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**A7-0271/2011**

14.7.2011

**\*\*\*I**  
**REPORT**

on the proposal for a directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted (recast)

(COM(2009)0551 – C7-0250/2009 – 2009/0164(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Jean Lambert

(Recast – Rule 87 of the Rules of Procedure)

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted (recast)  
(COM(2009)0551 – C7-0250/2009 – 2009/0164(COD))**

**(Ordinary legislative procedure – recast)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2009)0551),
  - having regard to Article 251(2) and Article 63(1), points 1(c), 2(a) and 3(a) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C7-0250/2009),
  - having regard to the Commission Communication to Parliament and the Council entitled ‘Consequences of the entry into force of the Treaty of Lisbon for ongoing interinstitutional decision-making procedures’ (COM(2009)0665),
  - having regard to Article 294(3) and Article 78(2)(a) and (b) of the Treaty on the Functioning of the European Union,
  - having regard to the opinion of the European Economic and Social Committee of 28 April 2010<sup>1</sup>,
  - after consulting the Committee of the Regions,
  - having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts<sup>2</sup>,
  - having regard to the letter of 2 February 2010 from the Committee on Legal Affairs to the Committee on Civil Liberties, Justice and Home Affairs in accordance with Rule 87(3) of its Rules of Procedure,
  - having regard to Rules 87 and 55 of its Rules of Procedure,
  - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A7-0271/2011),
- A. whereas, according to the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission, the proposal in question does not include any substantive amendments other than those identified as such in the proposal

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<sup>1</sup> OJ C 18, 19.1.2011, p. 80.

<sup>2</sup> OJ C 77, 28.3.2002, p. 1.

and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance,

1. Adopts its position at first reading hereinafter set out, taking into account the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission;
2. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

POSITION OF THE EUROPEAN PARLIAMENT  
AT FIRST READING\*

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DIRECTIVE 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, ***a uniform status for refugees or for persons eligible for subsidiary protection***, and the content of the protection granted

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

After consulting the Committee of the Regions,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure<sup>2</sup>,

Whereas:

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\* Amendments: new or amended text is highlighted in ***bold italics***; deletions are indicated by the symbol **■**.

<sup>1</sup> Opinion delivered on 28 April 2010 (OJ C 18, 19.1.2011, p. 80).

<sup>2</sup> Position of the European Parliament of ... .

- (1) A number of substantive changes are to be made to Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted<sup>1</sup>. In the interests of clarity, that Directive should be recast.
  - (2) A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of progressively establishing an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the *Union*.
  - (3) The European Council at its special meeting in Tampere on 15 and 16 October 1999 agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention of 28 July 1951 Relating to the Status of Refugees ("Geneva Convention"), as supplemented by the New York Protocol of 31 January 1967 (the "Protocol"), thus affirming the principle of non-refoulement and ensuring that nobody is sent back to persecution.
  - (4) The Geneva Convention and the Protocol provide the cornerstone of the international legal regime for the protection of refugees.
  - (5) The Tampere conclusions provide that a Common European Asylum System should include, in the short term, the approximation of rules on the recognition of refugees and the content of refugee status.
  - (6) The Tampere conclusions also provide that rules regarding refugee status should be complemented by measures on subsidiary forms of protection, offering an appropriate status to any person in need of such protection.
  - (7) The first phase in the creation of a Common European Asylum System has now been achieved. The European Council of 4 November 2004 adopted The Hague Programme, which sets the objectives to be implemented in the area of freedom, security and justice in the period 2005-2010. In this respect the Hague Programme invited the European Commission to conclude the evaluation of the first-phase legal instruments and to submit the second-phase instruments and measures to the Council and the European Parliament, with a view to their adoption before the end of 2010. ■
  - (8) In the European Pact on Immigration and Asylum, adopted on 15-16 October 2008, the European Council noted that considerable disparities remain between one Member State and another concerning the grant of protection and the forms that protection takes and called for new initiatives to complete the establishment of a Common European Asylum System, provided for in the Hague Programme, and thus to offer a higher degree of protection.
- (8a) *In the Stockholm Programme the European Council reiterated its commitment to the objective of establishing a common area of protection and solidarity, based on a common asylum procedure and a uniform status, in accordance with Article 78***

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

***TFEU, for those granted international protection, by 2012 at the latest.***

- (9) In the light of the results of the evaluations undertaken, it is appropriate, at this stage, to confirm the principles underlying Directive 2004/83/EC as well as to seek to achieve a higher level of approximation of the rules on the recognition and content of international protection on the basis of higher standards **■** .
- (10) The resources of the European Refugee Fund and of the European Asylum Support Office (EASO) should be mobilised to provide adequate support to the Member States' efforts relating to the implementation of the standards set in the second phase of the Common European Asylum System, in particular to those Member States which are faced with specific and disproportionate pressures on their asylum systems, due in particular to their geographical or demographic situation.
- (11) The main objective of this Directive is, on the one hand, to ensure that Member States apply common criteria for the identification of persons genuinely in need of international protection, and, on the other hand, to ensure that a minimum level of benefits is available for these persons in all Member States.
- (12) The approximation of rules on the recognition and content of refugee and subsidiary protection status should help to limit the secondary movements of applicants for international protection between Member States, where such movement is purely caused by differences in legal frameworks.
- (13) **■** Member States should have the power to introduce or maintain more favourable provisions ***than the standards laid down in this Directive*** for third country nationals or stateless persons who request international protection from a Member State, where such a request is understood to be on the grounds that the person concerned is either a refugee within the meaning of Article 1(A) of the Geneva Convention, or a person ***eligible for subsidiary*** protection.
- (14) Those third country nationals or stateless persons who are allowed to remain in the territories of the Member States for reasons not due to a need for international protection but on a discretionary basis on compassionate or humanitarian grounds, fall outside the scope of this Directive.
- (15) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union<sup>1</sup>. In particular this Directive seeks to ensure full respect for human dignity and the right to asylum of applicants for asylum and their accompanying family members and to promote the application of Articles 1, 7, ***II***, 14, 15, 16, 18, 21, 24, 34 and 35 of the Charter and should be implemented accordingly .
- (16) With respect to the treatment of persons falling within the scope of this Directive, Member States are bound by obligations under instruments of international law to which they are party, ***including in particular those that prohibit discrimination.***

