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from : Presidency

to : Permanent Representatives Committee

on : 24 March 2004

No. prev. doc. : 10576/04 ASILE 40

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 protections

Following the mandate of the Permanent Representatives Committee, the JHA Counsellors met on 22 March 2004 in order to pursue work on the above-mentioned proposal.

Delegations will find

- in Annex I : the text of the above-mentioned proposal with delegations' comments in the footnotes,
- in Annex II : the text of the draft statements to the Council minutes.

Changes to 10576/03 ASILE 40 are in bold.

The Permanent Representatives Committee is invited to finalise the text of this proposal with a view to submission to Council for agreement at its meeting on 30 March 2004.

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 granted¹

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);
- (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 NL/UK : parliamentary scrutiny reservations.

- (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;
- (d) “Refugee status” means the recognition by a Member State of a third country national or a stateless person as a refugee;
- (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 harm as defined in article 15, and to whom Article 17 paragraph 1 and 2 does not apply, and is unable, or owing to such risk, 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;
- (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)
- (i) (deleted)

- (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:
- (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 dependent and regardless of whether they were born in or out of wedlock or adopted as defined under the national law;
- (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;
- (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 eligible for subsidiary protection, and in determining the content of international protection, in so far as those standards are compatible with this Directive.

CHAPTER II

Assessment of applications for international protection

Article 5

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

Article 6

(see new Article 21)

Article 7

Assessment of facts and circumstances

1. Member States may consider it the duty of the applicant to submit as soon as possible all elements needed to substantiate the claim for international protection. In cooperation with the applicant it is the duty of the Member State to **assess**¹ the relevant elements of the claim.
2. The elements referred to in the first sentence of paragraph 1 consist of statements and all documentation at the applicants 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:
 - (a) all relevant facts as they relate to the country of origin at the time of taking a decision on the application; including laws and regulations of the country of origin and the manner in which they are applied;
 - (b) the relevant statement and documentation presented by the applicant including information on whether the applicant has been or may be subject to persecution or serious harm;

¹ UK : preferred "consider" instead of "assess".

- (c) the individual position and personal circumstances of the applicant, including factors such as background, gender and age, so as to assess whether, on the basis of the applicants' personal circumstances, the acts to which he or she has been or could be exposed would amount to persecution or serious harm;
 - (d) whether the applicant's activities since he left his or her country of origin were engaged in for the sole or main purpose of creating the necessary conditions for making an application for international protection, so as to assess whether these activities will expose the concerned person to persecution or serious harm if returned to that country;
 - (e) whether the applicant could reasonably be expected to avail himself of the protection of another country where he could assert citizenship.
4. The fact that an applicant has already been subject to persecution or serious harm or to direct threats of such persecution or such harm, is a serious indication of the applicant's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.
5. Where Member States apply the principle referred to in the first sentence of paragraph 1 according to which it is the duty of the applicant to substantiate his or her claim and where aspects of the applicant's statements are not supported by documentary or other evidence, those aspects shall not need confirmation, when the following conditions are met :
- (a) the applicant has made a genuine effort to substantiate his 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,

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

Article 8

International protection needs arising sur place

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

Article 9
Actors of persecution or serious harm¹

Actors of persecution or serious harm include:

- (a) the State;
- (b) parties or organisations controlling the State or a substantial part of the territory of the State;
- (c) non-State actors, if it can be demonstrated that the actors mentioned 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 harm.²

¹ The following Recital will be added to the Preamble :
"Risks to which a population of a country or a section of the population is generally exposed do normally not create in itself an individual threat in line with Article 15 (c)".

² **DE** : scrutiny reservation concerning subsidiary protection status.

Article 9 A
Actors of protection¹

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 harm inter alia by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.
3. When assessing whether an international organisation controls a State or a substantial part of its territory and provides protection as described in paragraph 2, Member States shall take into account any guidance which may be provided in relevant Council acts.

¹ The following Recital will be added to the Preamble :
"Protection can be provided not only by the State but also by parties or organisations, including international organisations, meeting the conditions of Article 9A(2) and (3), which control a region or a larger area within the territory of the State."

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 no real risk of suffering serious harm; and the applicant can reasonably be expected to stay in that part of the country.

