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from : Asylum Working Party

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No. Cion prop. : 13620/01 ASILE 52 - COM(2001) 510 final

Subject : Proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection

I

At its meeting on 3-4 and 16-17 October 2002, the Asylum Working Party continued its examination of the above proposal.

Delegations will find in section II below the text of the proposal, with delegations' comments in the footnotes.

Changes to 12199/02 ASILE 45 are in bold.

II

Draft

COUNCIL DIRECTIVE

on minimum standards for the qualification [...] of third country nationals and stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted

CHAPTER I

General provisions

Article 1

Subject matter and scope

The purpose of this Directive is to lay down minimum standards for the qualification [...] of third country nationals and stateless persons as refugees or as persons who otherwise need international protection **and the content of the protection granted**.

Article 2

Definitions

For the purposes of this Directive:

- (a) "International protection" consists of refugee and subsidiary protection status as defined in sub-paragraphs (d) and (f)¹;
- (b) "Geneva Convention" means the Convention relating to the status of refugees done at Geneva on 28th July 1951, as amended by the New York Protocol of 31 January 1967;

¹ E : wanted the former version as in 11356/02 ASILE 40. A "true" definition of "international protection" is needed.

- (c) “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, and a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 14 does not apply;¹
- (d) “Refugee status” means the recognition by a Member State of a third country national or a stateless person as a refugee;²
- (e) "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 [and unjustified] harm³ as defined in article 15, and to whom Article 17 **paragraph 1** does not apply, **and is unable, or owing to such fear, is unwilling to avail himself or herself of the protection of that country;**
- (f) “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;

¹ IRL/S : scrutiny reservations.

² IRL : scrutiny reservation.

³ S : avoid reference to "unjustified harm" which is an inappropriate expression and risks allowing the acceptance of "justified harm".

- (g) “Application for international protection” means a request made by a third country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status, **and who does not explicitly request another kind of protection, outside the scope of this Directive, that can be applied for separately;**
- (h) (deleted)¹
- (i) (deleted)²
- (j) "Family members" shall mean, insofar as the family already existed in the country of origin, the following members of the family of the beneficiary of refugee or subsidiary protection status who are present in the same Member State in relation to the application for international protection:

¹ **Cion** : a definition of "application for asylum" should be reinserted.

² **IRL** : scrutiny reservation on the deletion.

Cion : a definition of "application for subsidiary protection" should be reinserted.

- (i) the spouse of the beneficiary of refugee or subsidiary protection status or his or her unmarried partner in a stable relationship, where the legislation or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to aliens;
 - (ii) the minor children of the couple referred to in point (i) or of the beneficiary of refugee or subsidiary protection status, on condition that they are unmarried and dependent¹ and regardless of whether they were born in or out of wedlock or adopted as defined under the national law;
 - (iii) (deleted)²
- (k) (deleted)
- (l) "Unaccompanied minors" means third-country nationals and stateless persons below the age of eighteen, who arrive on the territory of the Member States unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person; it includes minors who are left unaccompanied after they have entered the territory of the Member States;

¹ **D/NL/S** : delete the words "and dependent" which look as a supplementary criteria.
E : the words "and dependent" are needed in order to take into account the case of minors who are independent ("emancipated") following a judicial decision.

² **Cion** supported by **IRL/I/S** : insert a sub-paragraph (iii) modified as follows :
 "(iii) Member States may also consider as "family members" :
 other close relatives who lived together as part of the family unit at the time of leaving the country or origin, and who were wholly or mainly dependent on the qualified beneficiary of international protection at that time,
 [or alternatively :]
 first degree relatives in direct ascending line and the adult unmarried children when they are dependent on the qualified beneficiary of international protection;"
NL : such a provision should be compulsory and say "Member States shall" and not "Member States may".

- (m) "Residence permit" means any permit or authorisation issued by the authorities of a Member State, in the form provided for under that State's legislation, allowing a third country national or stateless person to reside on its territory;
- (n) "Country of origin" means the country or countries of nationality or, for stateless persons, former habitual residence.

Article 3

(deleted)

Article 4

More favourable provisions

Member States may introduce or retain more favourable standards for determining who qualifies as a refugee or as a person in need of subsidiary protection, and in determining the content of international protection, in so far as those standards are compatible with this Directive.¹

¹ **D** : scrutiny reservation.