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

- (17) The "best interests of the child" should be a primary consideration of Member States when implementing this Directive, in line with the 1989 United Nations Convention on the Rights of the Child. ***In assessing the best interests of the child, Member States 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/her age and maturity.***
- (18) It is necessary to broaden the notion of family members, taking into account the different particular circumstances of dependency and the special attention to be paid to best interests of the child.
- (19) This Directive is without prejudice to the Protocol on asylum for nationals of Member States of the European Union as annexed to the ***Treaty on European Union (TEU) and TFEU.***
- (20) The recognition of refugee status is a declaratory act.
- (21) Consultations with the United Nations High Commissioner for Refugees (UNHCR) may provide valuable guidance for Member States when determining refugee status according to Article 1 of the Geneva Convention.
- (22) ■ Standards for the definition and content of refugee status should be laid down to guide the competent national bodies of Member States in the application of the Geneva Convention.
- (23) It is necessary to introduce common criteria for recognising applicants for asylum as refugees within the meaning of Article 1 of the Geneva Convention.
- (24) In particular, it is necessary to introduce common concepts of protection needs arising sur place; sources of harm and protection; internal protection; and persecution, including the reasons for persecution.
- (25) Protection can be provided, ***where they are willing and able to offer protection, either*** by the State ***or*** by parties or organisations, including international organisations, meeting the conditions of this Directive, which control a region or a larger area within the territory of the State ■ . Such protection should be effective and of a ***non temporary*** nature.
- (26) 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. ***Where the State or agents of the State are the actors of persecution, 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 interest of the unaccompanied minor, should be part of assessing whether protection is effectively available.***
- (27) It is necessary, when assessing applications from minors for international protection, that Member States should have regard to child-specific forms of persecution.

- (28) One of the conditions for qualification for refugee status within the meaning of Article 1(A) of the Geneva Convention is the existence of a causal link between the reasons of 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.**
- (29) It is equally necessary to introduce a common concept of the persecution ground "membership of a particular social group". For the purposes of defining a particular social group, issues arising from an applicant's gender, **including gender identity and sexual orientation, which may be related to certain legal traditions and customs, resulting in for example genital mutilation, forced sterilisation, forced abortion,** should be given due consideration **insofar as they are related to the applicant's well-founded fear of persecution.**
- (30) Acts contrary to the purposes and principles of the United Nations are set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations and are, amongst others, embodied in the United Nations Resolutions relating to measures combating terrorism, which declare that "acts, methods and practices of terrorism are contrary to the purposes and principles of the United Nations" and that "knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations".
- (31) As referred to in Article 14, "status" can also include refugee status.
- (32) 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 eligible for subsidiary protection. Those criteria should be drawn from international obligations under human rights instruments and practices existing in Member States.
- (34) Risks to which a population of a country or a section of the population is generally exposed do normally not create in themselves an individual threat which would qualify as serious harm.
- (35) Family members, merely due to their relation to the refugee, will normally be vulnerable to acts of persecution in such a manner that could be the basis for refugee status.
- (36) The notion of national security and public order also covers cases in which a third country national belongs to an association which supports international terrorism or supports such an association.
- (36a) When deciding on entitlements to the benefits included in this Directive, Member States 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 beneficiaries of international protection. 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.*

- (37) ■ While responding to the call of the *Stockholm* programme for the establishment of a uniform status *for refugees or for persons eligible for subsidiary protection*, and with the exception of derogations which are necessary and objectively justified, beneficiaries of subsidiary protection should be granted the same rights and benefits as refugees *enjoy according to this Directive*, and should be subject to the same conditions of eligibility.
- (38) Within the limits set out by international obligations, Member States may lay down that the granting of benefits with regard to access to employment, social welfare, health care and access to integration facilities requires the prior issue of a residence permit.
- (39) In order to enhance the effective exercise of the rights and benefits laid down in the Directive by beneficiaries of international protection, it is necessary to take into account their specific needs and the particular integration challenges they are confronted with *without prejudice to the possibility to Member States to introduce or retain more favourable standards, this should normally not result in a more favourable treatment than provided to the nationals of the Member State.*
- (40) In that context, efforts should be made in particular to address the problems ■ which prevent beneficiaries of international protection from *having* effective access to employment-related educational opportunities and vocational training *inter alia relating to financial constraints.*
- (41) This Directive does not apply to financial benefits from the Member States which are granted to promote education.
- (42) Special measures need to be considered with a view to effectively addressing the practical difficulties encountered by beneficiaries of international protection concerning the authentication of their foreign diplomas, certificates or other evidence of formal qualifications, in particular due to the lack of documentary evidence and their inability to meet the costs related to the recognition procedures.
- (43) Especially to avoid social hardship, it is appropriate, for beneficiaries of international protection, to provide without discrimination in the context of social assistance the adequate social welfare and means of subsistence. *With regard to social assistance, the modalities and detail of the provision of core benefits to beneficiaries of subsidiary protection status should be determined by national law. The possibility of limiting the benefits for beneficiaries of subsidiary protection status to core benefits is to be understood in the sense that this notion covers at least minimum income support, assistance in case of illness, pregnancy and parental assistance, insofar as they are granted to nationals according to the legislation of the Member State concerned.*

