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NOTE

From:	Presidency
To:	Delegations
No. prev. doc.:	8302/17
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

JHA Counsellors examined new Presidency compromise proposals on 27 April 2017.Taking into account comments made by delegations on that occasion, this document contains compromise proposals suggested by the Presidency in relation to all articles, except for the following items placed between square brackets:

- points (a) and (b) of paragraph 1 of Article 26 (to be discussed in Coreper);

- recitals (10), (14), (21a) and (43), Articles 2 (7), 29 (2) (cross-references to other proposals).

New or modified text compared to the previous version of this document is to be found in Recitals (36a) and (41a), in Article 2 (9) and (14) and in Article 28 (2).

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 compared to the Commission proposal is marked with **[…]**.

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

ANNEX

2016/0223 (COD)

Draft ~~Proposal for a~~ Regulation[1] 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[2]

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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1 **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**: differences between the rights attached to refugee status and subsidiary protection status will lead to considerable additional administrative burden for national systems.

2 **BG, CZ, ES, FI, FR, IT, NL, PT, 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[3] **[…]**. 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 **[…]**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 to as the** 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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[3] 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,[4] 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 […]**. That Communication is in line with calls by the European Council on 18-19 February 2016[5] 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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4 7665/16.
5 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 **[…]national** humanitarian statuses granted by Member States under their national law**. Such humanitarian statuses may only be issued** to**[…]third country nationals or stateless persons** who do not **individually** qualify for **[…]** refugee status or **[…]for** subsidiary protection status **in accordance with this Regulation**. **[…]**.[6]

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[6] **DE, NL, SK:** scrutiny reservation. **PRES:** the term "individually" mirrors Article 25 (1). **SE:** are humanitarian statuses limited to persons with medical and other needs linked to vulnerabilities, or does this also encompass persons fleeing environmental disasters? **PRES:** This Recital refers to a *national* humanitarian status. Therefore, it can include any circumstances the Member State deems fit under its national law, except for persons which qualify for refugee or subsidiary protection status in accordance with this Regulation.

[(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.[7]]

(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.

(11a) Pursuant to Article 78(1) TFEU all national authorities are required[8] to comply with the principle of non-refoulement set out in Article 33 of the Geneva Convention and developed in the case law of the Court of Justice of the European Union (CJEU).When refouling a person, the competent authorities should respect the Charter of Fundamental Rights, in particular Articles 4 and 19(2) thereof.[9]

(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.

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7 **SE:** is it only Chapter 1 which applies to resettled persons? **PRES:** Recital 10 refers to the content of international protection (Chapter 7). This means that a resettled person who has been granted international protection should have all the right and benefits which are granted to asylum seekers once they become beneficiaries.

8 **DE:** insert "*when they are implementing Union law*" for better clarity.

9 **CZ, DE:** scrutiny reservation. **CZ:** replace "*refoulement*" with "*return or expulsion*".

(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**, upon the request or with the agreement of the Member State concerned**[10], 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 […]**. 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 **[…]** Regulation **(EU) XXX/XX [Regulation on the European Union Agency for Asylum]**[11]**.]**[12]

(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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10 **PRES:** upon the request of a MS, text has been aligned with the Council position on the EUAA Proposal (Article 16(2), Article 21(2)(d)).

11 8742/16 + ADD 1.

12 **NL:** inconsistencies with the EUAA Regulation.

(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. **[…]**

(16a) The provisions on family unity should be exercised in compliance with the values and principles recognised by the Member States. Such compliance justifies the possible taking of restrictive measures against the application of the provisions on family unity to polygamous households.In the event of a polygamous marriage, it is for the Member States to decide whether they wish to apply the provisions on family unity to minor children of a further spouse of the beneficiary of international protection.[13]

(16b) Member States can decide that the provisions on maintaining family unity also apply to other close relatives of the beneficiary of international protectionwho 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 are[14]**wholly or mainly dependent on the beneficiary of international protection.**[15]

(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.

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13 **DE:** scrutiny reservation. **PRES:** as suggested during the last Counsellors meeting, this revised Recital is now based on Recitals 10 and 11 of the Family Reunification Directive.

14 **PRES:** this change indicates that this Recital only applies to persons who are still dependent on the beneficiary of international protection. This Recital has been amended to clarify that the relatives must still be dependent on the beneficiary of international protection when the provisions on family unity are to be applied.

15 **DE, SE, SI, SK:** scrutiny reservation.**CZ, LV:** reservation, wider concern related to the definition of family members. **CZ:** see also comments on Art. 25.

(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.

(19a) When assessing whether parties or organisations, including international organisations, control a State or a substantial part of its territory, and provide protection, as well as when 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, the determining authority should also take into account generalinformation and recommendations issued by the United Nations Commissioner for Refugees (UNHCR).[16]

(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) Applicantsshould cooperate with the determining authority and other competent authorities, and remain present and available throughout the procedure, in accordance with the relevant provisions of the Dublin Regulation, the Asylum Procedures Regulation and the Reception Conditions Directive.][17]

(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.

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16 **SE, SK:** scrutiny reservation.

17 **DE**: scrutiny reservation; the content of this new recital depends more on Dublin.

(23) **[…]** **Where they are able and willing to offer protection, this** can be provided either **[…]** by the State or by parties or organisations, including international organisations, meeting the conditions set out in this **[…]** **Regulation**, 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.[18]

(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 **of** 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. **In those cases where the determining authority demonstrates that an internal protection alternative is generally available, the applicant can provide proof in relation to his or her personal circumstances which demonstrate that such an alternative is not applicable to him or her.**[19]

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[18] **PRES:** The Recital was amended to improve its clarity.

[19] **FI:** scrutiny reservation. **DE:** scrutiny reservation linked to the sequence of assessment (see comment on Art. 8(2)).**FR:** reservation, not coherent with UNHCR guidelines. **SI:** reservation, the burden of proof should be regulated in the operative part of the text, move the added part to Art. 8. **SE:** reference to "*generally available*" is problematic (against the individual assessment). **PRES:** this is the PRES compromise meant to address the conflicting comments received from delegations.

(24a) When considering whether an applicant can be reasonably expected to settle in another part of the country of origin, the determining authority should also take into account whether he or she would be able to cater for his or her own basic needs in relation to access to food, hygiene and shelter[20] in the context of local circumstances in his or her country of origin, either independently or with the assistance of others such as family members or local organisations.[21]

(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.

(25a) When assessing the facts and circumstances in relation to an application for international protection, the determining authority should take due consideration of all the relevant elements, including whether an applicant has misled the competent authorities by presenting false information or documents or by withholding relevant information or documents with respect to the application which could have had a negative impact on the decision.[22]

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20 **PRES:** several MS were in favour of the reintroduction of this text. Furthermore, this text limits the scope of 'basic needs', thus preventing the CJEU from taking an overly broad interpretation. This wording is taken from the ECtHR judgment *Sufi and Elmi vs the UK*, which reads: "*have regard to an applicant's ability to cater for his most basic needs, such as food, hygiene and shelter*" (para. 254).

21 **DE, FR:** scrutiny reservation. **BE, LU, NL, SK:** add "*in the context of the area concerned*" after "*whether he or she*".

22 **SE:** scrutiny reservation.

(25b) When assessing a sur place application, the fact that the risk of persecution or serious harm is based on circumstances that do not constitute an expression or continuation of convictions or orientations held in the country of origin could serve as an indication that the sole or main purpose of the applicant was to create the necessary conditions for applying for international protection.[23]

(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.

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[23] **DE, SE:** scrutiny reservation. **FR:** could be acceptable if the exact wording from the Directive is taken over.**SI:** this issue should be regulated in the operative part of the text, move it to Art. 5.

(28a) The circumstances in the country of origin, including for example the existence and application of criminal laws which specifically target <u>lesbian, gay, bisexual, transgender and intersex</u> (LGBTI) <u>persons</u>, can mean that those persons are to be regarded as forming a particular social group.[24]

(29) **[…]W**hen 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 **<u>LGBTI persons</u> […]**, the individual assessment of the applicant's credibility should not be based on stereotyped notions concerning **<u>LGBTI persons</u> […]** 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'.

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[24] **DE:** scrutiny reservation. **PL:** the mentioning of LGBTI could lead to an increased number of international protection requests from persons in all countries where this is criminalised. **PRES:** LGBTI persons are recognised as beneficiaries of international protection if their sexual orientation is the reason for which they are persecuted. The credibility of the claim is usually assessed on the basis of statements made in relation to the process of accepting one's sexual orientation and life as an LGBTI person in the country of origin including societal stigma and/or mistreatment that the person faced.

(30a) For the purposes of applying the provisions on exclusion from international protection where there are reasonable grounds to assume that an applicant has committed an act contrary to the purposes and principles of the United Nations set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations, it is not a prerequisite to establish that the applicant has been convicted of one of the terrorist offences referred to in Article 1(1) of Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism.[25]

(30b) Furthermore, for the purposes of applying the provisions on exclusion from international protection to an applicant for having committed acts constituting participation in the activities of a terrorist group, the fact that it is not established that the applicant committed, attempted to commit or threatened to commit a terrorist act as defined in the resolutions of the United Nations Security Council does not preclude the conduct of the applicant from being regarded as contrary to the purposes and principles of the United Nations.[26]

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[25] **CZ:** scrutiny reservation, prefers "*refugee status*" instead of "*international protection*". **NL:** same drafting suggestion as CZ, in addition replace "*on the ground*" by "*where there are reasonable grounds to assume*". **PRES:** in order to address MS concerns regarding "*an applicant can be excluded*", the text has been amended to more closely reflect the *Lounani* judgment (Case C-573/14, para 54).