CHAPTER II

Assessment of applications for international protection

Article 5

(deleted - its content has been transferred to Article 2)

Article 6

(see new Article 21A)

Article 7

Assessment of facts and circumstances

1. Member States may consider it the duty of the applicant¹ to submit as soon as possible all elements needed to substantiate the claim for international protection. **In co-operation with the applicant it is the duty of the Member State to ascertain and evaluate the elements of the claim.**
2. The applicant shall be considered to have presented all the necessary elements of his/her case, if he/she has provided statements and **all** documentation at his/her disposal regarding his/her age, background, **including that of relevant relatives**, identity, nationality(ies), **country(ies) and place(s) of previous residence, previous asylum applications**, travel routes, identity and travel documents and the reasons for applying for international protection.
3. The assessment of an application for international protection is to be carried out on an individual basis and includes taking into account:²
 - (a) all relevant facts as they relate to the country of origin at the time of taking a decision on the application; including laws and regulations of the country of origin and the manner in which they are applied;³
 - (b) the relevant statement and documentation presented by the applicant including information on whether the applicant has been or may be subject to persecution or serious and unjustified harm;

¹ NL : scrutiny reservation.

² S : reservation on paragraph (3) linked to proposal for a Directive on asylum procedures. This wording could appear in the preamble, but not in the Articles.

³ NL : delete the words: "including laws and regulations of the country of origin and the manner in which they are applied".

- (c) the individual position and personal circumstances of the applicant, including factors such as background, gender, age, health and disabilities¹ so as to assess whether, on the basis of the applicants' personal circumstances, the acts to which he or she has been or could be exposed would amount to persecution or serious and unjustified harm.
- (d) whether the applicant's activities since he left his or her country of origin were engaged in for the sole purpose of creating the necessary conditions for making an application for international protection.**
4. The fact that an applicant has already been subject to persecution or serious and unjustified harm or to direct threats of such persecution or such harm, is a serious indication of the applicant's well-founded fear of persecution or real risk of suffering serious and unjustified harm, unless **there are good reasons to consider that such persecution or serious and unjustified harm will not be repeated.**²
5. **Where aspects of the applicant's statements are not supported by documentary or other evidence, those aspects shall not need confirmation, when the following conditions are met :**³
- (a) the applicant has made a genuine effort to substantiate his claim;
- (b) all relevant elements, at his/her disposal, have been submitted, **and** a satisfactory explanation **regarding** any lack of **other relevant** elements has been given;
- (c) [...] the applicant's statements are found to be coherent and plausible and do not run counter to **available specific and general information** relevant to his/her case,

¹ IRL/NL : such a specific list of factors is not needed.

² B : scrutiny reservation.

³ P : scrutiny reservation.

- (d) **the applicant has filed his or her application for international protection at the earliest possible time, unless the applicant can demonstrate good reason for not having done so,¹**
- (e) **the general credibility of the applicant has been established.**

Article 8

International protection needs arising sur place²

1. A well-founded fear of being persecuted or a real risk of suffering serious and unjustified harm may be based on events which have taken place since the applicant left his country of origin.
2. A well-founded fear of being persecuted or a real risk of suffering serious and unjustified harm may be based on activities which have been engaged in by the applicant since he left his country of origin, in particular where it is established that the activities relied upon constitute the expression and continuation of convictions or orientations held in the country of origin.³
3. (deleted)⁴

¹ **A/D/FIN** : scrutiny reservations.

² **D/EL** : reservations. This provision should refer only to refugee status.

³ **I** : this paragraph could be deleted.

⁴ **A** : scrutiny reservation on the deletion.

Article 9

Actors of persecution or serious and unjustified harm

Actors of persecution or serious and unjustified harm include:

- (a) the State;
- (b) parties or organisations controlling the State or a substantial part of **the territory of the State**;
- (c) non-State actors, if it can be demonstrated that the actors mentioned under sub-paragraphs (a) and (b), including international organisations, are unable or unwilling to provide [...] protection as defined in article 9 A against persecution or serious and unjustified harm.¹

Article 9 A

Actors of protection²

1. Protection can be provided by:
 - (a) the State; or
 - (b) parties or organisations, including international organisations, controlling the State or a substantial part of **the territory of the State**.
2. [...] Protection is **generally** provided when the actors mentioned **in** sub-paragraphs (a) and (b) take reasonable steps to prevent the persecution or suffering of serious and unjustified harm inter alia by operating **an effective**³ legal system for the detection, prosecution and punishment of acts constituting persecution or serious and unjustified harm, and the applicant has access to such protection.

¹ D : scrutiny reservation.

² D : scrutiny reservation on the title of this Article. Prefers original structure as proposed by the Cion.

³ F : linguistic scrutiny reservation.

Article 10
Internal protection

1. As part of the assessment of the application for international protection, Member States may determine that an applicant is not in need of international protection if in a part of the country of origin [...] there is no well-founded fear of being persecuted or not real risk of suffering serious and unjustified harm; and [...] the applicant **can reasonably be expected** to reside in that part of the country.