- (44) Access to health care, including both physical and mental health care, should be ensured to beneficiaries of international protection.
- (45) The specific needs and particularities of the situation of beneficiaries of *refugee status or subsidiary protection status* should be taken into account, as far as possible, in the integration programmes provided to them *including where appropriate language training and information concerning individual rights and obligations related to their protection status in the Member State concerned*.
- (46) The implementation of this Directive should be evaluated at regular intervals, taking into consideration in particular the evolution of the international obligations of Member States regarding non-refoulement, the evolution of the labour markets in the Member States as well as the development of common basic principles for integration.
- (47) Since the objectives of this Directive, namely to establish **■** standards for the granting of international protection to third country nationals and stateless persons by Member States and the content of the protection granted, cannot be sufficiently achieved by the Member States and can, therefore, by reason of the scale and effects of the Directive, be better achieved at *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 Directive does not go beyond what is necessary in order to achieve those objectives.
- (47a) *In accordance with Articles 1, 2 and 4a(1) of the 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 TEU and to the TFEU, and without prejudice to Article 4 of the said Protocol, the United Kingdom and Ireland are not taking part in the adoption of this Directive and are not bound by it or subject to its application.***
- (48) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the *TFEU*, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.
- (49) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with the earlier Directive. The obligation to transpose the provisions which are unchanged arises under the earlier Directive.
- (50) This Directive should be without prejudice to the obligations of the Member States relating to the time-limit for transposition into national law of the Directive set out in Annex I, Part B,

HAVE ADOPTED THIS DIRECTIVE:

#### CHAPTER I

## General provisions

### Article 1

#### Purpose

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

### Article 2

#### Definitions

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

- (a) "international protection" means refugee status and subsidiary protection status as defined in points (e) and (g);
- (b) "beneficiaries of international protection" means persons who have been granted refugee status or subsidiary protection status as defined in points (e) and (g);
- (c) "Geneva Convention" means the Convention Relating to the Status of Refugees done at Geneva on 28 July 1951, as amended by the New York Protocol of 31 January 1967;
- (d) "refugee" means a third country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 does not apply;
- (e) "refugee status" means the recognition by a Member State of a third country national or a stateless person as a refugee;
- (f) "person eligible for subsidiary protection" means a third country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) do not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country;
- (g) "subsidiary protection status" means the recognition by a Member State of a third country national or a stateless person as a person eligible for subsidiary protection;
- (h) "application for international protection" means a request made by a third country national or a stateless person for protection from a Member State, who can be

understood to seek refugee status or subsidiary protection status, and who does not explicitly request another kind of protection, outside the scope of this Directive, that can be applied for separately;

- (i) "applicant" means a third country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken;
- (j) "family members" means, in so far as the family already existed in the country of origin, the following members of the family of the beneficiary of international protection who are present in the same Member State in relation to the application for international protection:
  - the spouse of the beneficiary of international protection or his or her unmarried partner in a stable relationship, where the legislation or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to *third country nationals*;
  - the minor children of the couples referred to in the first indent or of the beneficiary of international protection, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under the national law;
  - the father, mother or another adult responsible for the beneficiary of international protection whether by law or by *the national practice of the Member State concerned*, when the latter is a minor and unmarried;
- (k) "minor" means a third-country national or stateless person below the age of 18 years;
- (l) "unaccompanied minor" means a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him/her whether by law or *the national practice of the Member State concerned*, and for as long as he/she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he/she has entered the territory of the Member States;
- (m) "residence permit" means any permit or authorisation issued by the authorities of a Member State, in the form provided for under that State's legislation, allowing a third country national or stateless person to reside on its territory;
- (n) "country of origin" means the country or countries of nationality or, for stateless persons, of former habitual residence.

### Article 3

#### More favourable standards

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

## CHAPTER II

### Assessment of applications for international protection

#### Article 4

##### Assessment of facts and circumstances

1. Member States may consider it the duty of the applicant to submit as soon as possible all elements needed to substantiate the application for international protection. In cooperation with the applicant it is the duty of the Member State to assess the relevant elements of the application.

2. The elements referred to in paragraph 1 consist of the applicant's statements and all documentation at the applicant's disposal regarding the applicant's age, background, including that of relevant relatives, identity, nationality(ies), country(ies) and place(s) of previous residence, previous asylum applications, travel routes, travel documents and the reasons for applying for international protection.

3. The assessment of an application for international protection is to be carried out on an individual basis and includes taking into account:

- (a) all relevant facts as they relate to the country of origin at the time of taking a decision on the application; including laws and regulations of the country of origin and the manner in which they are applied;
- (b) the relevant statements and documentation presented by the applicant including information on whether the applicant has been or may be subject to persecution or serious harm;
- (c) the individual position and personal circumstances of the applicant, including factors such as background, gender and age, so as to assess whether, on the basis of the applicant's personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious harm;
- (d) whether the applicant's activities since leaving the country of origin were engaged in for the sole or main purpose of creating the necessary conditions for applying for international protection, so as to assess whether these activities will expose the applicant to persecution or serious harm if returned to that country;
- (e) whether the applicant could reasonably be expected to avail himself of the protection of another country where he could assert citizenship.

4. The fact that an applicant has already been subject to persecution or serious harm or to direct threats of such persecution or such harm, is a serious indication of the applicant's well-

founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.

5. Where Member States apply the principle according to which it is the duty of the applicant to substantiate the application for international protection and where aspects of the applicant's statements are not supported by documentary or other evidence, those aspects shall not need confirmation, when the following conditions are met:

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

#### Article 5

##### International protection needs arising sur place

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

#### Article 6

##### Actors of persecution or serious harm

Actors of persecution or serious harm include:

- (a) the State;
- (b) parties or organisations controlling the State or a substantial part of the territory of the State;
- (c) non-State actors, if it can be demonstrated that the actors mentioned in points (a) and

(b), including international organisations, are unable or unwilling to provide protection against persecution or serious harm as defined in Article 7.