[26] **AT, BE:** "*should*" instead of "*can*". **BE:** a reference to Art. 1F of the Geneva Convention should be added in Recitals (30a) and (30b). **NL:** scrutiny reservation on (30b). **AT,DE,FR:** scrutiny reservation on Recitals (30a) and (30b). **CLS:** the Court says "*may be excluded*", "*can*" is preferable, "*should*" is too strong. **IT:** we should keep the margin of manoeuvre and reflect the language of the case-law ("*may*" instead of "*can*"). **PRES:** in order to address MS concerns regarding "*an applicant can be excluded*", text has been amended to more closely reflect the *Lounani* judgment (Case C-573/14, para 77).

(30c) For the purposes of the individual assessment of the facts that may constitute serious reasons for considering that the applicant has been guilty of acts contrary to the purposes and principles of the United Nations, has instigated such acts or has otherwise participated in such acts, the fact that the applicant was convicted, by the courts of a Member State or a third country, on a charge of participation in the activities of a terrorist group is of particular importance, as is a finding that the applicant was a member of the leadership of that group, and there is no need to establish that that person himself or herself instigated a terrorist act or otherwise participated in it.[27]

(31) Committing a political crime is not in principle a ground justifying exclusion from refugee status. However, **[…]**, particularly cruel actions, where the act in question is disproportionate to the alleged political objective, and terrorist acts which are characterised by their violence **[…]**, even if committed with a purportedly political objective, should be regarded as **serious** 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.[28]

(33) It is necessary to introduce common criteria on the basis of which applicants for international protection are to be recognised as **[…]beneficiaries of** subsidiary protection. Those criteria should be drawn from international obligations under human rights instruments and practices existing in Member States.

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[27] **ES, FI, SE, SI:** scrutiny reservations on Recitals (30a)-(30c).

[28] **NL**: delete second sentence. **PRES:** understands the Dutch policy preference for a single international protection status, but this cannot be accommodated because a majority of MS would like to differentiate between the two statuses.

(34) For the purpose of assessing serious harm which may qualify applicants as **persons** eligible for subsidiary protection, the notion of indiscriminate violence, **[…]implies that this violence […]** extend**s** to people irrespective of their personal circumstances.[29] **Therefore, this notion should be understood as violence reaching such a high level that substantial grounds are shown for believing that a civilian, returned to the relevant country or, as the case may be, to the relevant region, would, solely on account of his/her presence on the territory of that country or region, face a real risk of being subject to the serious threat. In case of indiscriminate violence as aforementioned, determining authorities should not require the applicant to present evidence that he or she is specifically targeted by reason of factors particular to his personal circumstances.**[30]

(35) **[…]F**or 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.

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29 **PRES:** the text has been clarified, and now better reflects the *Elgafaji* judgment (Case C-465-07, para. 34). The word "may" has been deleted as "*indiscriminate*" violence extends to persons irrespective of their personal circumstances in all cases.

30 **PRES:** Further clarification on the notion of 'indiscriminate violence' was requested by a delegation, on the basis of the *Elgafaji* judgment (Case C-465-07).

(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, **[…]** determining authorities should not require the applicant to adduce evidence that he is specifically targeted by **[…]** factors**[…]related** 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 **[…]** factors **related[…]** to his personal circumstance**s**. Moreover, the existence of a serious and individual threat should exceptionally be established by the determining authorit**y[…]** solely on account of the presence of the applicant on the territory or relevant part of the territory of the country of origin**,** provided **that** 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 **part of that country[…]**, face a real risk of being subject to the serious threat.[31]

(36a) Frequent travel by a beneficiary of subsidiary protection status to his or her country of origin could serve as an indication that the grounds for granting subsidiary protection status have ceased to exist.

(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.

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[31] **NL:** reservation, not aligned with Elgafaiji judgement.

(37a) In order to achieve a higher level of convergence among Member States, the validity periods of residence permits issued upon granting international protection should be as much as possible harmonized. To this end the initial duration of residence permits should be set out in national law and should be [between 1-3 years for beneficiaries of subsidiary protection status, and between 3-5 years for beneficiaries of refugee status. Residence permits can thereafter be renewed in accordance with national law, and can include renewal for an unlimited period].[32]

(37b) In the period between the granting of international protection and the issuance of a residence permit, Member States should ensure that a beneficiary of international protection has effective access to rights related to information, free movement within the Member State that granted him or her protection, movement within the Union, employment and access to integration measures, and equal treatment as regards education, recognition of qualification and validation of skills, social security, social assistance, health care and access to accommodation[33]**.**

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[32] **DE:** first renewal should be for a limited period or, if it is done for an unlimited period, there should be a mandatory review of the status. **HU, SE:** scrutiny reservation.**NL:** reservation linked to Art. 26.

[33] **DE:** add "*in accordance with the provisions of Chapter 7 of this Regulation*" after "*social assistance*".

(38) Family members, due to their close relationship to the **[…] 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 **[…] should** be entitled to **[…]**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 **[…] 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 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 **[…]** Regulation **(EU) XXX/XX [Regulation on the European Union Agency for Asylum]**[34].

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34 8742/16 + ADD 1.

(40) When assessing a change of circumstances in the third country concerned, the competent authorities of the Member States **[…] 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.

(40a) When assessing whether the grounds on which the refugee status or the subsidiary protection status have ceased to exist, the determining authority should also take into account general information and recommendations issued by the UNHCR.[35]

(41) When the refugee status or the subsidiary protection status ceases to exist, **[…]** the decision by **[…]** the determining authority of a Member State **[…]to withdraw** the status should be **[…]without prejudice to the possibility for** the third-country national or stateless person concerned **[…]** to apply for residence on the basis of other grounds than those having justified the granting of international protection, **[…]**in accordance with relevant Union and national law.

(41a) <u>The decision to end the international protection should not have a retroactive effect whereas a decision to revoke the international protection should have a retroactive effect. When a decision is based on a cessation ground, it should not have a retroactive effect. In case of revocation, acquired rights could be retained in accordance with national law.</u>[36]

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35 **SE:** scrutiny reservation.

36 **PRES:** as requested by MS, the PRES is proposing a new recital to provide guidance on the effects of different types of withdrawal decisions.

(41b) Beneficiaries of international protection should enjoy freedom of movement within the territory of the Member State that granted international protection, under the same conditions and restrictions as those provided for other third country nationals legally resident in its territory who are in a comparable situation. This right for beneficiaries of international protection to freedom of movement does not entail an obligation for the Member States to arrange for accommodation.[37]

(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[38] and with Article 21 of the Convention implementing the Schengen Agreement[39]. 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 **[…] Union** rules, **[**notably on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment[40]**]** and national rules; however, this does not imply any transfer of the international protection and related rights.

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37 **FR:** reservation. **AT, FR, IT:** the last sentence is problematic as it can be interpreted as meaning that when the beneficiary does not choose the place of residence, the MS has an obligation to arrange for accommodation. **SE:** scrutiny reservation on (41a) and (41b). **PRES:** this Recital clarifies that the right of beneficiaries to choose their residence mentioned in Article 28 does not mean that a Member State is obliged to arrange for accommodation in that place.

38 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.

39 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.

40 8715/1/16 REV 1.

[(43) In order to**[…]address** secondary movements within the **[…]** Union, beneficiaries of international protection, if found in a Member State other than the **[…]one** having granted them protection without fulfilling the conditions of stay or reside**nce**, should be taken back by the Member State responsible in accordance with the procedure laid down by Regulation **(EU) [xxx/xxxx Dublin Regulation]**.**]**[41]

(44) In order to discourage secondary movements within the **[…]** Union, **[…] 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 […]** status should **[…] in principle** 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**, […]** national **or international** law.

(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.[42]

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41 **[…]**

42 **AT:** add a new recital as follows: "*In order to maintain public security in MS and as a common European response to recent security related issues connected to refugee movements in Europe, serious crimes that may pose a threat to the security, social peace, community or to individuals of a Member State shall be considered within the assessment for the withdrawal of or the exclusion from the status of a beneficiary of international protection*."

(45a) Member State authorities retain a certain discretion with regard to the notions of public order and national security. Since national security encompasses both internal and external security, in order to assess whether a third country national or stateless person poses a risk to its national security, Member State authorities are entitled to take account of information received from other Member States or third countries.[43] [44]

(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 **to** 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.

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[43] **AT,DE, IT, SE, SK:** scrutiny reservation. **PRES:** Several MS wished to also take into account information from non-EU Member States.

[44] **PRES:** Recital (45b) (a set out in document 8302/17) was deleted in view of two considerations. First of all, the Qualification Regulation includes two distinct notions: "*serious crime*" and "*particularly serious crime*". Counsellors had pointed out that the Recital only defined "*serious crime*". PRES considers that making a legal distinction between these two notions in the Regulation would lead to over-regulation and excessive interference with Member States' criminal law systems which diverge considerably in their appraisal of different types of crimes. Furthermore, the Counsellors also criticised the application of notions developed in the context of EU criminal law to asylum matters.

(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 **[…]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 **[…] 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 **[…] 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[45].