2. In examining whether a part of the country is in accordance with paragraph 1, Member States shall have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant **at the time of taking the decision on the application**.

3. [...] Paragraph 1 may apply **notwithstanding** technical obstacles to return, **unless there is no reasonable prospect in the foreseeable future that the return will be possible, even with the co-operation of the applicant**.

CHAPTER III
Qualification for being a refugee

Article 11
Acts of persecution

1. Acts considered as persecution within the meaning of article 1 A of the Geneva Convention must :¹
 - (a) be sufficiently serious by their nature or repetition as to constitute a severe **violation of basic human rights, in particular the right to life, the right not to be subjected to torture or the right to liberty and security² of person**; or
 - (b) **be an accumulation of violations of human rights which is sufficiently severe as to affect an individual in a similar manner as mentioned in sub-paragraph (a).**

2. Acts of persecution, **which can be qualified as such in accordance with** paragraph 1, can inter alia take the form of:
 - (a) acts of physical or mental violence, **including acts of sexual violence**;
 - (b) legal, administrative, police, and/or judicial measures **which are in themselves discriminatory or which are** implemented in a discriminatory manner;³
 - (c) prosecution or punishment, which is disproportionate or discriminatory;

¹ S : scrutiny reservation on paragraph 1.

² A/D/UK : scrutiny reservations on the terms "liberty and security".

³ E : specify that only cases of unjustified discrimination are covered here and not cases of positive discrimination.

- (d) denial of judicial redress resulting in a disproportionate or discriminatory punishment;¹
 - (e) prosecution or punishment for refusal to perform military service in a conflict, [...] ² where performing military service would include **crimes or** acts falling under the exclusion clauses **as set out in Article 14 paragraph 2**;
 - (f) acts of a gender-specific or child-specific nature. [...].³
3. **In accordance with Article 2 (c), there must be a connection between the reasons mentioned in Article 12 and the acts of persecution as qualified in paragraph 1.**

Article 12

The reasons for persecution

1. Member States shall take the following elements into account when assessing the reasons for persecution:
 - (a) the concept of race shall **in particular**⁴ 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;⁵

¹ **D** : these cases are difficult to foreseen in practice.

² **A/EL/IRL/NL** : scrutiny reservations.

³ **A/D/E/P** : scrutiny reservations. These cases are already covered by sub-paragraph (a) and by Article 12(1)(d).

⁴ **F** : reservation on the terms "in particular" used in sub-paragraphs (a) to (d). This list should be an exhaustive one.

⁵ **IRL** : add a text on the lines of Article 18(3) of the International Covenant on Civil and Political Rights, which reads as follows :

"Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others".

- (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;¹
- (d) a group may be considered to form a particular social group where **in particular**:
- members of that group share an innate characteristic, such a sexual orientation,² age³ or gender,⁴ or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and
 - that group has a distinct identity⁵ in the relevant country, because it is treated differently or perceived as being different by the surrounding society;
- (e) the concept of political opinion shall **in particular** include the holding of an opinion, **thought or belief** on a matter related to the **organisation of the society [...]**, whether or not that opinion, **thought or belief** has been acted upon by the applicant.

¹ **IRL** : cases where the applicant could easily obtain the nationality of another safe country should be included.

² **D/EL/E/F/P** : wanted to delete the reference to "sexual orientation" as a social group.

B/FIN/IRL/I/NL/S/UK : opposed to such a deletion.

A : scrutiny reservation on the deletion.

³ **B/EL/F/IRL** : wanted to delete the reference to "age" as a social group.

I/NL/S/UK : opposed to such a deletion.

A/FIN : scrutiny reservations on the deletion.

⁴ **EL/E/F/NL** : wanted to delete the reference to "gender" as a social group.

B/D/IRL/I/S/UK : opposed to such a deletion.

A/FIN : scrutiny reservations on the deletion.

⁵ **A** : the words "distinct identity" should be clarified.

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

Article13
Cessation¹

1. A third country national or a stateless person shall cease to be a refugee if he or she:
 - (a) has voluntarily re-availed himself or herself of the protection of the country of nationality; or
 - (b) having lost his or her nationality, has voluntarily re-acquired it; or
 - (c) has acquired a new nationality, and enjoys the protection of the country of his or her new nationality; or
 - (d) has voluntarily re-established himself or herself in the country which he or she left or outside which he or she remained owing to fear of persecution; or
 - (e) can no longer, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of nationality; [...]
 - (f) being a person with no nationality, he or she is able, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, to return to the country of former habitual residence; [...]

¹ **D** : scrutiny reservation.