## Article 7

### Actors of protection

1. Protection against persecution or serious harm **■** can only be provided by:
  - (a) the State; or
  - (b) parties or organisations, including international organisations, controlling the State or a substantial part of the territory of the State *provided these* are willing and able to ***offer protection in accordance with paragraph 2.***
2. ***This protection must be effective and of a non-temporary nature. Such*** protection is generally provided when the actors mentioned ***under points (a) and (b) of*** paragraph 1 take reasonable steps to prevent the persecution or suffering of serious harm inter alia by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.
3. When assessing whether an international organisation controls a State or a substantial part of its territory and provides protection as described in paragraph 2, Member States shall take into account any guidance which may be provided in relevant Council acts.

## Article 8

### Internal protection

1. As part of the assessment of the application for international protection, Member States may determine that an applicant is not in need of international protection if ***in a part of the country of origin***, 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 as defined in Article 7 **■**,and he or she can safely and legally travel ***to and*** gain admittance ***to that part of the country*** and ***can reasonably be expected to*** settle ***there.***
2. 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, Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant ***in accordance with Article 4.*** To this end, Member States shall ensure that precise and up-to-date information is obtained from ***relevant*** sources, such as UNHCR and EASO.

## CHAPTER III

### Qualification for being a refugee

#### Article 9

##### Acts of persecution

1. In order to be regarded as an act of persecution within the meaning of Article 1A of the Geneva Convention, an act must:
  - (a) be sufficiently serious by its nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; or
  - (b) be an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as mentioned in point (a).
2. Acts of persecution as qualified in paragraph 1, can inter alia take the form of:
  - (a) acts of physical or mental violence, including acts of sexual violence;
  - (b) legal, administrative, police, and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner;
  - (c) prosecution or punishment, which is disproportionate or discriminatory;
  - (d) denial of judicial redress resulting in a disproportionate or discriminatory punishment;
  - (e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling under the exclusion clauses as set out in Article 12(2);
  - (f) acts of a gender-specific or child-specific nature.
3. In accordance with Article 2 (*d*), there must be a connection between the reasons mentioned in Article 10 and the acts of persecution as qualified in paragraph 1 or the absence of protection against such acts.

#### Article 10

##### Reasons for persecution

1. Member States shall take the following elements into account when assessing the reasons for persecution:
  - (a) the concept of race shall in particular include considerations of colour, descent, or membership of a particular ethnic group;

- (b) the concept of religion shall in particular include the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief;
- (c) the concept of nationality shall not be confined to citizenship or lack thereof but shall in particular include membership of a group determined by its cultural, ethnic, or linguistic identity, common geographical or political origins or its relationship with the population of another State;
- (d) a group shall be considered to form a particular social group where in particular:
  - members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it; and
  - that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society.

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

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

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

## Article 11

### Cessation

- 1. A third country national or a stateless person shall cease to be a refugee, if he or she:
  - (a) has voluntarily re-availed himself or herself of the protection of the country of nationality; or
  - (b) having lost his or her nationality, has voluntarily re-acquired it; or
  - (c) has acquired a new nationality, and enjoys the protection of the country of his or her new nationality; or

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

## Article 12

### Exclusion

1. A third country national or a stateless person is excluded from being a refugee, if:
- (a) he or she falls within the scope of Article 1 D of the Geneva Convention, relating to protection or assistance from organs or agencies of the United Nations other than UNHCR. When such protection or assistance has ceased for any reason, without the position of such persons being definitely settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Directive;
  - (b) he or she is recognised by the competent authorities of the country in which he or she has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country; or rights and obligations equivalent to those.
2. A third country national or a stateless person is excluded from being a refugee where there are serious reasons for considering that:
- (a) he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
  - (b) he or she has committed a serious non-political crime outside the country of refuge prior to his or her admission as a refugee; which means the time of issuing a residence permit based on the granting of refugee status; particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-

- political crimes;
- (c) he or she has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations.
3. Paragraph 2 applies to persons who instigate or otherwise participate in the commission of the crimes or acts mentioned therein.

## CHAPTER IV

### Refugee Status

#### Article 13

##### Granting of refugee status

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

#### Article 14

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

1. Concerning applications for international protection filed after the entry into force of Directive 2004/83/EC, Member States shall revoke, end or refuse to renew the refugee status of a third country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body, if he or she has ceased to be a refugee in accordance with Article 11.
2. Without prejudice to the duty of the refugee in accordance with Article 4(1) to disclose all relevant facts and provide all relevant documentation at his/her disposal, the Member State, which has granted refugee status, shall on an individual basis demonstrate that the person concerned has ceased to be or has never been a refugee in accordance with paragraph 1 of this Article.
3. Member States shall revoke, end or refuse to renew the refugee status of a third country national or a stateless person, if, after he or she has been granted refugee status, it is established by the Member State concerned that:
- (a) he or she should have been or is excluded from being a refugee in accordance with Article 12;
  - (b) his or her misrepresentation or omission of facts, including the use of false documents, were decisive for the granting of refugee status.
4. Member States may revoke, end or refuse to renew the status granted to a refugee by a governmental, administrative, judicial or quasi-judicial body, when:
- (a) there are reasonable grounds for regarding him or her as a danger to the security of the

- Member State in which he or she is present;
- (b) he or she, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that Member State.
5. In situations described in paragraph 4, Member States may decide not to grant status to a refugee, where such a decision has not yet been taken.
6. Persons to whom paragraphs 4 or 5 apply are entitled to rights set out in or similar to those set out in Articles 3, 4, 16, 22, 31 and 32 and 33 of the Geneva Convention insofar as they are present in the Member State.