(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

[45] OJ L 55, 28.2.2011, p. 13.

[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.]

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

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** for persons eligible for subsidiary protection[46];

(c) the content of the international protection granted.

[46] **IT,** supported by **FR** and **PT:** add "*being granted that protection*" or replace *"beneficiaries of subsidiary protection"* with *"persons eligible for subsidiary protection"* otherwise the current drafting suggests that there is a status for the eligibility phase (which is not the case).**NL:** reservation, favours a single uniform status for both categories. **PRES:** since para (1) (b)refers to the granting of a status for refugees and persons eligible for subsidiary protection(i.e. before an applicant is recognized as a beneficiary), the comment by IT cannot be accommodated. **COM:** the current text is *acquis* and should be read together with the definitions and with recital (18).

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

Material scope[47]

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 for competent authorities to grant national humanitarian statuses for third-country nationals or stateless persons who do not qualify as beneficiaries of international protection**[48].

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47 **BG**: scrutiny reservation related to an inquiry made to the National Assembly of the Republic of Bulgaria. **DE, NL, SE**: scrutiny reservation. **NL, PL, PT:** this Article together with Recital (9) seem to suggest that MS cannot grant a humanitarian status before assessing if the person qualifies for international protection under this Regulation (unclear what happens if the person does not apply for international protection). **COM:** such humanitarian statuses have a residual nature compared to refugee and subsidiary protection status and should not be seen as a parallel system; a cascade evaluation should be conducted (first refugee, then subsidiary protection then a national humanitarian status). **SE:** clarification needed on the content of the humanitarian status. **PRES**: the content of national humanitarian statuses is set out in national law.

48 **AT** (supported by **DE**)**:** MS should be able to grant such statuses to family members according to national law. **DE:** reservation due to German family asylum; add the following: "*National humanitarian statuses, if issued, shall not be incompatible with the standards of this Regulation*." **IT, ES**: it should be clear that such statuses do not create a parallel system to the one provided by QR. **COM:** such persons get protection as family members (derived status) entailing the same rights; they do not get refugee/subsidiary protection status. **PRES:**. Article 1a(2) was amended in order to make it clearer that national humanitarian statuses (e.g. ones based on family links to a beneficiary of international protection) can be issued to persons who do not qualify as beneficiaries of international protection. Recital 9 has also been amended to make this clearer.

Article 2

Definitions[49]

For the purposes of this Regulation, the following definitions shall apply:

(1) 'international protection' means refugee status and 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);

(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;

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[49] **NL**(opposed by **DE**): a definition of '*public order*' is missing. 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***."

(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;**]**[50]

(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 **[…]** **in the country of origin**, the following members of the family of the beneficiary of international protection who are present **[…]on the territory of** the same Member State in relation to the application for international protection[51]:

(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;

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[50] **BE, BG:** a clear distinction should be made between making and lodging of an application; an application which was made but not lodged should not be considered as such.

[51] **PRES:** in view of concerns expressed by MS, PRES is reverting to the text of the current QD, while maintaining the addition specifying the presence on the territory of the same MS as the beneficiary.

(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;[52]

(11) 'unaccompanied minor' means a minor who arrives on the territory of the Member States unaccompanied by a**n 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 an adult, including a minor who is left unaccompanied after he or she has entered the territory of the Member States;

(12) 'residence permit' means any **[…]** authorisation issued by the authorities of a Member State, in a **uniform** form**[…] as laid down in** Council Regulation (EC) No 1030/2002[53], allowing a third-country national or stateless person to reside **legally** on its territory;[54]

(13) 'country of origin' means the country or countries of nationality or, for stateless persons, of former habitual residence;

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52 **LU**: agrees in principle; scrutiny reservation given the link with Art. 21 APR.
53 OJ L157, 15.6.2002, p.1.
54 **AT, DE, HU**, **IE, SE**: scrutiny reservation.

(14) 'withdrawal of international protection' means the decision by **[…] the determining** authority **or a competent Court or Tribunal** to revoke **[…]** **or** end **[…]** **the international protection**;[55]

(15) **[…]**

(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 **[…]the administrative stage of the procedure**;[56]

(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[57]**[…]**;[58]

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55 **PRES:** the amendments reflect the outcome of bilateral meetings with MS which found this definition problematic. Since the current QR text no longer envisages a status review linked to the renewal of the residence permit, "*refusal to renew*" is no longer needed in the definition of withdrawal of international protection. However, since refusal to renew is a form of ending the status granted, MS are still able to issue such decisions.

56 **SE**: not entirely in line with Art. 4(2)(e) in APR.

57 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).*

58 **FI, IE, IT, NL, SE**: scrutiny reservation. **AT:** reservation linked to the extension of rights; due to the reference to Art. 3 para (1) and (2) of Regulation (EC) No 883/2004 this term also entails family benefits. According to Art. 29 para. (2) QD the rights of beneficiaries of the subsidiary protection status are limited to core benefits regarding social assistance. **BG**: persons who are subject to equal treatment should be covered by Reg (EC) 883/2004 and Reg (EU) 1231/2010, regarding the issues related to the coordination of social security systems. **FR:** reservation, similar misgivings as FI, DE, NL with regard to the special non-contributory cash benefits in relation to Regulation 883/2004.

(18) 'social assistance' means benefits granted in addition to or beyond social security benefits as defined in point (1**7[…]**), with the objective of ensuring that the basic needs of those who lack sufficient resources are met;[59]

(19) **[…].**[60]

Article 3

Material scope

[…]

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[59] **AT, BG, FI, HU, IT, LV, NL, SE**: scrutiny reservation. **IE:** reservation, no agreed definition of '*social assistance*' and this remains a MS competence. **NL**: clarify that this assistance is granted by public bodies and is not conditional upon the beneficiary's own contributions; introduce reference to Art. 3(5) of Regulation 883/2004.**FI,NL**: delete "*in addition to or*". **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.**FR:** reservation, similar misgivings as FI, DE, NL with regard to the special non-contributory cash benefits in relation to Regulation 883/2004.

[60] **PRES:** Following the outcome of horizontal discussions on guardianship in the context of the Asylum Working Party, "*guardian*" will not be defined in the QR but his/her tasks for the purposes of this Regulation are listed in Article 36.

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 […]** or she shall **fully** cooperate with the determining authority **and with other competent authorities**[61],and shall remain present and available throughout the procedure**[…]on the territory of the Member State responsible for examining his or her application**.

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61 **PRES:** the wording "*other competent authorities*" was added to cater for an appeals scenario where the authority examining the facts and circumstances would not be the determining authority.

2. The elements referred to in paragraph 1 shall consist of the applicant's statements and all the documentation at the applicant's disposal regarding **[…]the reasons for being in need of international protection,** 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 **[…]** resettlement procedure as defined by Regulation (EU) no XXX/XX **([…]**Resettlement regulation**[…])]**, travel routes **and[…]** travel documents **[…]**.[62]

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 [**Asylum** 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.

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[62] **CZ,LV**: scrutiny reservation on the reference to the Resettlement Regulation proposal. unclear why there is a need to give information on the results of the resettlement procedure. **PRES:** the reference to the results of the resettlement procedure is now in square brackets pending the outcome of discussions on the Union Resettlement Framework Regulation; new wording is proposed in order to remove any possible links to the making and lodging of an application (APR) and to ensure that the text is more accurate (i.e. statements and documents also in relation to the need for international protection). It should be noted that travel documents are not necessarily catered for under "travel routes" (e.g. an applicant travelled illegally to the territory of the MS but is in possession of a travel document). Besides, the expedited procedure has been deleted from the EURF. Finally, the term 'background' is wide enough to include any further documents the applicant might have.**COM:** in this Article, "*family members*" refers only to the assessment of the application not to family reunification. **CLS:** "*reasons for being in need of international protection*" is preferred because the actual need cannot be assessed; the implication would be that the authority would need to physically check the need/situation in the field.

5. Where **one or more particular** aspects of the applicant's statements are not supported by documentary or other evidence, no additional evidence shall be required in respect of those **particular** aspects where the following conditions are met:[63]

(a) the applicant has made a genuine effort to substantiate his or her**[…]need**[64]**for international protection**;

(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[65];

(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;[66]

(e) the general credibility of the applicant has been established.

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63 **DE:** scrutiny reservation on para (5).**SE**: scrutiny reservation on para (5), suggest to redraft as follows: "*Where particular aspects of the applicant's statements are not supported by documentary or other evidence, the applicant shall be given the benefit of the doubt in respect of those particular aspects, where the following conditions are met*". **PRES:** the "*benefit of the doubt"* is a legal presumption which can be rebutted. By contrast, "*no additional evidence shall be required"* is an objective statement. The word "*particular*" was added to make it clear that this may apply to any individual aspect separately. The wording "*one or more*" before "*particular*" was added to make it clearer that this would apply to "*one or more*" individual aspects separately.

64 **PRES:** aligned with Article 4(2) which reads: "*in need of international protection*".

65 **IT:** delete "*all relevant elements*" as it is difficult to apply in practice. **COM:** this is meant to give authorities enough margin of appreciation.

66 **SE:** not clear what sort of additional information should be submitted in case the applicant has not applied at the earliest possible time and cannot demonstrate good reasons for not having done so, delete (d) as (a), (b) and (c) correspond to the UNHCR handbook. **PRES:** a number of Member States do use point (d) when evaluating the general credibility of an applicant and his or her need for international protection (e.g. an applicant claiming persecution in the country of origin lives in the Member State for over a year before applying for international protection).

