive additional tax-funded social assistance benefits – because they are already contributing to their integration. They should therefore be exempted from the scope of application of this provision.

**RO:** linguistic reserve as in Art. 20(3). What is meant by "long-term residence conditions"?

Article 29

*Movement within the Union*<sup>110</sup>

1. Beneficiaries of international protection shall not have the right to reside in Member States other than the one which granted them international protection. This is without prejudice to their right to apply and be admitted to reside in another Member States pursuant to that Member State's national law or pursuant to relevant provisions of Union law and national or of international law agreements, and or their right to move freely in accordance with the conditions of Article 21 of the Convention Implementing the Schengen Agreement.<sup>111</sup>

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<sup>110</sup> **ES, FR:** reservation. **SE:** scrutiny reservation. **DE:** scrutiny reservation on Article 29 and recital (42), providing for an expansion of the freedom of movement in accordance with EU law, and the resulting applicability of the Blue Card Directive (draft). Regarding recital (42): expanding the scope of application of the Blue Card Directive (draft) to persons entitled to protection should not be anticipated in recital 42 before agreement is achieved on this issue. **HU:** the scope of Dublin regulation would be extended to beneficiaries of international protection. Hungary, in connection with the proposal of Dublin regulation, opposes the art. and enters a scrutiny reservation on the second sentence of this article. **RO:** the two paragraphs of this art. are inconsistent. On the one hand, the beneficiaries of international protection have the right to move freely in accordance with the requirements of Art. 21 of the Convention implementing the Schengen Agreement (being allowed to remain in another MS fully applying the Schengen acquis for a period of 90 days within any period of 180 days). On the other hand, if they have no right to stay or a right to reside in the State in which he/she moves in accordance with the Union law or relevant national law, will be subject to a take back procedure. In conclusion, the right to move freely in accordance with the requirements of Art. 21 of the Convention implementing the Schengen Agreement lacks content. Further clarification is needed in this regard. Moreover, the rules create a discriminatory situation, meaning that third country nationals or stateless persons on the territory of a MS with a right of temporary residence other than that the one which had granted them international protection will not apply for the right to long term residence under the same conditions as those applicable to third country nationals / stateless persons who are beneficiaries of international protection staying in the same Member State and with the same right of temporary residence (the right of residence in their case will be considered for granting a right of residence in the long term and, if necessary, to obtain citizenship of the Member State which granted them this right). Further clarifications are needed in this regard.

<sup>111</sup> **DE:** suggests to read as follows: " ... pursuant to relevant provisions of Union, ~~and~~ national and international law ~~and~~, in particular their right to move ..." **PL:** reservation; link with recital (42). **HU:** reservation on the second sentence.

2. Where a beneficiary is found in a Member State other **than** the one ~~that~~ **which granted** him or her ~~granted~~ **international** protection without a right **to** stay or the right to reside there in accordance with **that Member State's national law, or pursuant to relevant provisions of Union law, and of international agreements** ~~relevant Union or national law~~, he **or she** will be subject to a take back procedure as defined under Article 20(1)(e) of the Dublin Regulation (EU) no. xxx/xxx.<sup>112</sup>

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<sup>112</sup> **DE, FR, RO:** scrutiny reservation. **LT:** this paragraph is in conflict with the Blue Card Regulation. **IT:** it might be better to use other instruments, like readmission agreements; resorting to Dublin is too burdensome for MS of arrival who are responsible for the take back procedure. Dublin entails a tremendous burden. **BG:** reservation; see IT comment. **DE:** this provision is redundant as already covered by the Dublin Reg. **CY:** reservation: Since the purpose of the Dublin Regulation is the examination of the claim for international protection in the MS where the application was first lodged, Cyprus has reservations regarding para 1(e) of article 20 of the Dublin proposal (take back beneficiaries of international protection who made an application in another member state than the one which granted the protection status). These cases are already being dealt with under Article 6(2) of the Return Directive, and they are returned back to the MS which issued the residence permit. This will also add to the administrative and financial burden of the MSs which are already under pressure. **COM:** Article 29 is relevant even if mirroring Schengen Agreement or Dublin Reg provisions.