## CHAPTER V

### Qualification for subsidiary protection

#### Article 15

##### Serious harm

Serious harm consists of:

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

#### Article 16

##### Cessation

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

#### Article 17

##### Exclusion

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

## CHAPTER VI

### Subsidiary Protection Status

#### Article 18

##### Granting of subsidiary protection status

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

#### Article 19

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

1. Concerning applications for international protection filed after the entry into force of Directive **2004/83/EC**, Member States shall revoke, end or refuse to renew the subsidiary protection status of a third country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body, if he or she has ceased to be eligible for subsidiary protection in accordance with Article 16.

2. Member States may revoke, end or refuse to renew the subsidiary protection status of a third country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body, if after having been granted subsidiary protection status, he or

she should have been excluded from being eligible for subsidiary protection in accordance with Article 17(3).

3. Member States shall revoke, end or refuse to renew the subsidiary protection status of a third country national or a stateless person, if:

- (a) he or she, after having been granted subsidiary protection status, should have been or is excluded from being eligible for subsidiary protection in accordance with Article 17(1) and (2);
- (b) his or her misrepresentation or omission of facts, including the use of false documents, were decisive for the granting of subsidiary protection status.

4. Without prejudice to the duty of the third country national or stateless person in accordance with Article 4(1) to disclose all relevant facts and provide all relevant documentation at his/her disposal, the Member State, which has granted the subsidiary protection status, shall on an individual basis demonstrate that the person concerned has ceased to be or is not eligible for subsidiary protection in accordance with paragraphs 1, 2 and 3 of this Article.

## CHAPTER VII

### Content of international protection

#### Article 20

##### General rules

1. This Chapter shall be without prejudice to the rights laid down in the Geneva Convention.
2. This Chapter shall apply both to refugees and persons eligible for subsidiary protection unless otherwise indicated.
3. When implementing this Chapter, Member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of trafficking, persons with mental *disorders* and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.
4. Paragraph 3 shall apply only to persons found to have special needs after an individual evaluation of their situation.
5. The best interests of the child shall be a primary consideration for Member States when implementing the provisions of this Chapter that involve minors.

#### Article 21

##### Protection from refoulement

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

#### Article 22

##### Information

Member States shall provide beneficiaries of international protection, as soon as possible after

the respective protection status has been granted, with access to information, in a language that they ***understand or*** are reasonably supposed to understand, on the rights and obligations relating to that status.

## Article 23

### Maintaining family unity

1. Member States shall ensure that family unity can be maintained.
2. Member States shall ensure that family members of the beneficiary of international protection, who do not individually qualify for this protection, are entitled to claim the benefits referred to in Articles 24 to 35, in accordance with national procedures and as far as it is compatible with the personal legal status of the family member.
3. Paragraphs 1 and 2 are not applicable where the family member is or would be excluded from international protection pursuant to Chapters III and V.
4. Notwithstanding paragraphs 1 and 2, Member States may refuse, reduce or withdraw the benefits referred therein for reasons of national security or public order.
5. Member States may decide that this Article also applies to other close relatives who lived together as part of the family at the time of leaving the country of origin, and who were wholly or mainly dependent on the beneficiary of international protection at that time.

## Article 24

### ***Residence permits***

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

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

2. ***As soon as possible after international protection has been granted, Member States shall issue to beneficiaries of subsidiary protection status and their family members a renewable residence permit which must be valid for at least one year and, in case of renewal, at least two years, unless compelling reasons of national security or public order otherwise require.***

## Article 25

### Travel document

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

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

## Article 26

### Access to employment

1. Member States shall authorise beneficiaries of international protection to engage in employed or self-employed activities subject to rules generally applicable to the profession and to the public service, immediately after protection has been granted.

2. Member States shall ensure that activities such as employment-related education opportunities for adults, vocational training, including training courses for upgrading of skills, practical workplace experience and counselling services afforded by employment offices are offered to beneficiaries of international protection, under equivalent conditions as nationals.

3. Member States shall endeavour to facilitate *full access for* beneficiaries of international protection to the *activities* referred to in paragraph 2 .

4. The law in force in the Member States applicable to remuneration, access to social security systems relating to employed or self-employed activities and other conditions of employment shall apply.

## Article 27

### Access to education

1. Member States shall grant full access to the education system to all minors granted international protection, under the same conditions as nationals.

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

## Article 28

### Access to procedures for recognition of qualifications

1. Member States shall ensure equal treatment between beneficiaries of international protection and nationals in the context of the existing recognition procedures for foreign diplomas, certificates and other evidence of formal qualifications.

2. Member States shall endeavour to *facilitate full access for* beneficiaries of international protection who cannot provide documentary evidence of their qualifications to appropriate schemes for the assessment, validation and accreditation of their prior learning. Any such measures shall respect Articles 2(2) and 3(3) of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of

professional qualifications<sup>1</sup>.



## Article 29

### Social Welfare

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

**2. *By exception to the general rule laid down in paragraph 1, Member States may limit social assistance granted to beneficiaries of subsidiary protection status to core benefits which will then be provided at the same levels and under the same eligibility conditions as nationals.***

## Article 30

### Health care

1. Member States shall ensure that beneficiaries of international protection have access to health care under the same eligibility conditions as nationals of the Member State that has granted such protection.

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

## Article 31

### Unaccompanied minors

1. As soon as possible after the granting of international protection Member States shall take the necessary measures, to ensure the representation of unaccompanied minors by legal guardianship or, where necessary, by an organisation responsible for the care and well-being of minors, or by any other appropriate representation including that based on legislation or Court order.

2. Member States shall ensure that the minor's needs are duly met in the implementation of this Directive by the appointed guardian or representative. The appropriate authorities shall make regular assessments.