2. In considering sub-paragraphs (e) **and** (f), Member States shall have regard to whether the change of circumstances is of such a significant and **non-temporary** nature that the refugee's fear of persecution can no longer be regarded as well-founded.¹

Article 14

Exclusion

1. A third country national or a stateless person is excluded from being a refugee, if:
 - (a) he or she is [...] receiving protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees. When such protection or assistance has ceased for any reason, without the position of such persons being definitely settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Directive;
 - (b) he or she is recognised by the competent authorities of the country in which he or she has taken up residence as having the rights and obligations **equivalent to those**² attached to the possession of the nationality of that country.

¹ **D** : this sub-paragraph should be inserted as a new paragraph in Article 7.

² **D/FIN/I** : scrutiny reservations.

2. A third country national or a stateless person is excluded from being a refugee where there are serious reasons for considering that:
- (a) he or she has committed [...] a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
 - (b) he or she has committed [...] a serious non-political crime **outside the country of refuge** prior to his or her **recognition**¹ as a refugee; particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes;
 - (c) he or she has been guilty of [...] acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations.

¹ A/D/FIN/NL/S : scrutiny reservations.

3. **Without prejudice to national law paragraph 2 applies to persons, who instigate or otherwise participate in the commission of the crimes or acts mentioned in that paragraph.¹**
4. **A third country national or a stateless person is excluded from being a refugee where there are reasonable grounds for regarding that :**
- (a) **he or she constitutes a danger to the security of the country in which he or she is;**
or
- (b) **he or she, having been convicted by a final judgement of a particular serious crime, constitutes a danger to the community of that country.²**

(former paragraph 3 is deleted)³

¹ **Cion** : opposed to the reference to the instigators, which are covered by the expression "has committed".

² **B/FIN/NL/S/Cion** : reservations. They consider that in the light of the Geneva Convention, which contains an exclusive list of exclusion clauses, and additional exclusion clause would not be compatible with this Convention. An exception to the principle of "non-refoulement" should be included in the Directive but not under Article 14.

EL/UK : scrutiny reservation.

The Group asked the opinion of the Council Legal Service regarding this question.

³ **D/NL/UK** : scrutiny reservations concerning this deletion.

Cion : opposed to this deletion. (This paragraph read : "The grounds for exclusion as referred to in paragraph 2 shall be based solely on the personal and willing conduct of the person concerned.").

CHAPTER IV

Refugee Status

Article 14 A

Granting of refugee status

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

Article 14 B

Revocation of, ending of or refusal to renew refugee status

1. Member States may revoke, **end** or refuse to renew the refugee status of a third country national or a stateless person **granted by an administrative or judicial body**, if: [...]
 - (a) **he or she** has ceased to be a refugee in accordance with Article 13;
 - (b) [...] his or her misrepresentation or omission of facts, **including the use of false documents, were decisive for the granting of refugee status.**
2. Without prejudice to the duty¹ of the refugee to disclose all relevant facts and provide all relevant documentation at his/her disposal the Member State, which has granted refugee status, shall on an individual basis demonstrate that the concerned person has ceased **to** be or has never been a refugee in accordance with paragraph 1.

¹ S : scrutiny reservation. The charge of proof should not fall on the refugee.

3. Member States shall revoke, **end** or refuse to renew the refugee status of a third country national or a stateless person, if it, after he or she has been granted refugee status, is established by the concerned Member State that he or she **should have been or** is excluded from being a refugee in accordance with Article 14.

(former paragraph 3 is deleted)

CHAPTER V

Qualification for subsidiary protection

Article 15

Serious [and unjustified] harm¹

Serious [and unjustified] harm consists of:

- (a) death penalty or execution, or
- (b) torture or inhuman or degrading treatment or punishment of an applicant in his or her country of origin, or in the case of stateless persons, his or her country of former habitual residence;
or²

¹ S : same comment concerning "unjustified harm" as in Article 2 (e).

² The following recital will be added to the Preamble:

"Whereas those third country nationals or stateless persons, who are allowed to remain in the territories of the Member States for reasons not due to a need for international protection but on compassionate or humanitarian grounds, fall outside the scope of this Directive."

- (c) **[in accordance with the 1949 Convention relative to the Protection of Civilian Persons in time of War,]**¹ serious and individual threat² to a civilian's life or **person** by reason of indiscriminate violence in situations of international or internal armed conflict.

Article 16

Cessation

1. A third country national or stateless person **shall** cease to be a person eligible for subsidiary protection when **the circumstances, which led to the granting of subsidiary protection status have ceased to exist or have changed to such a degree that** protection is no longer required.
2. In considering paragraph 1, [...] Member States shall have regard to whether the change of circumstances [...] is of such a significant and **non-temporary** nature that the person eligible for subsidiary protection no longer faces a real risk of serious and unjustified harm.³

¹ The Council Legal Service suggested to add a reference to the Annexes and Protocols related to this Convention.