**SECTION III**  
**RIGHTS RELATED TO INTEGRATION**<sup>113</sup>

*Article 30*

*Access to employment*<sup>114</sup>

1. Beneficiaries of international protection shall have the right to engage in employed or self-employed activities subject to the rules generally applicable to the profession and to the public service<sup>115</sup>, immediately after protection has been granted.<sup>116</sup>
2. Beneficiaries of international protection shall enjoy equal treatment with nationals of the Member State that has granted **them international** protection as regards: <sup>117</sup>
  - a) **terms of employment including the minimum working age and** working conditions, including pay and dismissal, working hours, leave and holidays as well as health and safety requirements at the workplace;
  - b) freedom of association and affiliation, and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the benefits conferred by such organisations;

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<sup>113</sup> **BE, BG, ES, FI:** general scrutiny reservation on the whole Section III

<sup>114</sup> **EL, FI, RO,:** scrutiny reservation.

<sup>115</sup> **RO:** scrutiny reservation; a definition of "public service" is needed.

<sup>116</sup> **DE, EL, SE:** scrutiny reservation; clarify the link with Art 22(3) which refers to the requirement of the prior issuing of a residence permit, while in Art. 30(1) it says "immediately after protection has been granted". **COM:** the residence permit is not constitutive of the right to work but it is a proof of the status. **EL:** clarify the situation where the residence permit is revoked but the status not, no clear if the person is allowed to work **COM:** if the residence permit is revoked, he/she has not the right to stay or work even if the status is still there. The Geneva Convention provides for rights for unlawful refugees.

<sup>117</sup> **DE:** scrutiny reservation on para 2.

- c) employment-related education opportunities for adults, vocational training, including training courses for upgrading skills, practical workplace experience;
  - d) advice services afforded by employment offices.
3. Competent authorities, where necessary shall facilitate the full access to the activities referred to in **points (c) and (d) of paragraph (2)**~~(c) and (d)~~.<sup>118</sup>

*Article 31*

*Access to education*<sup>119</sup>

1. Minors granted international protection shall have full access to the education system, under the same conditions as nationals of the Member State that has granted **them international** protection.
2. Adults granted international protection shall have access to the general education system, further training or retraining, under the same conditions as third-country nationals legally resident in ~~that~~ **the** Member State **that has granted them international protection** who are in a comparable situation.<sup>120</sup>

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<sup>118</sup> **IE:** scrutiny reservation. **SE:** scrutiny reservation; clarify "where necessary" and "full access". **COM:** the intention of "where necessary" is to make this obligation more flexible, i.e. a case by case assessment.

<sup>119</sup> **FI, IE, NL, RO:** scrutiny reservation.

<sup>120</sup> **DE, SE:** scrutiny reservation; clarify "in a comparable situation". **COM:** addition of "in comparable situation" in order to make the applicability of the Regulation more efficient as there are various types of third-country nationals depending on their status; open to better wording suggestions. **AT:** add para (3) as follows: "*Paragraph 1 shall not apply to financial benefits from the Member States which are granted to promote education.*"

Article 32

*Access to procedures for recognition of qualifications and validation of skills*<sup>121</sup>

1. Beneficiaries of international protection shall enjoy equal treatment with nationals of the Member State that has granted **them international** protection in the context of the existing recognition procedures for foreign diplomas, certificates and other evidence of formal qualifications.
2. Competent authorities shall facilitate full access to the procedures mentioned in paragraph 1 to those beneficiaries of international protection who cannot provide documentary evidence of their qualifications, without prejudice to Articles 2(2) and 3(3) of Directive 2005/36/EC of the European Parliament and of the Council.<sup>122 123</sup>
3. Beneficiaries of international protection shall enjoy equal treatment with nationals of the Member State that has granted **them international** protection as regards access to appropriate schemes for the assessment, validation and ~~accreditation~~ **recognition** of their prior learning **outcomes** and experience.

Article 33

*Social security*

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

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<sup>121</sup> **EL, FI, IE, NL, RO**: scrutiny reservation. **FR**: reservation.

<sup>122</sup> Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications ([OJ L 255, 30.9.2005, p. 22](#)).