Article 5

International protection needs arising sur place[67]

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 […]** 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.

2. **[*merged with paragraph 1*]**

2a. <u>Without prejudice to the Geneva Convention, i</u>f the risk of persecution or serious harm is based on circumstances which the applicant has deliberately created since leaving the country of origin for the sole or main purpose of creating the necessary conditions for applying for international protection, the determining authority may decide not to grant international protection.[68]

3. **[…]**[69]

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67 **AT:** add a para (2a) as follows: "*The determining authority shall not grant an international protection status when the activities of the applicant since leaving the country of origin were carried out intentionally for the main reason, or increasing the likeliness to be granted an international protection status.*"

68 **DE, EL, FI, SE, SI:** scrutiny reservation. **PRES:** since a number of MS found the deletion of paras (2) and (3) to be problematic, the Presidency is proposing this new paragraph. The proposed wording is open enough to apply to both first instance and subsequent applications. Guidance in relation to how this provision can be applied by MS has been added in Recital 25b.

69 **DE, NL:** reservation on the deletion of para (3).

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 **[…] Article 7(1)[…]** are unable or unwilling to provide protection against persecution or serious harm **[…]**.

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**[…] able** and **[…] willing** to **[…]provide** protection in accordance with paragraph 2.

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.[70]

3. When assessing whether **parties or organisations, including** international organisation**s,** control**[...]** a State or a substantial part of its territory**,** and provide**[…]** protection as referred to in paragraph 2, **the** determining authorit**y[…]** shall **[…] 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].[71]

This is without prejudice to the competence of the determining authority to decide on applications for international protection.[72]

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70 **DE:** scrutiny reservation related to the deletion of the term "*generally*" (QD). **PRES:** the word "*generally*" was deleted because this is wording which is acceptable in a Directive, but not in a Regulation.

71 **PRES:** in view of the concerns raised by several Member States in relation to the reference to "*guidance*" issued by UNHCR, the Presidency has therefore removed the entire reference to UNHCR in the operative part of the text and moved it to a new Recital (19a).

72 **DE:** reservation, delete and replace with the following: "*It shall be up to the determining authority to assess the various information*".**NL:** this provision could be placed in a recital.**IT:** include the last sentence in the main body of para (3) (comment valid for all similar articles).

Article 8

Internal protection <u>alternative</u>

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[73] **[…]examine if** an applicant is not in need of international protection **[…]because** 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.[74]

2. **[…]**

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[73] **IE, IT, SK**: reservation. The examination for internal protection has to remain optional in order to ensure that requests are assessed according to their own characteristics ("*may*" instead of "*shall*"). **PRES:** in order to achieve further harmonization this should not be a "*may*" provision since it might lead to more secondary movements from one MS to the other (e.g. MS A applies internal protection alternative to Iraqis while MS B does not).**COM:** the assessment of the internal protection alternative has been identified as one of the main reasons of the different recognition rates; therefore, from a policy and legal perspective, "*shall*" is an adequate choice.

[74] **DE:** reservation regarding the order of examination established in para (1), it should be reversed.**COM:** this would have bad effects on the assessment of the need for international protection.

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 authorit**y**~~ies~~ 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 authorit**y […]** shall **[…] take into account** precise and up-to-date information **[…]** 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]**[…]**.[75]

This is without prejudice to the competence of the determining authority to decide on applications for international protection.[76]

4. **[…]** **When considering whether it is reasonable to apply the internal protection alternative, the determining authority shall take into account:**

(a) 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; and

(b) the personal circumstances of the applicant **in relation to factors such as** health, age, gender, **[…] including** gender identity, and **[…] sexual orientation.**

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[75] **SE:** scrutiny reservation. **PRES:** see explanations related to Art. 7 (3).

[76] **DE**: reservation.

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 **[…]**, 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, **[…]** 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, **membership of** a group **[…]**:

– **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

– **[…] 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, **[…]that** concept **[…]may** include **membership of** a group based on a common characteristic of sexual orientation **[…].[…]**[77]**. G**ender**-**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; [78]

(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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77 **PRES:** this phrase was deleted since it is superfluous: acts such as statutory rape and paedophilia would fall under the exclusion grounds.

78 **DE**: scrutiny reservation (also on recital (28a)); clarification needed whether MS are allowed to further specify in national law the ground for persecution of social groups by referring to categories which are in any case social groups.**NL:** clarify in recitals that "*political convictions*" fall under "*identity*"; keep the deleted sentence or put it in a recital ("*Acts considered to be criminal in accordance with the national law of the Member State responsible for examining the applicatio*n *for international protection shall not be considered to fall under sexual orientation*"). **SK:** keep the deleted sentence or put it in a recital. **PRES:** the wording was changed here in view of Member States' comments that the wording of the QD was more accurate.

2. When assessing if an applicant has a well-founded fear of being persecuted it is**[…]irrelevant** 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.

3. When assessing if an applicant has a well-founded fear of being persecuted, the determining authority cannot reasonably expect an applicant to**[…]adapt or change his or her behaviour, convictions or identity,** or **to** abstain from certain practices, where **[…] these** are inherent to his or her identity, to avoid the risk of persecution in his or her country of origin**.**

Article 11

Cessation[79]

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[80]himself or herself of the protection of the country of nationality;

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79 **AT**: scrutiny reservation. **IT**: this article is linked with Art. 8 and 14. Review creates administrative burden; establish a time-limit after which review cannot take place.

80 **CZ**: scrutiny reservation, unclear what the term "*re-availed*" means in practice.**AT:** add "*travelled to or*" before "*re-availed*" (also for letter (d)) because a person shall cease to be e refugee when travelling back to the country of origin or clarify in a recital that if a person travels back to the CoO, this should be taken into account when assessing the cessation grounds (comment valid also for Art. 17). **PRES:** the wording in this text mirrors that of the Geneva Convention. No changes should be made to wording that is already present and agreed upon in international law. The UNHCR Guidelines entitled 'The Cessation Clauses: Guidelines on their Application' (April 1999) (p. 2-3) clarify that merely travelling back is not tantamount to re-availing oneself of the protection of the country of origin. The beneficiary must voluntarily contact the authorities of country of origin with the motive of obtaining their protection. See http://www.refworld.org/pdfid/3c06138c4.pdf **COM:** the suggestion by AT extends the grounds for cessation as provided for by Geneva Convention.

(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;

(d) the person has voluntarily re-established[81] himself or herself in the country which he or she left or outside which he or she remained owing to fear of persecution;[82]

(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. **[…] In order to assess whether** points (e) and (f) of paragraph 1 apply, the determining authority **shall:**

(**b[*former a*]**) **[…]** 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;

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[81] **CZ**: scrutiny reservation, unclear what the term "*re-established*" means in practice.

[82] **AT:** a person returning voluntarily should cease to be a refugee. **PRES:** this text cannot be amended in this way because it was taken from the Geneva Convention.

(**a[*former b*]**) **[…]take into account** precise and up-to-date information 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]**[…]**.[83]

This is without prejudice to the competence of the determining authority to decide on applications for international protection.[84]

Article 12

Exclusion[85]

1. A third-country national or a stateless person shall be excluded from being a refugee if:

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[83] **SE:** scrutiny reservation on the removal of the reference to UNHCR (comment also valid for Art. 17). **PRES:** see explanations for Art. 7(3) and 8(3). The corresponding recital in this case is (40a). The reasoning behind the change in the word order is that chronologically the determining authority should first take into account the available information and then 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.

[84] **DE:** reservation, delete and replace with the following: "*It shall be up to the determining authority to assess the various information*".

[85] **AT**: reservation on the whole article. Further grounds for exclusion are necessary due to new challenges to security; repeated crimes or serious crimes that may constitute a danger to the security, community, social peace or individuals of a MS must be considered. Thus, add following text: "*(d) there are reasonable grounds for regarding him or her as a danger to the security, to the community, the social peace or individuals of the Member State in which he or she is present; (e) he or she, having been convicted by a final judgment of a serious crime or repeated crimes that may constitute a danger to the security, to the community, the social peace or individuals of the Member State in which he or she is present.*"
PRES: the exclusion grounds listed here are the same as the ones in the Geneva Convention, albeit with a number of minor changes. As far as possible, text that has already been agreed upon in international law should be maintained.

(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 **[…]**.

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 his/her area of operation, 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 living conditions in accordance with their mandate.

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 to his or her admission as a refugee, which means the time of **[…]** granting of refugee status; particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes;[86]

(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 shall apply to persons who incite or otherwise participate in the commission of the crimes or acts mentioned therein.

4. **[…]**

5. **[…]**[87]

6. The exclusion of a person from refugee status shall depend exclusively on whether the conditions set out in paragraphs (1) to (**3[…]**) are met and shall not be subject to any additional proportionality assessment in relation to the particular case.

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86 **FI, SE**: scrutiny reservation. **PRES:** in view of the discrepancy in timing between the granting of refugee status and the actual issuance of a residence permit we suggest the deletion of this part of the text.