² **D** : the scope of the threat should be clarified.

³ **A/D** : linguistic scrutiny reservations.

Article 17

Exclusion

1. A third country national or a stateless person is excluded from being a person eligible for subsidiary protection **where there are serious reasons for considering that:**¹
 - (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; [...]²
 - (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 United Nations;
 - (d) **he or she constitutes a danger to the community or to the security of the country in which he or she is.**
2. **Without prejudice to national law paragraph 1 applies to persons who instigate or otherwise participate in the commission of the crimes or acts mentioned in this paragraph.**
3. Member States may exclude a third country national or a stateless person from being a person eligible for subsidiary protection, if he or she prior to his or her admission to the Member State has committed one or more crimes, outside the scope of **paragraph 1**, which would be punishable **by imprisonment**, had they been committed in the Member State concerned, and he or she left his or her country of origin solely in order to avoid **sanctions** resulting from these crimes.³

¹ **D/S** : reservations. This sub-paragraph should be an option for Member States.
S : a sub-paragraph should be added for cases where the person risks death penalty or torture in the country of origin.

FIN : scrutiny reservation.

² **E** : scrutiny reservation.

³ **B/D/S** : scrutiny reservation. This paragraph could be deleted.

(former paragraphs 3 and 4 are deleted)¹

CHAPTER VI Subsidiary Protection Status

Article 17 A Granting of subsidiary protection status

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

Article 17 B Revocation of, ending of or refusal to renew subsidiary protection status

1. Member States may revoke, **end** or refuse to renew the subsidiary protection status of a third country national or a stateless person **granted by an administrative or judicial body, if:**
 - (a) he or she has ceased to be a person eligible for subsidiary protection in accordance with Article 16;
 - (b) [...]his or her misrepresentation or omission of **decisive facts, including the use of false documents, were decisive for the granting of subsidiary protection status.**
 - (c) **after having been granted subsidiary protection status, should have been or is excluded from being a person eligible for subsidiary protection in accordance with Article 17, paragraph 3.**

¹ **D** : former paragraph 4 should be reinserted (It read : "The application of the exclusion shall not in any manner affect obligations that Member States have under international law").

2. Member States shall revoke,¹ **end** or refuse to renew the subsidiary protection status of a third country national or a stateless person, if he or she, after having been granted subsidiary protection status, **should have been or** is excluded from being a person eligible for subsidiary protection in accordance with Article 17, paragraph 1.
3. Without prejudice to the duty of the third country national or stateless person to disclose all relevant facts and provide all relevant documentation at his/her disposal the Member State, which has granted the subsidiary protection status, shall on an individual basis demonstrate that a person has ceased to be or is not a person eligible for subsidiary protection in accordance with paragraphs 1 **and 2**.²
4. Member States shall ensure that a third country national or stateless person has the right to an appeal or a review before a judicial body³ of a decision to revoke, **end** or refuse to renew a subsidiary protection status.⁴

¹ **D/S** : scrutiny reservations. Say "may" instead of "shall".

² **S** : scrutiny reservation.

³ **A** : scrutiny reservation.

⁴ **D/FIN/IRL/UK** : reservations. This provision relates to asylum procedures and should not be included in this Directive.

A/S : scrutiny reservations.

CHAPTER VII

Article 18

Content of international protection

1. The rules laid down in this Chapter shall be without prejudice to the rights laid down in the Geneva Convention.
2. The rules laid down in this Chapter shall apply both to refugees and persons eligible for subsidiary protection unless otherwise indicated.
3. The level of rights granted to a refugee or a person eligible for subsidiary protection status shall not be lower than that enjoyed by applicants during the determination process.
4. When implementing the provisions of this Chapter, Member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.¹
5. Within the limits set out by the Geneva Convention, Member States may reduce the benefits of Chapter VII, granted to a refugee, whose refugee status has been obtained **on the basis of activities engaged in for the sole purpose of creating the necessary conditions for being recognised as a refugee.**

¹ Text of Article 17(1) of draft Directive on reception conditions of asylum seekers (9098/02 ASILE 28).

S/Cion : reinsert the last sentence which read :

"Member States shall also take into account the specific situation of women who are subject to substantial gender-related discrimination in their country of origin".

The Chair : suggested to add the possibility of reducing the rights in cases of "fabricated" applications.