2. In examining whether a part of the country of origin 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.

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 :
 - (a) be sufficiently serious by their nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15 (2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; or
 - (b) be an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as mentioned in subparagraph (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;
 - (c) prosecution or punishment, which is disproportionate or discriminatory;
 - (d) denial of judicial redress resulting in a disproportionate or discriminatory punishment;

- (e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling under the exclusion clauses as set out in Article 14, paragraph 2;
 - (f) acts of a gender-specific or child-specific nature.
3. In accordance with Article 2 (c), there must be a connection between the reasons mentioned in Article 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 include considerations of colour, descent, or membership of a particular ethnic group;
 - (b) the concept of religion shall in particular include the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief;
 - (c) the concept of nationality shall not be confined to citizenship or lack thereof but shall in particular include membership of a group determined by its cultural, ethnic, or linguistic identity, common geographical or political origins or its relationship with the population of another State;

- (d) a group shall be considered to form a particular social group where in particular:
- members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it; and
 - that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society;
 - depending on the circumstances in the country of origin a particular social group might include a group based on a common characteristic of sexual orientation. Sexual orientation cannot be understood to include acts considered to be criminal in accordance with national law of the Member States; gender related aspects might be considered, without by themselves alone creating a presumption for the applicability of this Article;
- (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 persecutors mentioned in Article 9 and to their policies or methods, whether or not that opinion, thought or belief has been acted upon by the applicant.
2. When assessing if an applicant has a well-founded fear of being persecuted it is immaterial whether the applicant actually possesses the racial, religious, national, social or political characteristic, which attracts the persecutory action, provided that such a characteristic is attributed to him or her by the actor of persecution.

Article 13

Cessation

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

Article 14

Exclusion¹

1. A third country national or a stateless person is excluded from being a refugee, if:
 - (a) he or she falls within the scope of Article 1 D of the Geneva Convention, relating to protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees. When such protection or assistance has ceased for any reason, without the position of such persons being definitely settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Directive;
 - (b) he or she is recognised by the competent authorities of the country in which he or she has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country; or rights and obligations equivalent to those.
2. A third country national or a stateless person is excluded from being a refugee where there are serious reasons for considering that:
 - (a) he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

¹ The following Recital will be added to the Preamble :
"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 combatting 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"."

FR/UK : scrutiny reservations on this Recital.

- (b) he or she has committed a serious non-political crime outside the country of refuge prior to his or her admission as a refugee; which means the time of issuing a residence permit based on the granting of refugee status; particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes;
 - (c) he or she has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations.
3. Paragraph 2 applies to persons, who instigate or otherwise participate in the commission of the crimes or acts mentioned in that paragraph.

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 status

1. Concerning applications for international protection lodged after the entry into force of this Directive, Member States shall revoke, end or refuse to renew the refugee status of a third country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body, if he or she has ceased to be a refugee in accordance with Article 13.
2. Without prejudice to the duty of the refugee in accordance with Article 7 (1) to disclose all relevant facts and provide all relevant documentation at his/her disposal, the Member State, which has granted refugee status, shall on an individual basis demonstrate that the concerned person has ceased to be or has never been a refugee in accordance with paragraph 1.
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 :
 - (a) he or she should have been or is excluded from being a refugee in accordance with Article 14;
 - (b) his or her misrepresentation or omission of facts, including the use of false documents, were decisive for the granting of refugee status.

4. Member States may revoke, end or refuse to renew the status granted to a refugee by a governmental, administrative, judicial or quasi-judicial body, when:
 - (a) there are reasonable grounds for regarding him or her as a danger to the security of the EU Member State in which he or she is;
 - (b) he or she, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that Member State.
5. In situations described in paragraph 4, Member States may decide not to grant status to a refugee, where such a decision has not yet been taken.¹
6. Persons to whom paragraphs 4 or 5 apply are entitled to rights set out in or similar to those set out in Articles 3, 4, 16, 22, 31 and 32 and 33 of the Geneva Convention insofar as they are present in the Member State.

¹ The following Recital will be added to the Preamble :
"As referred to in Article 14B, "status" can also include refugee status".

CHAPTER V
Qualification for subsidiary protection

Article 15
Serious harm

Serious harm consists of:

- (a) death penalty or execution; or
- (b) torture or inhuman or degrading treatment or punishment of an applicant in his or her country of origin, or in the case of a stateless person, his or her country of former habitual residence;
or¹
- (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

¹ 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 a discretionary basis on compassionate or humanitarian grounds, fall outside the scope of this Directive."

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 harm.

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:
 - (a) he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
 - (b) he or she has committed a serious crime;
 - (c) he or she has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations;
 - (d) he or she constitutes a danger to the community or to the security of the country in which he or she is.
2. Paragraph 1 applies to persons who instigate or otherwise participate in the commission of the crimes or acts mentioned in that 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 if he or she left his or her country of origin solely in order to avoid sanctions resulting from these crimes.