87 **DE:** scrutiny reservation on the deletion of para (5). **PRES:** this point has been deleted and moved to recitals (30a)-(30c), where the wording was amended to reflect the recent Lounani judgement (C-573/14). It should also be noted that terrorist acts would fall under exclusion grounds mentioned in para 2(b) or (c).**CLS:** the Lounani judgement represents a complete change of case-law as it allows more leeway for MS to exclude a person from refugee status if that person is somehow connected to a terrorist group (even if that person has not committed a terrorist act). The case-law of the ECJ is reflected in the recitals and Art. 12 is based only on the Geneva Convention and on QD. **COM:** in Lounani the Court extended the scope of Article 12 (2) (c) by stating that participation is enough.

CHAPTER IV

REFUGEE STATUS

Article 13

Granting of refugee status[88]

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

[…]Withdrawal of refugee status[89]

1. The determining authority shall[90] **[…]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;

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88 **DE:** add the following text: "*Member States may decide in accordance with their national law to grant the refugee status to the family members of the beneficiary who are present in the Member State.*"

89 **DE:** scrutiny reservation. **PRES:** the new wording in the title is based on the definition of withdrawal of international protection found in Article 2 of this Regulation. The term "*withdrawal*" should always be seen in the context of the definition in this Regulation and would cover both ex-nunc and ex-tunc cases.

90 **ES:** reservation on "*shall*". **PRES:** as reiterated by the CLS on various occasions, a Regulation should contain a minimum number of "*may*" provisions. The withdrawal of refugee status cannot be a "*may*" provision since it would not lead to harmonisation.

(b) he or she should have been or is excluded from being a refugee in accordance with Article 12;

(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 **[…]national** security **[…]**;[91]

[91] **EL:** reservation on the deletion (comment valid also for point (e)). **FR**: there is a need to further emphasise the need to exchange information (comment valid for points (d) and (e)).**AT:** add "*to the community, the social peace or individuals*" after "*to the security*". **NL:** reservation; the result of the preliminary rulings currently pending should be taken into account. **PRES:** requests were expressed to reword this point to include *"a danger to the security of any Member State"*. However, besides the practical difficulties that this would entail (a MS would need to check with all the other MS whether someone is a danger to their security), the text does not preclude a MS which receives a security notification from another MS, from applying this provision on the basis that the beneficiary would also represent a danger to the security of the MS where he or she is present (e.g. terrorist threat). The new text as proposed by the Presidency removes any reference to the Member State where he or she is present, thus making it easier to apply this provision in case a beneficiary is a threat to the security of another Member State, without placing an added administrative burden on national authorities. There is no need to extend the operational provision to other MS as the case law of the ECJ confirms that MS retain a certain discretion with regard to the notions of public order and public security and that they are allowed to define these, subject to the control of the Court, in accordance with national needs. In addition, the case law of the Court confirms that "*national security*" encompasses not only the notion of "*internal security*" but also "*external security*" and that the latter concept allows a MS to take into account its relations with third countries (Case C-367/89 Richardt, para. 22; Case C- 83/94 Leifer, para. 26; Case C- 285/98 Kreil, para. 17). This means that a MS is already under the current acquis allowed to take into account information received from another MS to determine in individual cases, whether a third state national or stateless person poses a risk to its national security, but is not obliged to do so. In order to ensure more clarity in the text the wording has been changed from "*danger to security*" to "*danger to national security*".

(e) he or she, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community **[…]**;[92]

(f) Article 23(2) is applied.[93]

2. In situations referred to in points (d) to (f) of Article 14(1) the determining authority may decide not to grant refugee status if a decision on the application has not yet been taken.[94]

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 **that examined their application or granted them refugee status**.[95]

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92 **FI**: scrutiny reservation. **AT**: see comment regarding Art. 12; 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* constitute~~s~~ a danger to *the security, to the community, the social peace or individuals* ~~the community~~ of the Member State in which he or she is present;"; unclear what "*particularly serious crime*" means. **EL:** QD drafting is preferable because more clear. **COM:** the notion comes from QD and Geneva Convention. **PRES:** see the explanation in the previous footnote. **NL:** no definition for "*danger to the community*" (comment valid also for Art. 18 (1)(d)). **COM:** MS should assess what "*danger to a community*" represents; they enjoy discretion.

93 **FI**: scrutiny reservation, the principle of non-refoulement is unconditional in the Constitution of Finland. **SE**: scrutiny reservation on (d), (e) and (f) as long as scrutiny reservation remains for Article 12.

94 **EL:** reservation, unclear if this is a form of exclusion. **PRES:** It is not a ground for exclusion, as these are limited to the ones stated in the Geneva Convention. It is a complementary ground on the basis of which Member States may refuse to grant status. Member States may decide whether or not they wish to apply this provision as it is a 'may' clause.**CZ, FI, SE:** scrutiny reservation. **DE:** reservation, delete "*if a decision on the application has not yet been taken*". **PRES:** this text was moved from Article 14(2), since its inclusion in that article seemed to imply that this is a new exclusion ground. The order of the articles is also more logical since the text now outlines in chronological order the granting, non-granting and finally the withdrawal of protection. This provision is already in the acquis. Indeed, some Member States already make use of the corresponding provision in the Qualification Directive. Since this is a may provision it is up to each and every Member State to decide on whether to apply this provision or not. Deleting this provision would mean that those Member States which wish to continue making use of this provision would not be able to do so.

95 **FI, SE**: scrutiny reservation. **PRES:** the term *"responsible"* has been replaced with more appropriate wording. It should also be noted that in the new wording "*or*" cannot be replaced with "*and*" since you might have cases where protection was not granted.

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**,**[…]should have […]** never been **granted** refugee **status, or should no longer be a beneficiary of refugee status**[96] for the reasons set out in paragraph 1 of this Article.

5. **[…]**[97]

Article 15

Review of refugee status [98]

For the purpose of […] Article 14(1)**(a)**[99]**[…]**the determining authority shall[100] review the refugee status **[…] where available**[101] common analysis **[…] 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[102] in the country of origin which is relevant for the protection needs of the **[…] refugee**. **This is without prejudice to the possibility to review the refugee status on the basis of national and international sources, or on other grounds as deemed appropriate by the determining authority.**

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96 **PRES:** this new wording was added to ensure that this sub-article refers to all the scenarios where the status can be withdrawn: cessation (Art. 14(1)(a)), exclusion (Art. 14(1)(b)), or the person is no longer deserving of the status (Art. 14(1)((c)-(f)).

97 **IT:** would like to retain the concept of grace period of the last sub-para of para (5). **DE:** opposes reinstating the deleted para as a recital.

98 **IE, DE, SE**: scrutiny reservation. **FR:** concern over the binding nature of EASO guidelines. **AT**: MS must always be allowed to review the status periodically. The review should be connected to the period of validity of residence permits. **DE:** unclear if MS can continue to have periodical reviews of the refugee status, hence scrutiny reservation on the deletion of point (b). **PRES:** yes a MS can have a practice whereby periodic reviews of the refugee status take place.

99 **PRES:** point (a) was added in order to further clarify that this only applies for this specific withdrawal ground.

100 **BG,ES:** reservation on *"shall"*, "*may*" provision instead. **SE:** keep "*in particular*".

101 **DE:** delete "*where available*" because it is unnecessary (comment also valid for Art. 21(1)).

102 **DE**: clarify "*significant change*".

(b) **[…]**[103]

CHAPTER V

QUALIFICATION FOR SUBSIDIARY PROTECTION

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 beneficiary of subsidiary protection status** shall cease to be eligible for subsidiary protection when the circumstances which led to the granting of **[…] this** status have ceased to exist or have changed to such a degree that protection is no longer required.

2. **In order to assess whether 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, […] t**he determining authority **shall**:

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[103] **DE:** scrutiny reservation on this deletion.

(**b[…]**) **[…]** have regard **to** whether the change in circumstances is of such a significant and non-temporary nature that the **[…] beneficiary of** subsidiary protection **status** no longer faces a real risk of serious harm;

(**a[…]**) **[…] take into account** precise and up-to-date information 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]**[…]**.

This is without prejudice to the competence of the determining authority to decide on applications for international protection.[104]

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.

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;

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[104] **DE:** reservation, delete or redraft as follows: "*It shall be up to the determining authority to assess the various information*". **PRES:** see explanation in Article 11(2)(a).

(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 **[…]national** security **[…]**;[105]

(e) **[…]**.[106]

2. **[…]**Paragraph 1 shall apply to persons who incite or otherwise participate in the commission of the crimes or acts mentioned therein.

2a. 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.

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[105] **AT:** same comments as for Art. 12, add "*to the community, the social peace or individuals*" after "*danger*". **DE, EL,FI, SE:** scrutiny reservation on (1) (d). **PRES:** same explanation as in relation to Art. 14.

[106] **AT:** scrutiny reservation on the deletion of point (e).**CZ, SK:** reservation on the deletion of point (e). **AT, CY, IE:** scrutiny reservation on the deletion of para (2a) (text proposed by PRES, cf. 7421/17). **DE:** reservation on the deletion of para (2a) (text proposed by PRES, cf. 7421/17).

CHAPTER VI

SUBSIDIARY PROTECTION STATUS

Article 19

Granting of subsidiary protection status[107]

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

Article 20

[…]Withdrawal of subsidiary protection status[108]

1. The determining authority shall **[…] 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;

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107 **DE:** add the following text: "*MS may decide in accordance with their national law to grant the subsidiary protection status to the family members of the beneficiary who are present in the MS.*"

108 **DE,FI**: scrutiny reservation. **AT, ES**: same comments as for Art. 14. **SK**: unclear whether it is possible to keep national legislation concerning refusal to renew the subsidiary protection status. The drafting in QD is preferable as it reflects better the temporary character of subsidiary protection.