6. Within the limits set out by international obligations of Member States, Member States may reduce the benefits of Chapter VII, granted to a person eligible for subsidiary protection, whose subsidiary protection status has been obtained **on the basis of activities engaged in for the sole purpose of creating the necessary conditions for being recognised as a person eligible for subsidiary protection.**

Article 19

Protection from refoulement

1. Member States shall respect the principle of non-refoulement in accordance with their international obligations.
2. (deleted)
3. (deleted)

Article 20

Information

Member States shall provide persons recognised as being in need of international protection, immediately¹ after status has been granted, with information,² in a language likely to be understood by them, in which provisions relating to the respective protection regimes are clearly set out.³

Article 21

Residence permits

1. As soon as their status has been granted Member States shall issue to refugees and their accompanying family members⁴ a residence permit which must be valid for at least five years⁵ and renewable automatically.⁶

2. As soon as the status has been granted Member States shall issue to persons enjoying subsidiary protection status and their accompanying family members⁷ a residence permit which must be valid for at least one year.⁸ This residence permit shall be automatically⁹ renewed at intervals of not less than one year, until such time as the granting authorities establish that such protection is no longer required.¹⁰

¹ **NL/P/S/UK** : read "as soon as possible" or "within a reasonable period" instead of "immediately".

² **FIN** : specify which kind of information.
E : specify that this information should relate to the rights and duties of the persons concerned.

³ **D** : scrutiny reservation.

⁴ **FIN** : scrutiny reservation concerning family members.

⁵ **NL** : prefers three years.

⁶ **E/FIN/L/NL** : delete "automatically".
L : read "renewable ipso jure" ("de plein droit" in French).

⁷ **FIN** : scrutiny reservation concerning family members.

⁸ **S** : add "or, in specific cases, for six months".

⁹ Same comments as for paragraph 1.

¹⁰ **D** : scrutiny reservation.
FIN : delete the second sentence.

Article 21A
Maintaining family unity¹

1. Member States shall ensure that family members of the same nationality as the beneficiary of refugee or subsidiary protection status are entitled to a status which will enable them to stay with the beneficiary. This status cannot be less favourable than the one granted to family members who have been reunified with a beneficiary of refugee or subsidiary protection status in accordance with family reunification regulations.²

2. The rule laid down in paragraph 1 is not applicable where the family member is excluded from refugee or subsidiary protection status pursuant to Chapters III and IV.

¹ D : proposed the following text :

Article 6
Extension of refugee protection to family members

1. Member States shall ensure that family members are entitled to refugee status already
 - (a) if they lodged their application for international protection before or at the same time as the refugee or without any delay after entering the territory of the Member State and
 - (b) if pursuant to Article 2 (j) (i) the marriage or the stable relationship with his/her unmarried partner already existed in the country of origin of the refugee or of his/her spouse or unmarried partner.

2. In cases pursuant to Article 2 (j) (ii) where the child is born on the territory of the Member State after the recognition of the refugee the application for international protection has to be filed within a period of one year after birth.

3. The rule laid down in paragraph 1 is not applicable if the family member is excluded from refugee status pursuant to Article 14.

4. Member States may introduce regulations which establish that paragraphs 1 to 3 apply *mutatis mutandis* to family members of persons who are eligible for subsidiary protection status.

² FIN : wanted the following text :

"Need for protection as a result of a family tie

Where a foreigner with a family obtains refugee status or a residence permit on the basis of subsidiary protection, a member of his family as referred to in Article 2 who has entered the country and has no grounds of his own for obtaining protection shall be granted the same status, unless his need for protection is to be examined separately as a result of a different background or nationality."

Article 22

Long-term residence status

Notwithstanding Article 3(2)(b) of Council Directive.../...EC. [concerning the status of third country nationals who are long term residents]¹ Member States shall grant persons enjoying subsidiary protection status long term-residence status on the same terms as those applicable to refugees under that Directive.²

¹ OJ L

² **IRL/UK** : pointed out that they did not opt to participate in the adoption of the proposal for a Directive referred to in this Article and asked the Council Legal Service for an opinion concerning this issue.

A/D/E/FIN : avoid making reference to "long-term residence status".

NL : scrutiny reservation.

Article 23

Travel document

1. Member States shall issue to persons to whom they have granted refugee status travel documents in the form set out in the Schedule to the Geneva Convention, for the purpose of travel outside their territory unless compelling reasons of national security or public order otherwise require.
2. Member States shall issue travel documents to persons enjoying subsidiary protection status who are unable to obtain a national passport.¹

Article 24

Access to employment²

1. Member States shall authorise refugees to engage in employed or self-employed activities under the same conditions as nationals, immediately after the refugee status has been granted.
2. Member States shall ensure that activities such as employment-related education opportunities for adults, vocational training and practical workplace experience are offered to refugees, under the same conditions as nationals.