<sup>123</sup> **FR, LV**: reservation. **DE, IE, AT, PT**: scrutiny reservation. **FR**, supported by **IE, LV, AT**: concern that this might lead to more favourable treatment for refugees than for other third-country nationals; in addition, this might be also problematic for certain regulated professions related to public health and safety issues. **COM**: this corresponds to Art. 28(2) of the current Directive, only "endeavour" was replaced by "facilitate" which means letting them into the procedure but not recognising their diplomas, certificates etc. Standards (minimum harmonisation rules in sectoral professions) have to be kept, hence cross-reference to Articles 2(2) and 3(3) of Directive 2005/36/EC; for recognition, they still need to present evidence.

Article 34

Social security<sup>124</sup> and social assistance<sup>125</sup>

1. Beneficiaries of international protection shall enjoy equal treatment with nationals of the Member State that has granted **them international** protection as regards social **security and social** assistance.<sup>126</sup>

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<sup>124</sup> **DE:** reservation if special non-contribution benefits are covered by social security (see comment on Art. 2(17)). Art. 33 restricts Art. 24 of the Geneva Convention. Is this the actual intention of the Commission? It is important that benefits intended to aid a beneficiary's integration into the labour market can be made conditional upon additional prerequisites (in accordance with Art. 24(1)(b)(ii) of the Geneva Convention); therefore insert: "***Within the limits set by international obligations***, beneficiaries of international protection shall enjoy equal treatment (...)." **COM:** the intention is to cover special non-contribution benefits applicable to all beneficiaries of international protection and their family members (i.e. those who are under family unity article). The Coordination Regulation No 883/2004 only applies when refugee has moved in another MS, while the QR is regulating situation where refugees are confined in one MS. Thus, two different situations. **FI:** in Finland the parliament is currently discussing a government bill, which would mean, that "Labour Market Subsidy" would be issued as "integration assistance" for immigrants (including beneficiaries of international protection). The new subsidy would be lower than the usual Labour Market Subsidy. **SE:** not clear how the principle of equal treatment should be applied. Shall the beneficiaries of international protection be treated equally with regard to a national citizen returning home from a longer period of residence in a third country, or shall the beneficiaries be treated equally with regard to persons that have lived in the Member State their entire life (or at least for a very long time)?

<sup>125</sup> **DE, FI, IE, LT, RO, SE:** scrutiny reservation. **DE:** see comment on Art. 2(17); the phrase "necessary social assistance" in the current Article 29 (1) of the QD should be retained in order to avoid giving the impression that an amendment or widening of scope is intended here. **LV:** reservation on the title and the definition of "social assistance" in Art. 2. **SE:** not clear what are the differences in the content of the rights to be granted with regard to Minimum income support (social assistance) versus unemployment benefits covered (social security); not clear what are the differences in the content of the rights to be granted with regard to assistance in the case of illness (social assistance) versus sickness benefits (social security); not clear what are the differences in the content of the rights to be granted with regard to pregnancy and parental assistance versus maternity and equivalent paternity benefits covered (social security).

<sup>126</sup> **DE:** maintain the current wording of QD "***necessary*** social assistance" in order to avoid giving the impression that this draft Regulation is proposing an amendment or widening of scope. **COM:** it is considered as implied; social assistance is given upon request.

Access to certain social assistance specified in national law may be made conditional on the effective participation of the beneficiary of international protection in integration measures, **where such measures are made compulsory in accordance with Article 38 (2).**<sup>127</sup>

2. **Notwithstanding paragraph 1, for beneficiaries of subsidiary protection status, Member States may limit the provision of equal treatment as regards social assistance may be limited to core benefits.**<sup>128</sup>

*Article 35*

***Healthcare***<sup>129</sup>

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

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<sup>127</sup> **DE:** this sentence restricts Articles 23 and 24 of the Geneva Convention. Is this the actual intention of the Commission? Germany therefore proposes the following amendment: "***Within the limits set by international obligations***, access to certain social assistance (...)".

**COM:** it is intentional that conditionality is only provided for social assistance and not for social security.

<sup>128</sup> **DE:** clarify why the current wording "which will then be provided at the same level and under the same eligibility conditions as nationals" from the QD was not included in the COM proposal. **EL:** para 1 introduces a mandatory rule of equal treatment between the beneficiaries of international protection and the nationals of the MS. However, para 2 introduces an exception to that rule, as far as it concerns the beneficiaries of subsidiary protection, without any other explanation/ justification. Perhaps para 1 should start by "***Without prejudice to paragraph 2*** (...)". **ES:** scrutiny reservation. Even if this is acquis, is this justified to maintain this differentiation? **NL:** reservation on the differentiation made between both statuses. **COM:** we cannot extend the "may" clause to both statuses due to international law (Geneva Convention); therefore, the *status quo* is kept.