(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;[109]

(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.[110]

2. 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 or her disposal, **[…] the determining authority** which has granted subsidiary protection status shall, on an individual basis, demonstrate that the person concerned has ceased to be **[…]eligible** for **subsidiary protection or should have never been granted** subsidiary protection **status** in accordance with paragraph 1 of this Article.[111]

3. **[…]**[112]

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109 **SE**: scrutiny reservation regarding (b) and (d) as long as scrutiny reservation remains for Art. 18.

110 **FI**: scrutiny reservation on (1)(d),the principle of non-refoulement is unconditional in the Constitution of Finland.

111 **SE**: scrutiny reservation.

112 **EL:** unclear if the second para of Art. 20(3) (deleted) will be replaced by another provision (text proposed by PRES, cf. 7421/17).

Article 21

Review of the subsidiary protection status[113]

[…]For the purpose of Article 20(1)**(a)**[114], the determining authority shall review the subsidiary protection status**, […] where available** common analysis **[…] 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 **[…] beneficiary of subsidiary protection status. This is without prejudice to the possibility to review the subsidiary protection status on the basis of national and international sources, or on other grounds as deemed appropriate by the determining authority.**[115]

(b) **[…]**[116]

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113 **SE:** reservation. **AT, BG, DE, ES, FR, IE, SE**: see comments on Art. 15. **PRES:** changes in order to make the text clearer. The review of cases should not be a 'may' provision as this would not lead to harmonization. However, to avoid administrative burden the obligation to review the status only applies when the common analysis and guidance notes published by EUAA highlight a significant change in the country of origin. The proposed wording leaves ample flexibility for MS to also make a review on the basis of national and international sources, as well as on other appropriate grounds (e.g. beneficiary sentenced by a Court for breaking the law).

114 **PRES:** see note in Article 15.

115 **FR, IE:** same suggestions as for Art. 15. **PRES:** see explanation related to Art. 15. **DE:** unclear if it is possible to perform a review periodically. **PRES:** yes, a MS can have a practice whereby periodic reviews of the status take place

116 **DE:** scrutiny reservation on the deletion.

CHAPTER VII

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

SECTION I

COMMON PROVISIONS

Article 22

General rules[117]

1. Refugees and **[…] beneficiaries of** subsidiary protection status shall have the rights and obligations laid down in this Chapter. This **[…]** shall be without prejudice to the rights and obligations laid down in the Geneva Convention.

2. **[…]**

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117 **BG**: scrutiny reservation, especially for social security issues.

3. **[…]Beneficiaries of international protection shall have access to rights related to information, free movement within the Member State that granted them protection, movement within the Union, employment, and access to integration measures, and equal treatment as regards education, recognition of qualification and validation of skills,**[118] **social security, social assistance, health care and access to accommodation once international protection is granted**.[119]**Access to these rights shall be provided in accordance with the provisions of this Chapter.**

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[118] **IE:** insert a full stop and amend the rest of the text as follows: "*Access to social security, health care, access to accommodation and access to integration measures once international protection is granted shall require prior issuance of residence permits*." **COM:** if a residence permit is issued later than 60 days, during that period there would be no access to rights if there is a link with the residence permit.

[119] **ES, FI, FR, SE**: scrutiny reservation. **IE, NL:** reservation on the inclusion of "*social security*" for which there is no agreed definition. **DE:** reservation, delete para (3), it is unnecessary and confusing. Para (1) is sufficient. Opposition to explicitly listing various rights, because it is unclear whether this will lead to unintended legal consequences. Processing time needs to be taken into account. **FI** : the meaning is unclear. **PRES:** it should be noted that the rights listed in para (3) all emanate from the fact that the applicant has been granted international protection , not the fact that he has been issued a residence permit.. This reflects the principle stated in Case C-373/13: "*As those rights conferred on refugees result from the granting of refugee status and not from the issue of the residence permit, the refugee, as long as he holds that status, must benefit from the rights guaranteed to him by Directive 2004/83 and they may be limited only in accordance with the conditions set by Chapter VII of that directive.*" However, the Article has now been amended to make it clear which of these rights are equal treatment rights. In the case of these rights, if a national/third country national requires a residence permit to have access to any of these rights, the same would apply for a beneficiary. Furthermore, it has been clarified that access to these rights is provided in accordance with the specific provisions of this Chapter.

4. **[…]**<u>**Where, during the assessment by the determining authority referred to in Article 4 (3) or following an individual evaluation, it is established that a** person</u>**[…]has** special needs, such as **a** minor**[...]**, **an** unaccompanied minor**[…]**, **[…]a person with a disability**, **[…]an elderly person**, **a** pregnant **[…] woman**, **a** single parent**[…]** with **a** minor child**[…]**, **a** victim**[…]** of **[…]** trafficking **in human beings**, **a person with a serious illness**, **a** person**[…]** with **a** mental disorder**[…]** and **a** person**[…]** who has**[…]** been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, **such a person shall be entitled to have his or her specific situation[…]** taken into account **in the application of the provisions of this Chapter[…]**.[120]

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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[120] **NL:** the provision is too detailed for a Regulation; in favour of deletion. **FR:** reservation, delete the initial words "*Where an individual evaluation establishes that*" as they could be interpreted as if a new evaluation is necessary. **SE:** scrutiny reservation, include a definition of specific needs in a recital and redraft para (4) as follows: "*Persons with specific needs shall be entitles to have his or her specific situation taken into account in the application of the provisions of this Chapter*."; clarify that it does not add any further obligation. **PRES:** the wording in this text has been aligned with that of the RCD by adding "*a person with serious illness*". The proposed wording does not imply that a new evaluation needs to be carried out. As explained by the Presidency at the last AWP if an evaluation has already been made at a previous stage there is no need to do a new one (in most cases this would have already been done during the asylum procedure). Since in the QR we do not have any definition of "*persons with special needs*", there is the need to have such a non-exhaustive list. The fact that the text states "*have his or her specific situation taken into account"* does not mean that a vulnerable person would get extra benefits other then the ones already present in this Chapter. **DE:** delete para (4). **EL:** add the list in the definitions. **PRES:** a definition of a "*person who has special needs"* is not considered necessary in the Qualification Regulation, since this notion is only mentioned twice in this Regulation (in Articles 22(4) and 35(2)) and these two sub-articles have been aligned with each other.

Article 23

Protection from refoulement[121]

1. **[…]The principle of non-refoulement shall be respected in accordance with Union and international law**[122]**.**

2. Where not prohibited by the **[…]** obligations referred to in **the previous** paragraph**[…]**, **a […] third country national or stateless person falling within the scope of this Regulation**[123]may be refouled[124]**[…] provided that**:

   (a) there are reasonable grounds for considering him or her as a danger to **[…]national** security […];[125] **or**

   (b) he or she, having been convicted by a final judgment of a particularly serious crime constitutes a danger to the community**[…]**[126].

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121 **DE:** scrutiny reservation on (1) and (2); a reference to the security of other MS should be made - this is relevant if such a person travels from one MS to the other. **PRES:** see comment on Articles 14 and 18.

122 **PRES:** the wording has been amended to ensure that the text is clearer.

123 **SE:** scrutiny reservation on added text. ". **PRES:** the new wording in Art. 23 (2) has been added in order to make it abundantly clear that this applies to third country nationals or stateless persons who fall under this Regulation (i.e. to limit the scope).

124 **HU**: replace "*refouled*" by "*returned*" or "*expelled*". **FI**: scrutiny reservation; the principle of non-refoulement is unconditional in the Constitution of Finland.

125 **DE, SE:** scrutiny reservation.

126 **SE:** scrutiny reservation.

[…].[127]

Article 24

Information[128]

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 **international protection […]** has been granted. That information **[, as specified in Annex II**[129]**,]** 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 […]** on movement within the Union.[130]

[…]

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127 **PRES:** the wording in Article 23 has been amended to ensure that the text is clearer and to avoid regulating paragraph 2 twice (the same provision is already found in the respective Articles dealing with withdrawal of international protection). The new wording in 23 (2) has been added in order to make it abundantly clear that this applies to third country nationals or stateless persons who fall under this Regulation (i.e. to limit the scope). **CLS:** for this Article the following aspects should be kept in mind: no reference should be made to "*international obligations*" because the principle of non-refoulement is contained in the EU primary law; the drafting should be appropriate for a Regulation (no reference to MS); the exceptions should be clarified (the reference to the security of another MS should be put in a recital in order not to create a new obligation).

128 **SE:** scrutiny reservation.

129 **CZ,IE:** scrutiny reservation.

130 **PL,** supported by **CZ:** rules on provision of information should be more flexible, leaving MS more room for manoeuvre.

Article 25

Maintaining family unity[131]

1. **Without prejudice to paragraphs 3 and 4, f**amily members of a beneficiary of international protection who do not individually qualify[132]for such protection shall be entitled to[133]**[…]**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.

2. A residence permit issued pursuant to paragraph 1 shall have the **same[…]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[134] not extend beyond the date of expiry of the residence permit held by the beneficiary of international protection.

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131 **DE**: reservation related to national legislation.**FI, SE**: scrutiny reservation. **AT, BG, CZ, DE, IE, SK**: 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? **CZ:** redraft as follows (red line for this delegation)"*Family members of a beneficiary of international protection present on the territory of the Member State who do not individually qualify for such protection shall be entitled to a residence permit in the Member State that granted international protection to the beneficiary in accordance with national procedures.*".