3. Member States shall ensure that unaccompanied minors are placed either:

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<sup>1</sup> OJ L 255, 30.9.2005, p. 22

- (a) with adult relatives; or
- (b) with a foster family; or
- (c) in centres specialised in accommodation for minors; or
- (d) in other accommodation suitable for minors.

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

4. As far as possible, siblings shall be kept together, taking into account the best interests of the minor concerned and, in particular, his or her age and degree of maturity. Changes of residence of unaccompanied minors shall be limited to a minimum.

5. ***If an unaccompanied minor is granted international protection and the tracing of family members has not already started***, Member States shall ***start*** tracing the members of the unaccompanied minor's family as soon as possible after the granting of international protection, whilst protecting the minor's best interests. ***Where the tracing of family members has already started, Member States shall continue the tracing process 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.

6. Those working with unaccompanied minors shall have had and continue to receive appropriate training concerning their needs.

## Article 32

### Access to accommodation

1. The Member States shall ensure that beneficiaries of international protection have access to accommodation under equivalent conditions as other third country nationals legally resident in their territories.

2. ***While allowing for national dispersal practice of beneficiaries of international protection***, Member States shall endeavour to implement policies aimed at preventing discrimination of beneficiaries of international protection and at ensuring equal opportunities regarding access to accommodation.

## Article 33

### Freedom of movement within the Member State

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

## Article 34

## Access to integration facilities

■ In order to facilitate the integration of beneficiaries of international protection into society, Member States shall ensure access to integration programmes which they consider to be appropriate so as to take into account the specific needs of beneficiaries of *refugee status or of subsidiary protection status* or create pre-conditions which guarantee access to such programmes.

■

### Article 35

#### Repatriation

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

## CHAPTER VIII

### Administrative cooperation

#### Article 36

#### Cooperation

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

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

#### Article 37

#### Staff

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

## CHAPTER IX

### Final provisions

#### Article 38

## **Reports**

1. By ...<sup>\*</sup>, the Commission shall report to the European Parliament and the Council on the application of this Directive and shall propose any amendments that are necessary. ***These proposals for amendment shall be made by way of priority in Articles 2 and 7.*** Member States shall send the Commission all the information that is appropriate for drawing up that report by ...<sup>\*\*</sup>.
2. After presenting the report, the Commission shall report to the European Parliament and the Council on the application of this Directive at least every five years.

## Article 39 Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles ***1, 2, 4, 7, 8, 9, 10, 11, 16, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35 by ...<sup>\*</sup>*** at the latest. They shall forthwith communicate to the Commission the text of those provisions ***and a correlation table between those provisions and this Directive.***

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

2. Member States shall communicate to the Commission the text of the main provisions of national law covered by this Directive **■**.

## Article 40

### **Repeal**

Directive 2004/83/EC is repealed ***for the Member States bound by this Directive*** with effect from [day after the date set out in the first subparagraph of paragraph 1 of Article 39 of this Directive]<sup>\*</sup>, without prejudice to the obligations of the Member States relating to the time-limit for transposition into national law of the Directive set out in Annex I, Part B.

***For the Member States bound by this Directive, references*** to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex II.

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<sup>\*</sup> ***OJ please insert date: 42 months from the date of publication in the Official Journal of the European Union.***

<sup>\*\*</sup> ***OJ please insert date: 36 months from the date of publication in the Official Journal of the European Union.***

<sup>\*</sup> ***OJ please insert date: 24 months from the date of publication in the Official Journal of the European Union.***

Article 41

Entry into force

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

Articles *1, 2, 4, 8, 9, 10, 11, 16, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35* shall apply from [day after the date set out in the first subparagraph of paragraph 1 of Article 39]<sup>\*</sup>.

Article 42

Addressees

This Directive is addressed to the Member States *in accordance with the Treaties*.

Done at

*For the European Parliament*

*For the Council*

*The President*

*The President*

ANNEX I

Part A

Repealed Directive  
(referred to in Article 40)

Council Directive 2004/83/EC

(OJ L 304, 30.9.2004, p. 12)

Part B

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

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

ANNEX II  
Correlation Table

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

Article 10	Article 10
Article 11(1) (2)	Article 11 (1) (2)
-	Article 11 (3)
Article 12	Article 12
Article 13	Article 13
Article 14	Article 14
Article 15	Article 15
Article 16 (1) (2)	Article 16 (1) (2)
-	Article 16 (3)
Article 17	Article 17
Article 18	Article 18
Article 19	Article 19
Article 20 (1) – (5)	Article 20 (1) – (5)
Article 20 (6) (7)	-
Article 21	Article 21
Article 22	Article 22
Article 23 (1)	Article 23 (1)
Article 23 (2) first subparagraph	Article 23 (2) first subparagraph
Article 23 (2) second subparagraph	-
Article 23 (2) third subparagraph	-
Article 23 (3) - (5)	Article 23 (3) - (5)
Article 24 (1)	Article 24 (1)

Article 24 (2)	-
Article 25	Article 25
Article 26(1) - (3)	Article 26(1) - (3)
Article 26 (4)	-
Article 26 (5)	Article 26 (4)
Article 27 (1) (2)	Article 27 (1) (2)
Article 27 (3)	Article 28 (1)
-	Article 28 (2) (3)
Article 28 (1)	Article 29(1)
Article 28 (2)	-
Article 29 (1)	Article 30(1)
Article 29(2)	-
Article 29 (3)	Article 30(2)
Article 30	Article 31
Article 31	Article 32
Article 32	Article 33
Article 33	Article 34
Article 34	Article 35
Article 35	Article 36
Article 36	Article 37
Article 37	Article 38
Article 38	Article 39
-	Article 40
Article 39	Article 41

Article 40

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Article 42

Annex I

Annex II

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## EXPLANATORY STATEMENT

The proposal from the Commission for the recast of the original Directive 2004/83/EC forms part of the move towards a Common European Asylum Policy by 2012. For the original Directive, the European Parliament was only consulted: now, following the entry into force of the Lisbon Treaty, the Parliament is in a position of co-decision. The proposal now being put to Plenary is the result of six informal trilogues, hopefully resulting in a First Reading agreement.