<sup>129</sup> **DE, ES, FI, RO:** scrutiny reservation.

2. Beneficiaries of international protection who have special needs, such as pregnant women, disabled people, persons who have undergone torture, rape or other serious forms of psychological, physical or sexual violence or minors who have been victims of any form of abuse, neglect, exploitation, torture, cruel, inhuman and degrading treatment or who have suffered from armed conflict shall be provided adequate healthcare, including treatment of mental disorders when needed, under the same eligibility conditions as nationals of the Member State that has granted **them international** protection.<sup>130</sup>

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<sup>130</sup> **CZ:** paragraph to delete due to the basic principle that beneficiaries of international protection have access to healthcare under the same conditions as nationals of the Member State.

[Article 36

*Unaccompanied minors*<sup>131</sup>

1. As soon as possible after international protection is granted and within ~~five~~ **fifteen** working days at the latest, ~~as outlined in Article 22(1) of Regulation EU no xxx/xxx[Procedures regulation]~~, competent authorities shall take the necessary measures to ensure ~~the representation of~~ **that an** unaccompanied minors by a **appoint has a person or an organisation as** a legal guardian ~~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.~~<sup>132</sup>

Where an organisation is ~~appointed as~~ **the** guardian, it shall as soon as possible designate a person responsible for carrying out the duties of guardian in respect of the unaccompanied minor, in accordance with this Regulation.

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<sup>131</sup> **AT, FI, IE, RO:** scrutiny reservation.

<sup>132</sup> **EL, ES:** scrutiny reservation. **EL:** deadline could be problematic. **ES:** there is a contradiction regarding the consequences. **CZ, FR:** clarify "*competent authorities*". **COM:** any competent authority defined by the MS. **CZ:** clarify whether the guardian assigned under APR can remain guardian under QR. **COM:** yes. **HU:** clarify what is included in "necessary measures". **BG:** suggests to be prescribed one month maximum term from the the entry into force of the decision for protection. For the purpose of the procedure for international protection the unaccompanied child should have a representative, appointed to carry out his/her representative functions, until the appointment of a guardian. It could be provided that the representative may, during the ongoing procedure, take action to appoint a guardian. In this way a guardian could be appointed before a decision on substance is taken. There should be defined powers to relevant staff during the different stages and in this connection it would be appropriate that a representative (could be a social worker) is promptly appointed in the beginning of the procedure and during the procedure to take responsibility for the action to appoint a guardian. **LU:** reservation on the term "*guardian*". **DE:** in favour of keeping the term "*legal representative*" or of deleting the phrase "*where necessary*". **AT:** we distinguish between "*legal representative*" and "*guardian*". **SE:** clarify why the wording used for the role of the "*guardian*" is different from that in the Directive.

**This is without prejudice to the possibility of appointing or keeping the same person referred to in Article 22 (1) of the [Asylum Procedures Regulation] or in Article 23 (1a) of the [Reception Conditions Directive], without the need for a formal re-appointment.**

**In the case of ~~Until~~ the appointment of a new guardian ~~in accordance with this paragraph~~, the guardian person referred to in Article 22 (1a) of the [Asylum Procedures Regulation] or in Article 23 (1a) of the [Reception Conditions Directive] shall remain responsible for the unaccompanied minor.**

2. The appointed guardian shall:

- a) ~~have the duty of ensuring~~ **ensure** that the minor can access all rights stemming from this Regulation;
- b) ~~assist the unaccompanied minor in case of withdrawal of~~ **if the status is** withdrawn; and
- c) where, appropriate, assist in family tracing as provided for in paragraph 5.