132 **PRES:** the wording "*apply or*" was deleted because it was opposed by several MS.

133 **BG:** reservation, redraft as follows: "*entitled to apply for*". **PRES:** The provision has been amended to state "without prejudice to paragraphs 3 and 4" to emphasise that the entitlement does not mean that permits are automatically granted to family members. MS should nevertheless conduct checks to confirm whether they should refuse to issue permits in cases of exclusion (25(3)) and where reasons of national security or public order so require (25(4)). **NL:** reservation, redraft as follows: "*Family members of a beneficiary of international protection who are entitled to a residence permit but do not individually qualify for international protection, shall be treated in the Member State that granted international protection to the family member treated in accordance with this Article and with national procedures and insofar as this is compatible with the personal legal status of the family member*"

134 **DE:** reservation regarding "*in principle*".

3. No residence permit shall be issued **under this Article […] to** a family member **[…] who** is or would be excluded from international protection pursuant to Chapters III and V.[135]

4. Where reasons of national security or public order so require, a residence permit shall not be issued **[…] to** a family member**,** and such residence permits which have already been issued shall be withdrawn or shall not be renewed.

5. Family members who are issued a residence permit pursuant to paragraph 1 shall be entitled to the rights referred to in Articles 2**8[…]** to **35 and 37 to** 39[136].

6. **[…]**[137]

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135 **PRES:** the residence permit issued to family members of a beneficiary who do not qualify should have the exact same validity period as that of the beneficiary since the only reason why the residence permit is being issued is to ensure family unity with the beneficiary. The current text does not preclude the possibility of issuing a residence permit to family members on the basis of other regulations or national law. Adding new grounds for not issuing a residence permit would be problematic since in this case family members were not granted international protection.

136 **CZ:** not all of the rights the beneficiaries of international protection are entitled for should be available for their family members. 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 a third-country citizen or stateless person; are MS allowed to verify whether the conditions provided in Art. 7 (1) of Directive 2003/86/EC are met if the application for the residency for the family member is submitted after 3 months since granting the international protection for the applicant? **DE:** scrutiny reservation, if family members do not have their own travel documents, they might make applications just to get such documents and hence increase the workload.

137 **EL:** reservation, deletion not acceptable. **DE:** scrutiny reservation on the deletion. **PRES**: MS may still apply this provision. It is reflected in Recital 16b.

SECTION II

RIGHTS AND OBLIGATIONS RELATED TO RESIDENCE AND STAY

Article 26

Residence permits[138]

1. **As soon as possible after international protection has been granted, and within 90 days from the notification of the decision at the latest,[…]** 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:[…]**[139]

[a) For beneficiaries of refugee status, th**at[…]** residence permit shall have a period of validity**[…] between** three **and five** years**, as determined by national law,** and **shall** be renewable **[…]**.[140]

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138 **FR, NL**: reservation. **FI, IE, SK**: scrutiny reservation. **SE**: reservation, a temporary permit has major negative consequences for integration prospects and costs relating to renewal and litigation. Therefore, a permanent residence permit should be granted.**HU:** scrutiny reservation because it currently does not issue residence permits; this would constitute a major change; the proposed validity periods could still cause asylum shopping.

139 **PRES:** in view of the concerns raised by some MS, the time limit has now been extended to 90 days. However, MS should ensure that in the interim period between the granting of international protection and the issuance of a residence permit a beneficiary has effective access to the rights indicated in Article 22 (3). To this effect a new recital (37b) has been included in the text. **DE,** supported by **IE**: scrutiny reservation linked to Art. 22(3); a maximum validity period should be defined for the first renewal. **FR**: add the following sentence at the end of the first sub-para: "*A temporary document shall be issued immediately to the beneficiary of protection awaiting the issuance of the residence permit.*" **EL, FI:** reservation on the proposed validity periods. **EL, NL:** 5 years for both categories.

140 **IT**: 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*". **FR:** for refugees the validity of the residence permit should be between five and ten years, renewable afterwards. **ES:** not enough harmonisation; if full harmonisation is not an option and in order to answer to certain MS concerns, the drafting could be as follows: "*at least, three and five years*".

b) For beneficiaries of subsidiary protection status, th**at[…]** residence permit shall have a period of validity **[…]between** one **and three** year**s, as determined by national law,** and **shall** be renewable **[…]**[141]**]**

2. A residence permit shall not be renewed or shall be revoked[142] **[…] where**:

a) **[…]** competent authorities **[…] withdraw** the refugee status **[…]** in accordance with Article 14 **[…] or** the subsidiary protection status in accordance with Article 20;[143]

b) **[…]**Article 23(2) is applied;

c) where reasons of national security or public order so require.[144]

3. **[…]**[145]

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141 **FR:** for beneficiaries of subsidiary protection, the validity of the residence permit should be between one and five years, renewable afterwards. **AT, DE:** scrutiny reservation on the extension of the validity period for subsidiary protection. **PRES:** the wording proposed by the Presidency only stipulates the validity period of the first residence permit to be issued to a beneficiary. This does not preclude the possibility of issuing a permanent residence permit when renewing for the first time (recital (37a) has been added to this effect). **DE:** scrutiny reservation on the deletion of para (1a) (text proposed by PRES, cf. 7421/17); unclear if such a review can still be done at national level.

142 **DE:** scrutiny reservation on the term "*shall*".

143 **SE:** reservation linked to Art. 14 and Art . 20 (b) and (d).

144 **AT, CZ, SE:** scrutiny reservation. **FI:** reservation (unless this becomes a "*may*" provision). **PRES:** Article 26(2)(c) was reinstated upon the request of several Member States.

145 **EL, IT:** reservation on the deletion.

Article 27

Travel document[146]

1. **Unless compelling reasons of national security or public order so require**, 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[147][148]. Those travel documents shall be valid for at least one year.

2. **Unless compelling reasons of national security or public order so require**, 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. **[…]**

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146 **BG, FI, SE**: scrutiny reservation. **IE:** reservation. **PRES:** the text has been reworded to more closely reflect Article 28 of the Geneva Convention: "*The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory,* ***unless compelling reasons of national security or public order otherwise require***..." This amendment was introduced in order to address the FI reservation.

147 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).

148 **IE:** does not participate in Regulation 2252/2004 and is not bound by it.

Article 28

Freedom of movement within the Member State[149]

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.[150]

2. Within the limits set by international obligations, residence conditions may be imposed on a beneficiary of international protection **[…]** where those residence conditions are necessary to facilitate the integration of the beneficiary in the Member State that has granted **[…]him or her international** protection.[151]

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149 **SE:** scrutiny reservation.

150 **NL**: scrutiny reservation.

151 **DE**: scrutiny reservation on para (2). The beneficiary's lasting integration into society should be the only purpose for assigning a certain place of residence. **PRES:** para (2) is a "*may*" provision. Thus, there is no obligation for a MS to place any residence conditions on a beneficiary. Moreover, para (2) clearly states that this can only be done within the limits set by international obligations (i.e. in full respect of the Geneva Convention). Furthermore, considering the views expressed by MS, the Presidency has aligned Article 28(2) more closely with the Court's judgment in Case C-443/14 (*Alo*).

Article 29

Movement within the Union[152]

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 **an**other Member State**[…] pursuant to that Member State's national law or** pursuant to relevant provisions of Union **law[…]or of international[…] agreements, […]or** their right to move freely in accordance with the conditions of Article 21 of the Convention Implementing the Schengen Agreement.[153]

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[152] **ES**: 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 before agreement is achieved on this issue.

[153] **HU**: the scope of the Dublin Regulation would be extended to beneficiaries of international protection; reservation on the second sentence of this Article.

[2. Where a beneficiary is found in a Member State other **than** the one **[…] which granted** him or her **[…]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 […]**, 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.][154]

[154] **DE, FR, RO:** scrutiny reservation. **BG, CY, EL, ES, IT, SK**: reservation. **BG, IT, EL**: 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. **NL:** the relation with Art. 6 (2) of the Return Directive is unclear. **CY, ES**: 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. **PRES:** the two paragraphs are not in contradiction. Para (1) states the right to a beneficiary to move freely within the Union in accordance with the conditions of Article 21 of the Convention Implementing the Schengen Agreement and to the possibility of applying and being admitted to reside in another MS. On the other hand, para (2) states the repercussions if a beneficiary is found in another MS without a right to stay there (e.g. overstayed the 90 day timeframe in a 180 day period as indicated in Schengen Borders code).

SECTION III

RIGHTS RELATED TO INTEGRATION[155]

Article 30

Access to employment[156]

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[157], immediately after protection has been granted.[158]

2. Beneficiaries of international protection shall enjoy equal treatment with nationals of the Member State that has granted **them international** protection as regards: [159]

   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;

   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.

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155 **BG,ES, FI**: scrutiny reservation on Section III

156 **EL, SE**: scrutiny reservation.

157 **RO**: a definition of "public service" is needed.

158 **EL**: clarify the situation where the residence permit is revoked but the status not, unclear 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.

159 **DE**: scrutiny reservation on para 2.

3. Competent authorities, where necessary shall **endeavour to** facilitate the full access to the activities referred to in **points (c) and (d) of** paragraph (2).[160]

Article 31

Access to education[161]

1. Minors granted international protection shall **enjoy equal treatment with nationals of the Member State that has granted them international protection with regard to[…]** access to the education system **[…]**.