The existing Directive has two key elements: the **grounds on which someone qualifies** for refugee status or subsidiary protection and the **content** of that protection in terms of residence, employment and social rights within the Member State responsible for protection.

The Commission brought forward **the recast proposal** (Directive COM (2009) 551 final 2) as a result of the required review of the earlier Directive and developing jurisprudence. It is clear that there are considerable variations in practice between Member States in their implementation of the current Directive. This leads to wide variation in recognition rates overall and risks the continuation of secondary movements of applicants. While some of the disparities can be dealt with through improved co-operation, in which the new European Asylum Support Office should play an important role, there is a need for clarification in the legislative framework - the Directive itself - in order to provide a stronger, clearer framework for the implementation process.

An important change proposed here is to approximate the two categories of protection more closely and thus to generally refer to *beneficiaries of international protection*. This will act to remind implementing authorities that the two categories of protection are complementary: subsidiary protection is not of less importance for individuals at risk of serious harm if they return to their country of origin. The proposal also aims to approximate the entitlements of the content of protection more closely, access to the labour market is perhaps the most significant. The majority of Member States already make little difference between the two groups. However, a difference in treatment will still remain possible in three areas: social welfare (which reflects the status quo - social security is covered in the related recital); integration measures and residence permits - although some progress was made on the latter, where a renewal after one year for those with subsidiary protection must be of at least two years duration (few Member States currently differentiate.) The EP took the view that this was important for integration and to give a sense of greater stability to the individual.

Progress has also been made on issues relating to gender and gender identity. These are now explicitly mentioned in the Articles in relation to social groups at risk of persecution. A reference has also been added in the Recitals to "customs and legal traditions" which could result in damaging outcomes, such as genital mutilation.

On the best interests of the child, it proved difficult to find a definition for the Articles, so we have agreed to a brief set of principles in Recital 17. The proposed amendment to Article 8.2 dealing specifically with the care of unaccompanied minors now appears in the related recital. Continuity of care for such children is a strand that should be pursued throughout the CEAS,

hence the changes to Article 31.5. which should provide the necessary continuity in tracing family members.

The EP views on the extension of the definition of family proved unacceptable to Council, although there is some small progress concerning the addition of either parent or another relative in connection to the beneficiary when already present. It remains to be seen if the non-inclusion of married minors leaves a protection gap - hence the inclusion of Article 2 in the review clause. Despite the very explicit wording of this Article and its relation to protection needs, some Member States wish to keep a very narrow definition of family, fearing future claims for family reunification - although that Directive clearly states the rules relating to refugees. Married minors are now mentioned in recital 36a in relation to benefits.

Article 7 relates to Actors of Protection. There is a strongly held view in the EP that, in principle, only states can be viewed as actors of protection: international bodies do not have the attributes of a state and cannot be parties to international conventions. The limited change to the original Article aim to strengthen the requirements demanded of non-state actors if they are to be viewed as able to deliver effective and durable (now non-temporary) protection. Article 7 also appears in the review clause due to the continuing inclusion of non-state bodies.

Article 8 concerns internal protection within the country-of-flight. Here, Council chose to stay closer to the Commission wording, although parts of the EP amendments are taken up in recitals - especially relating to a strong position against internal protection where the state is the actor of persecution.

Correlation tables remain an area of difficulty, but your Rapporteur recommends the substance of the proposed agreement to the House as a step forward from the existing Directive, offering greater security for beneficiaries of international protection, greater clarity for Member States, and will hopefully result in a reduction of the current disparities in delivery of a fair and effective system.

## ANNEX: LETTER FROM THE COMMITTEE ON LEGAL AFFAIRS

COMMITTEE ON LEGAL AFFAIRS

CHAIRMAN

Ref.: D(2010)5206

Mr Fernando LOPEZ AGUILAR  
Chair of Civil Liberties, Justice  
and Home Affairs Committee  
ASP 11G306  
Brussels

*Subject: Proposal for a directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted  
COM(2009) 551 final of 21.10.2009 - 2009/0164 (COD)*

Dear Chairman,

The Committee on Legal Affairs, which I am honoured to chair, has examined the proposal referred to above, pursuant to Rule 87 on Recasting, as introduced into the Parliament's Rules of Procedure.

Paragraph 3 of that Rule reads as follows:

*"If the committee responsible for legal affairs considers that the proposal does not entail any substantive changes other than those identified as such in the proposal, it shall inform the committee responsible.*

*In such a case, over and above the conditions laid down in Rules 156 and 157, amendments shall be admissible within the committee responsible only if they concern those parts of the proposal which contain changes.*

*However, if in accordance with point 8 of the Interinstitutional Agreement the committee responsible intends also to submit amendments to the codified parts of the Commission proposal, it shall immediately notify its intention to the Council and to the Commission, and the latter should inform the committee, prior to the vote pursuant to Rule 54, of its position on the amendments and whether or not it intends to withdraw the recast proposal."*

Following the opinion of the Legal Service, whose representatives participated in the meetings of the Consultative Working Party examining the recast proposal, and in keeping with the recommendations of the draftsman, the Committee on Legal Affairs considers that the proposal in question does not include any substantive changes other than those identified as such in the proposal or in the opinion of the Consultative Working Party and that, as regards the codification of the unchanged provisions of the earlier acts with those changes, the proposal contains a straightforward codification of the existing texts, without any change in

their substance.

Furthermore, pursuant to Rules 87, the Committee on Legal Affairs considered that the technical adaptations suggested in the opinion of the abovementioned Working Party were necessary in order to ensure that the proposal complied with the recasting rules.