**The guardian shall have the necessary expertise, shall receive continuous and appropriate training concerning the rights and needs of unaccompanied minors, including those relating to any applicable child safeguarding standards, and shall not have a verified criminal record, with particular regard to child-related crimes or offences.**

2a. **The person acting as guardian shall be changed when the competent authorities consider that he or she has not adequately performed his or her tasks adequately. Organisations or individuals whose interests conflict or could potentially conflict with those of the unaccompanied minor shall not be appointed as guardian.**

- 2b. The competent authorities shall place a guardian in charge of an adequate and limited number of unaccompanied minors at the same time to ensure that he or she is able to perform his or her tasks effectively.**

The appropriate **competent** authorities shall regularly assess the performance of the appointed guardian. **To that end the competent authorities shall appoint entities or persons responsible for the assessment of the performance of the guardian's tasks and for supervising and monitoring that guardians perform their tasks in a satisfactory manner. Those entities or persons shall review any complaints lodged by unaccompanied minors against their guardian.**

**Unaccompanied minors shall be given information, in a child-friendly manner and in a language they can reasonably be expected to understand, about who those entities or persons are and how to report complaints against their guardians in confidence and safety.**

- 3. While taking into account the best interest of the child, unaccompanied minors shall be placed in one of the following ways:<sup>133</sup>**
- a) with **an** adult relative;
  - b) with a foster family;
  - c) in centres specialised in accommodation for minors;
  - d) in other accommodation suitable for minors.

The views of the minor shall be taken into account in accordance with his or her age and degree of maturity.

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<sup>133</sup> **DE:** clarify whether the list is in order of priority. **COM:** the list is current acquis, not necessarily in order of priority (tbc).

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. If an unaccompanied minor is granted international protection and the tracing of his or her family members has not already started, competent authorities shall start tracing them as soon as possible after the granting of international protection, ~~whilst protecting the~~ **provided that it is in** the minor's best interests. If tracing has already started, it shall be continued where appropriate. 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.<sup>134</sup>
6. ~~The persons and organisations working with unaccompanied minors shall receive continuous appropriate training concerning the rights and needs of minors and child safeguarding standards will be respected as referred to in Art 22 of Regulation EU No xxx/xxx[Procedures regulation].]~~

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<sup>134</sup> **IT, ES:** the words “*whilst protecting the minor's best interests*” should be replaced by “*provided that it is in the minor's best interest*”. This latter drafting is more clearly linked to the previous BID (best interest determination) which should underpin the family tracing process. **COM:** the best interest of the minor is already foreseen in the acquis.

Article 37

*Access to accommodation*<sup>135</sup>

1. Beneficiaries of international protection shall have access to accommodation under conditions equivalent to those applicable to other third-country nationals legally resident in the territories of the Member States **State responsible that granted him or her international protection** who are in a comparable situation.<sup>136</sup>
2. National dispersal practices of beneficiaries of international protection shall be carried out to the extent possible without discrimination of beneficiaries of international protection and shall ensure equal opportunities regarding access to accommodation.

Article 38

*Access to integration measures*<sup>137</sup>

1. In order to facilitate ~~the~~ **their** integration **into society**, of beneficiaries of international protection ~~into society~~, beneficiaries of international protection shall **be ensured** ~~have~~ access to integration measures **considered appropriate**<sup>138</sup>, provided **or facilitated** by the Member States **State responsible that granted him or her international protection**, in particular language courses, civic orientation, ~~and~~ integration programs and vocational training ~~which~~ take into account their specific needs.<sup>139</sup>

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<sup>135</sup> **FI, RO, SE:** scrutiny reservation.

<sup>136</sup> **DE:** scrutiny reservation on para (1)

<sup>137</sup> **FI, LU, SE:** scrutiny reservation. **HU:** this proposal is acceptable, though it should be clarified whether giving the access to integration measures is obligatory for Member States.

<sup>138</sup> **DE, IT:** unclear what "considered appropriate" means. **IE:** after "*considered appropriate*," include "*where provided for or facilitated by the Member State responsible...*".

<sup>139</sup> **ES:** equal treatment for men and women should be included. **FR:** it should be a "may" clause instead. **FI, SE:** unclear why the last part was deleted.

2. ~~Member States may make participation~~ **Beneficiaries of international protection shall participate** in integration measures **where participation is made** compulsory **in the Member State that granted them international protection.**, ~~and ensure that s~~**Such integration measures are shall be** accessible and affordable.