¹ **A/D** : scrutiny reservations.

EL/E : add also in paragraph (2) the words "unless compelling reasons of national security or public order require otherwise".

FIN : application of more generous national practice should be allowed.

² **D** : rules concerning refugee status and subsidiary protection should be more clearly separated.

FIN/P : scrutiny reservations.

3. Member States shall authorise persons enjoying subsidiary protection status to engage in employed or self-employed activities under the same conditions as nationals no later than six months after such status is granted.¹
4. Member States shall ensure that persons enjoying subsidiary protection status have access to activities such as employment-related education opportunities for adults, vocational training and practical workplace experience, under the same conditions as nationals no later than one year after such status is granted.²
5. After access to the labour market is granted in accordance with paragraphs 1 and 3, refugees and persons enjoying subsidiary protection status are entitled to equal treatment with nationals in terms of remuneration, access to social security systems relating to employed or self-employed activities, and other conditions of employment.³

¹ **A/I** : scrutiny reservations.
D : reservation. Avoid any link between duration of stay and access to work.
EL : scrutiny reservation concerning the six-month period. Wanted a longer time-limit.
FIN : wondered whether any time-limit was needed here.
NL/S : wanted the same time-limits for both statuses.

² **A/I** : scrutiny reservations.
D : reservation.
FIN : wondered whether any time-limit was needed here. Refer to "EU nationals".
NL : in practice it would be difficult to treat these persons under the same conditions as nationals.

³ **EL/A** : reservations. EL wondered whether this provision is compatible with Article 137 TEC.

Article 25
Access to education¹

1. Member States shall grant full access to the education system to all those minors enjoying international protection under the same conditions as nationals.²
2. Member States shall allow adults enjoying international protection access to the general education system, further training or retraining, under the same conditions as nationals.³
3. Member States shall ensure equal treatment as between persons enjoying international protection and nationals with regard to the recognition of diplomas, certificates and other qualifications issued by a competent authority.⁴

Article 26
Social Welfare

Member States shall ensure that persons enjoying international protection receive, under the same conditions as nationals of the Member State that has granted the protection, the necessary assistance in terms of social welfare and means of subsistence.⁵

¹ **A/D/E/FIN/NL/P** : scrutiny reservations.

A : opposed granting the same treatment to both statuses.

E : refer to "EU nationals" instead of to "nationals".

² **FIN** : specify access to school or pre-school education.

³ **S** : scrutiny reservation.

⁴ **A/E/IRL/I/UK** : scrutiny reservations.

⁵ **A/D/P/S/UK** : scrutiny reservations.

F : scrutiny reservation on granting the same treatment to persons enjoying international protection and to nationals. Moreover, the term "social welfare" should be clarified.

FIN : the wording of this provision does not correspond to the explanations given by the Commission in its "Commentary on Articles".

Article 27

Health and psychological care¹

1. Member States shall ensure that persons enjoying international protection have access to health and psychological care under the same conditions as nationals of the Member State that has granted the status.²
2. Member States shall provide appropriate medical and psychological care to persons enjoying international protection who have special needs, such as accompanied or unaccompanied minors, or persons who have undergone torture, rape or other serious forms of psychological, physical or sexual violence.³
3. Member States shall ensure access to rehabilitation services to 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. To facilitate recovery and reintegration, appropriate mental health care shall be developed and qualified psycho-social counselling shall be provided when it is needed.⁴

¹ **S** : scrutiny reservation. Wondered about the treatment to be given to persons having been excluded from an international protection status but who cannot be removed from the country for reasons linked to Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

² **D** : different access should be granted to people enjoying different statuses (refugee or subsidiary protection).

³ **D/L/P** : this provision should be drafted along the same lines as the relevant provision of the draft Directive for the reception of asylum seekers.

L : read "Member States shall ensure as far as possible ..." (rest unchanged).

IRL : add the following sentence : "Insofar as services are not available, Member States shall work towards their provision".

NL : paragraphs (2) and (3) should be merged.

⁴ Same comments as for paragraph (2).

Article 28
Unaccompanied minors¹

1. Member States shall take the necessary measures as soon as possible, to ensure the representation of unaccompanied minors enjoying international protection by legal guardianship, or representation by an organisation which is responsible for the care and well-being of minors, or by any other appropriate representation.²
2. Member States shall ensure that the minor's needs are duly met in the implementation of the provisions of this Directive by the appointed guardian.³ The appropriate authorities shall make regular assessments.⁴
3. Member States shall ensure that unaccompanied minors are placed:⁵
 - (a) with adult family members; or
 - (b) with a foster family; or
 - (c) in centres specialised in accommodation for minors; or
 - (d) in other accommodation suitable for minors.
4. Member States shall ensure⁶ that siblings are kept together. Changes of unaccompanied minors' residence shall be limited to a minimum.