In conclusion, after discussing it at its meeting of 27 January 2010, the Committee on Legal Affairs, by 22 votes in favour and no abstentions<sup>1</sup>, recommends that your Committee, as the committee responsible, proceed to examine the above proposal in keeping with its suggestions and in accordance with Rule 87.

Yours faithfully,

Klaus-Heiner LEHNE

*Encl.: Opinion of the Consultative Working Party.*

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<sup>1</sup> Klaus-Heiner Lehne, Raffaele Baldassarre, Sebastian Valentin Bodu, Marielle Gallo, Alajos Mészáros, Lidia Joanna Geringer de Oedenberg, Antonio Masip Hidalgo, Bernhard Rapkay, Evelyn Regner, Alexandra Thein, Diana Wallis, Cecilia Wikström, Christian Engström, Jiří Maštálka, Francesco Enrico Speroni, Piotr Borys, Vytautas Landsbergis, Kurt Lechner, Arlène McCarthy, Toine Manders, Eva Lichtenberger, Sajjad Karim.

**ANNEX: OPINION OF THE CONSULTATIVE WORKING PARTY OF THE LEGAL SERVICES OF THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE COMMISSION**



CONSULTATIVE WORKING PARTY  
OF THE LEGAL SERVICES

Brussels, 23 November 2009

**OPINION**

**FOR THE ATTENTION OF THE EUROPEAN PARLIAMENT  
THE COUNCIL  
THE COMMISSION**

**Proposal for a European Parliament and Council directive on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted**

**(recast)**

**COM(2009)0551 of 21.10.2009 – 2009/0164(COD)**

Having regard to the Inter-institutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts, and in particular to point 9 thereof, the Consultative Working Party consisting of the respective legal services of the European Parliament, the Council and the Commission met on 29 October 2009 for the purpose of examining, among others, the aforementioned proposal submitted by the Commission.

At that meeting<sup>1</sup>, an examination of the proposal for a directive of the European Parliament and of the Council recasting Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted resulted in the Consultative Working Party's establishing, by common accord, as follows.

1) In Article 9(3), the initial wording "*In accordance with Article 2 (c)*" should be adapted so as to read "*In accordance with Article 2 (d)*".

2) In Article 19(1), the words "*after the entry into force of this Directive*" should be adapted so as to read "*after the entry into force of Directive 2004/83/EC*".

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<sup>1</sup> The Consultative Working Party had at its disposal the English, French and German language versions of the proposal and worked on the basis of the English version, being the master-copy language version of the text under discussion.

3) In Article 23(2), the reference made to "*Articles 24 to 34*" should be adapted so as to read as a reference to "*Articles 24 to 27 and 29 to 35*".

4) In Article 39(1), first subparagraph, the final sentence "*They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive*" should have been identified by using the grey-shaded type generally used for marking substantive changes in recast texts.

5) In Article 39(2), the final words "*and a correlation table between those provisions and this Directive*" should have been identified with grey-shaded type.

6) In Article 42, the final words of Article 40 of Council Directive 2004/83/EC ("*in accordance with the Treaty establishing the European Community*") should be re-introduced.

7) In Annex I, Part B, the indication of the date of 10 October 2006 should be replaced by that of 9 October 2006.

In consequence, examination of the proposal has enabled the Consultative Working Party to conclude, without dissent, that the proposal does not comprise any substantive amendments other than those identified as such therein or in the present opinion. The Working Party also concluded, as regards the codification of the unchanged provisions of the earlier act with those substantive amendments, that the proposal contains a straightforward codification of the existing text, without any change in its substance.

C. PENNERA  
Jurisconsult

J.-C. PIRIS  
Jurisconsult

L. ROMERO REQUENA  
Director General



## PROCEDURE

<b>Title</b>	Minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted (recast)
<b>References</b>	COM(2009)0551 – C7-0250/2009 – 2009/0164(COD)
<b>Date submitted to Parliament</b>	21.10.2009
<b>Committee responsible</b> Date announced in plenary	LIBE 12.11.2009
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	JURI 12.11.2009
<b>Rapporteur(s)</b> Date appointed	Jean Lambert 11.1.2010
<b>Discussed in committee</b>	24.5.2011                      12.7.2011
<b>Date adopted</b>	12.7.2011
<b>Result of final vote</b>	+:                      46 -:                      3 0:                      1
<b>Members present for the final vote</b>	Jan Philipp Albrecht, Sonia Alfano, Alexander Alvaro, Gerard Batten, Vilija Blinkevičiūtė, Mario Borghezio, Rita Borsellino, Emine Bozkurt, Simon Busuttil, Philip Claeys, Carlos Coelho, Rosario Crocetta, Cornelia Ernst, Tanja Fajon, H��l��ne Flautre, Kinga G��ncz, Nathalie Griesbeck, Sylvie Guillaume, ��gnes Hankiss, Anna Hedh, Salvatore Iacolino, Sophia in 't Veld, Teresa Jim��nez-Becerril Barrio, Timothy Kirkhope, Juan Fernando L��pez Aguilar, Baroness Sarah Ludford, Monica Luisa Macovei, V��ronique Mathieu, Jan Mulder, Antigoni Papadopoulou, Georgios Papanikolaou, Carmen Romero L��pez, Birgit Sippel, Csaba S��gor, Renate Sommer, Rui Tavares, Wim van de Camp, Renate Weber, Tatjana ��danoka
<b>Substitute(s) present for the final vote</b>	Edit Bauer, Anna Maria Corazza Bildt, Ioan Enciu, Monika Hohlmeier, Jean Lambert, Antonio Masip Hidalgo, Mariya Nedelcheva, Hubert Pirker, Mich��le Striffler, Kyriacos Triantaphyllides, Cecilia Wikstr��m
<b>Date tabled</b>	14.7.2011