*Article 39*

*Repatriation*

**When a beneficiary of international protection expresses the wish to be repatriated, and hence agrees to the withdrawal of the protection granted once repatriated, assistance for repatriation shall, where necessary, be provided.** ~~Assistance shall, where necessary, be provided to beneficiaries of international protection who wish to be repatriated.~~<sup>140</sup>

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<sup>140</sup> **BG:** reservation. The provision of assistance by the MS to the person whom protection was granted and, who wishes to be repatriated, should not be binding. Alternatively, the provision of funds should come from voluntary return programs for beneficiaries of protection. Otherwise, MS will be charged with additional financial and administrative burden. **DE, FI, IT, LV, SE:** scrutiny reservation. **AT, DE, ES, IE, LV:** clarify "assistance". **AT, DE, FI, FR, IE, IT, LV:** assistance should remain optional. **DE:** better in a recital and use "should" instead of "shall". The granting of repatriation assistance should remain a discretionary decision of MS. **HU:** clarify whether the EU's financial instruments especially the AMIF's financial resources could be used. **PL:** concerned by the obligation to provide support with repatriation for beneficiaries of international protection, who, at least formally, express founded fear of persecution or serious harm upon return to his or her country of origin. Supposes that international protection status should be withdrawn first, then required support granted. **FI:** the obligation to provide assistance to repatriation is now formulated strictly in the proposal. There should not be a need for assistance, if the person willing to repatriate has sufficient means to return.

## CHAPTER VIII

### ADMINISTRATIVE COOPERATION

#### *Article 40*

#### *Cooperation*

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

#### *Article 41*

#### *Staff*

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

# CHAPTER IX

## FINAL PROVISIONS

### *Article 42*

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

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

### *Article 43*

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

By ... [no later than two years from **the** entry into force of this Regulation] and every five years thereafter, the Commission shall report to the European Parliament and the Council on the application of this Regulation and shall, where appropriate, propose the necessary amendments.

Member States shall forward to the Commission all information appropriate for the preparation of that report, at the latest nine months before that time limit expires.

*Article 44*  
*Amendment to Directive 2003/109/EU<sup>141</sup>*

**Directive 2003/109/EU is amended as follows:**

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

"~~4~~ ~~3a~~. Where a beneficiary of international protection is found in a Member State, other than the one that granted international protection, without a right to stay or to reside there in accordance with relevant Union, ~~or~~ national **or international** law, the period of legal stay **in the Member State responsible that granted him or her international protection** preceding such a situation shall not **normally** be taken into account in the calculation of the period referred to in paragraph 1.<sup>142</sup>

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

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<sup>141</sup> **EL, ES, FI, PT, SE:** scrutiny reservation.

<sup>142</sup> **DE:** still examining the proportionality of the sanction (whether it is reasonable to consider that the period of legal stay is automatically interrupted in all cases and that this period should start from zero, or whether this should only apply when a beneficiary of international protection is found in a MS, other than the one that granted international protection, culpably without a right to stay or to reside there). **EL:** understands the reasoning behind this provision. Nevertheless, questions whether such a radical punishment, without any exceptions, justifications or conditions is compatible with the principle of proportionality. **AT** (supported by **BE**): welcomes sanctions. **COM:** this art. has nothing to do with the status review procedure; it only affects the eligibility to a legal migration status; it affects the access to an additional right; no problem of proportionality in this punitive measure.

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

~~"Article 26a~~

~~— Transposition of Article 4(3a)~~

**"1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 23 January 2006 at the latest.** Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 4(43a) of this Directive by ...[~~six~~ **eighteen** months after the entry into force of this Regulation] ~~at the latest~~. They shall forthwith ~~inform~~ **communicate the text of those measures to the Commission thereof.**"<sup>143</sup>

*Article 45*

***Repeal***

Directive 2011/95/EC is repealed with effect from ...[the date of entry into force of this Regulation]. References to the repealed Directive should be construed as references to this Regulation and shall be read in accordance with the correlation table in ~~the~~ Annex **I H**.

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<sup>143</sup> **CZ:** scrutiny reservation on para 2. **PL:** the proposed 6-month term to implement this regulation is definitely too short, considering a complexity of proposed changes. The date of bringing into force modification of Regulation 2003/109 should be same as date of implementation of the whole Regulation.

*Article 46*

***Entry into force and applicability***

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

This Regulation shall start to apply from [~~six~~ **twelve** **eighteen** months from its entry into force].<sup>144</sup>

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

*For the Council*

*The President*

[...]

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<sup>144</sup> **AT, CZ, DE, EL, ES, LT, SE:** scrutiny reservation. **CZ:** two years. **DE, LT:** one year.