¹ **FIN/IRL** : scrutiny reservations.

FIN : protection must be provided at least at the same level as that provided for national minors who have being taken into care.

² **I** : add "taking into account the best interests of the child".

³ **IRL** : add "or representative"

⁴ **NL** : the second sentence of this paragraph should be moved to Article 36.

⁵ **D/S** : ensure that none of the language versions make this list of possibilities an order of preference.

⁶ **I/NL** : add "as far as possible".

5. If it is in the best interests of the child, Member States shall endeavour to trace the members of the family of unaccompanied minors as soon as possible.¹
6. Member States shall ensure that those working with unaccompanied minors receive appropriate training² on their needs.

Article 29

Access to appropriate accommodation

The Member States shall ensure that persons enjoying international protection have access to suitable accommodation³ or, if necessary, receive the means to obtain housing.

Article 30

Freedom of movement within the Member State

Member States shall not limit the freedom of movement within their territory of persons enjoying international protection.⁴

¹ **FIN/NL** : this tracing must be undertaken when proceedings concerning international protection status start, and not after status has been granted.

² **D** : read "are trained" instead of "receive appropriate training".

³ **A/D** : delete reference to "suitable accommodation" and refer only to "housing".

A : limit this obligation to information about the housing market.

EL/E/IRL/P/UK : read "The Member States shall ensure that persons enjoying international protection have access to housing under the same conditions as nationals".

⁴ **D/EL/IRL** : scrutiny reservations.

EL/E/IRL/I/UK : add exceptions for circumstances where these persons may be subject to restrictions on free movement (i.e. national security, public order, criminal proceedings).

Article 31

Access to integration facilities¹

1. In order to facilitate the integration of refugees into society , Member States shall make provision for specific support programmes tailored to their needs in the fields of, inter alia, employment, education, healthcare and social welfare;
2. Member States shall grant persons enjoying subsidiary protection access to equivalent programmes; not later than one year after their status is granted.²

Article 32

Voluntary return³

Member States shall grant persons enjoying international protection access to voluntary return programmes⁴ for those who wish to return on a voluntary basis to their country of origin.

¹ **P/UK** : scrutiny reservations.

² **FIN/NL/S** : delete the following words "not later than one year after their status is granted".
A/D : scrutiny reservations.

³ **D/FIN** : scrutiny reservations.

IRL : start this provision with the following words : "Within the limit of their resources, Member States may endeavour..." (rest unchanged).

UK : delete this provision. Otherwise, make the amendment suggested by IRL.

⁴ **FIN/L** : read "assistance" instead of "programmes".

CHAPTER VI
Administrative cooperation

Article 33
Cooperation¹

Member States shall each appoint a national contact point, whose address they shall communicate to the Commission, which shall communicate it 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 34
Staff and resources

1. Member States shall ensure that authorities and other organisations implementing this Directive have received the necessary basic training with respect to the needs of both male and female refugees or beneficiaries of subsidiary protection status and their accompanying family members,² as well as the specific needs of minors, in particular unaccompanied minors.
2. Member States shall allocate the necessary resources in connection with the national provisions enacted to implement this Directive.³

¹ **FIN/NL** : clarify how this co-operation will work in practice.

² **NL** : accompanying family members should also have applied for international protection.

³ **D/F** : delete this provision, which does not belong in a harmonisation Directive.

CHAPTER VII

Final provisions

Article 35

Non-discrimination¹

Member States shall implement the provisions of this Directive without discrimination on the basis of sex, race, nationality, membership of a particular social group, health, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinions, membership of a national minority, fortune, birth, disabilities, age or sexual orientation.

Article 36

Reports

By [30 April 2006] at the latest, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose any amendments that are necessary. **These proposals for amendments shall be made by way of priority in relation to Article 15, taking into consideration the international obligations of Member States regarding non-refoulement, existing at the time these proposals are made.** Member States shall send the Commission all the information that is appropriate for drawing up that report. After presenting the report the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States at least every five years.²

¹ D/EL/F : delete this provision. Its content could be placed in the preamble.

² Recital 24 will be amended as follows :

"(24) The implementation of this Directive should be evaluated at regular intervals, **taking into consideration in particularly the evolution of the international obligations of Member States regarding non-refoulement.**"

Article 37
Transposition

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [30 April 2004] at the latest. They shall forthwith inform the Commission thereof.

When the Member States adopt those provisions, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such a reference is to be made.

2. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field covered by this Directive.

Article 38
Entry into force

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

Article 39
Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President