2. Adults granted international protection shall **as a minimum enjoy equal treatment with third country nationals legally resident in the Member State that has granted them international protection and who are in a comparable situation, with regard to[…]** access to the general education system, further training or retraining […].[162]

The Member State concerned may restrict equal treatment as regards study and maintenance grants and loans, or other grants and loans regarding secondary and higher education and vocational training[163]**.**

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160 **PRES:** in view of concerns expressed by MS the text is now the same as the current Qualification Directive.

161 **NL, SE:** scrutiny reservation.

162 **SE:** unclear if study grants shall be considered to fall under "*the general education system*". **AT:** add para (3) as follows: *"Paragraph 1 shall not apply to financial benefits from the Member States which are granted to promote education."* **RO:** reservation, the provisions limit the access to education for adults granted international protection, by providing similar rights with the third-country nationals legally resident in MS. Moreover, the proposal is not consistent because for the access to employment, the conditions are the same as for the citizens of the MS. Redraft as follows: „*Adults granted international protection shall have access to the general education system, further training or retraining, at least under the same conditions as third-country nationals legally resident in the Member State that has granted them international protection who are in a comparable situation*". **DE:** add a recital as follows: "*This Regulation does not apply to financial benefits from the Member States which are granted to promote education*". **PRES:** in view of concerns expressed by Member States, the possibility to restrict equal treatment has been introduced. The wording is taken from Article 14(2) of the Blue Card Directive.

163 **AT, BE, DE, EL, ES, FI, NL, SE:** scrutiny reservation.

Article 32

Access to procedures for recognition of qualifications and validation of skills[164]

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 **existing** 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.[165][166]

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 **and existing** schemes for the assessment, validation and **[…] recognition** of their prior learning **outcomes** and experience.

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164 **EL, SE**: scrutiny reservation. **FR**: reservation.

165 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).

166 **AT**: reservation. **DE**: scrutiny reservation. **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. **PRES:** this refers only to letting beneficiaries into the procedure and not recognising their diplomas, certificates etc. In this sense, "*existing*" has been added to make it clear that Member States do not have any obligation to create new procedures or schemes, but simply to give access if these schemes already exist.

Article 33

Social security

[…]

Article 34

Social security and social[…] assistance[167]

1. Beneficiaries of international protection shall enjoy equal treatment[168] with nationals of the Member State that has granted **them international** protection as regards social **security and social** assistance.

   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)**.

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[167] **BE,DE, EL, FR, IE, LT, FI:** scrutiny reservation. **DE**: former Art. 33 restricts Art. 24 of the Geneva Convention. 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 (...).*"**IE:** no agreed definition of "*social assistance*". **DE, HU**: 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. **COM**: it is considered as implied; social assistance is given upon request.**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).

[168] **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)? **PRES:** the point of comparison is the national who is in a comparable situation in accordance with the principle of proportionality. .

2. **Notwithstanding paragraph 1, for** beneficiaries of subsidiary protection status**,[…] the provision of equal treatment as regards** social assistance **may belimited** to core benefits.[169]

Article 35

Healthcare[170]

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

2. Beneficiaries of international protection who have special needs, such as pregnant women, **persons with a disability[…]**, persons who have**[…]been subjected to** 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.[171]

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169 **DE**: prefers "*without prejudice*" instead of "*notwithstanding*". 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. **ES, NL**: reservation on the differentiation made between both statuses. **AT:** reservation. It should be possible that the treatment of beneficiaries of subsidiary protection status regarding social security and social assistance can be limited to core benefits.**COM**: we cannot extend the "*may*" clause to both statuses due to international law (Geneva Convention); therefore, the *status quo* is kept. **PRES:** special non-contributory cash benefits no longer fall under social security but would now be part of social assistance, which in the case of beneficiaries of subsidiary protection status can be limited to core benefits as defined in the recitals. During the AWP, it was explained that MS would need to check on a case by case basis whether special non-contributory cash benefits fall under core benefits or not.

170 **SE**: scrutiny reservation.

171 **PRES:** slight rewording in order to align with wording used in Article 22(4).

Article 36

Unaccompanied minors[172]

1. As soon as possible after international protection is granted **[…]**, competent authorities shall take the necessary measures to **[…] appoint a natural person or an organisation as** a **[…]** guardian **[…]**.[173]

   Where an organisation is appointed as 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.

   The representative referred to in Article 22(1)(b) of the [Asylum Procedures Regulation] or in Article 23(1)(b) of the [Reception Conditions Directive] shall remain responsible for the unaccompanied minor until a guardian is appointed.

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

2. The **[…]** guardian shall**:**

   a) **[…] ensure** that the minor can access all rights stemming from this Regulation**;**

   b) **where applicable, assist the unaccompanied minor in case of withdrawal of the status; and**

   c) **where applicable, assist in family tracing as provided for in paragraph 5**.

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172 **AT, BG, EL, ES, FI, FR, IE, LV, RO, SE, SI**: scrutiny reservation.

173 **HU**: clarify what is included in "*necessary measures*". **LU**: reservation on the term *"guardian"*. **DE**: in favour of keeping the term *"legal representative"*. **AT**: we distinguish between *"legal representative"* and *"guardian"*. **SE**: clarify why the wording used for the role of the *"guardian"* is different from the wording in the QD.

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.[174]

2a. The person acting as guardian shall be changed where necessary, in particular when the competent authorities consider that he or she has not adequately performed his or her tasks. Organisations or natural persons[175] **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 **[…] competent** authorities shall regularly assess the performance of the appointed guardian. **To this end Member States shall appoint entities or persons responsible 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.**

The competent authorities shall inform unaccompanied minors in an age appropriate manner and in a language they can reasonably be expected to understand about how to lodge complaints against their guardian in confidence and safety.

3. **While taking into account the best interests of the child, […]u**naccompanied minors shall be placed in one of the following ways:[176]

a) with **an** adult relative;

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174 **PRES:** deletion to ensure uniformity with RCD and APR.

175 **PRES:** deletion to ensure uniformity with RCD and APR.

176 **DE**: clarify whether the list is in order of priority. **COM**: the list is current acquis, not necessarily in order of priority.

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.

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, **[…] provided that it is in** the minor's best interest~~s~~. 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.

6. **[…].**

Article 37

Access to accommodation[177]

1. Beneficiaries of international protection shall **as a minimum** have access to accommodation under conditions equivalent to those applicable to other third-country nationals legally resident in the territor**y[…]** of the Member State**[…]that granted him or her international protection** who are in a comparable situation.[178]

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[179]

1. In order to facilitate **[…] their** integration **into society,[…]** beneficiaries of international protection **[…]** shall **be ensured […]** access to integration measures **considered appropriate**[180], provided **or facilitated** by the Member State**[…]that granted him or her international protection**, in particular language courses, civic orientation**,[…]**integration programs and vocational training **[…]**.[181]

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177 **SE:** scrutiny reservation.

178 **DE:** scrutiny reservation on para (1).

179 **SE:** scrutiny reservation.

180 **DE, IT:** unclear what "*considered appropriate*" means. **PRES:** the wording "*considered appropriate*" leaves ample flexibility for Member States to decide on what type of integration measures are appropriate for beneficiaries.

181 **ES**: equal treatment for men and women should be included. **PRES:** integration policy is a MS competence, so MS are free to introduce integration measures related to gender equality. **FR:** it should be a *"may"* clause instead. **FI:** unclear why the last part was deleted. **PRES:** the current wording does not create an obligation on MS to provide integration measures, but only to give access if such measures are provided or facilitated. The last part was deleted in order to avoid undue burden on the MS. However, there is nothing precluding MS from providing or facilitating tailor made integration measures.

2. **[…]Beneficiaries of international protection shall participate** in integration measures **where participation is made** compulsory **in the Member State that granted them international protection. Such integration measures shall be accessible and affordable**.

Article 39

Repatriation

[…]

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

[…]

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[182]

Directive 2003/109/EU is amended as follows:

1**) […] in** Article 4 **[…]**, the following paragraph **[…]** is **added […]**:

[182] **EL, ES, SE**: scrutiny reservation.

"**4 […]**.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**,[…]** national **or international** law**[…]** the period of legal stay **in the Member State that granted him or her international protection** preceding such a situation shall not be taken into account in the calculation of the period referred to in paragraph 1.[183]

By way of derogation from the first subparagraph, in exceptional cases and in accordance with their national law, Member States may provide that the calculation of the period referred to in paragraph 1 shall not be interrupted."[184]

2)**[…]** Article 26**(1) […]** is **[…] replaced by the following**:

[…]

"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(**4[…]**) **[…]** by **…**[**[…]two years**[185]after the entry into force of this Regulation] **[…]**. They shall forthwith **[…] communicate the text of those measures to** the Commission **[…]**."

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183 **DE**: scrutiny reservation, still examining the proportionality of the sanction. **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. **PRES:** the last sub-para was reinstated to provide MS with some flexibility and maintain a measure of proportionality.

184 **BE, NL:** don't agree with the possibility to derogate. **DE:** scrutiny reservation on this sub-para.

185 **DE:** two years is too long.

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 Annex **I […].**

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 [**[…] two years** from its entry into force].[186]

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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[186] **AT, DE, SE**: scrutiny reservation.