CHAPTER VI
Subsidiary Protection Status

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

2. Member States may revoke, end or refuse to renew the subsidiary protection status of a third country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body, if after having been granted subsidiary protection status, he or she should have been excluded from being a person eligible for subsidiary protection in accordance with Article 17, paragraph 3.

3. Member States shall revoke, end or refuse to renew the subsidiary protection status of a third country national or a stateless person, if :
 - (a) he or she, after having been granted subsidiary protection status, should have been or is excluded from being a person eligible for subsidiary protection in accordance with Article 17, paragraphs 1 and 2.
 - (b) his or her misrepresentation or omission of facts, including the use of false documents, were decisive for the granting of subsidiary protection status.

4. Without prejudice to the duty of the third country national or stateless person in accordance with Article 7 (1) to disclose all relevant facts and provide all relevant documentation at his/her disposal, the Member State, which has granted the subsidiary protection status, shall on an individual basis demonstrate that a person has ceased to be or is not a person eligible for subsidiary protection in accordance with paragraphs 1 to 3.

CHAPTER VII
Content of international protection

Article 18
General rules

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. 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.
4. Paragraph 3 shall apply only to persons found to have special needs after an individual evaluation of their situation.
5. The best interest of the child shall be a primary consideration for Member States when implementing the provisions of this Chapter that involve minors.
6. 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 or main purpose of creating the necessary conditions for being recognised as a refugee.

7. 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 or main 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. Where not prohibited by the international obligations mentioned in paragraph 1, Member States may refoule a refugee, whether formally recognized or not, when:
 - (a) there are reasonable grounds for considering him or her as a danger to the security of the EU Member State 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 Member State.
3. Member States may revoke, end or refuse to renew or grant the residence permit of (or to) a refugee to whom paragraph 2 applies.

Article 20
Information

Member States shall provide persons recognised as being in need of international protection, as soon as possible after status has been granted, with access to information, in a language likely to be understood by them, on the rights and obligations relating to the respective protection status.

Article 21
Maintaining family unity¹

1. Member States shall ensure that family unity can be maintained.
2. Member States shall ensure that family members of the beneficiary of refugee or subsidiary protection status, who do not individually qualify for such status, are entitled to claim the benefits referred to in Articles 22 to 32, in accordance with national procedures and as far as it is compatible with the personal legal status of the family member.
3. The rule laid down in paragraphs 1 and 2 is not applicable where the family member is or would be excluded from refugee or subsidiary protection status pursuant to Chapters III and V.

¹ **BE/NL/FI/SE** : scrutiny reservations.
FR : preferred this Article as set out in 10576/03 ASILE 40.
The following Recital will be added to the Preamble :
"Mindful of the fact that family members, merely due to their relation to the refugee, will normally be vulnerable to acts of persecution in such a manner that could be the basis for refugee status."

4. Notwithstanding paragraphs 1 and 2, Member States may refuse, reduce or withdraw the benefits referred thereto for reasons of national security or public order.
5. **In exception to the general rule laid down in paragraph 2, Member States may limit the level of the benefits granted to family members of beneficiaries of subsidiary protection. In such cases, Member States shall ensure a dignified standard of living.¹**
6. Member States may decide that this Article also applies to other close relatives who lived together as part of the family at the time of leaving the country of origin, and who were wholly or mainly dependent on the beneficiary of refugee or subsidiary protection status at that time.

¹ **DE** : scrutiny reservation.

Article 22
Residence permits¹

1. As soon as possible after their status has been granted, unless compelling reasons of national security or public order otherwise require, and without prejudice to Article 19(3), Member States shall issue to beneficiaries of refugee status a residence permit which must be valid for at least three years and renewable.

Without prejudice to Article 21(1), the residence permit to be issued to the family members of the beneficiaries of refugee status may be valid for less than three years and renewable.

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

¹ The following Recital will be added to the Preamble :
"Within the limits set out by international obligations, Member States may lay down that the granting of benefits with regard to access to employment, social welfare, health care and access to integration facilities requires the prior issue of a residence permit in line with Article 22".

² The following Recital will be added to the Preamble :
"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".

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 to beneficiaries of subsidiary protection status who are unable to obtain a national passport, documents which enable them to travel, at least when serious humanitarian reasons arise that require their presence in another State, unless compelling reasons of national security or public order otherwise require.

Article 24

Access to employment

1. Member States shall authorise beneficiaries of refugee status to engage in employed or self-employed activities subject to rules generally applicable to the profession and to the public service, 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 beneficiaries of refugee status, under equivalent conditions as nationals.
3. Member States shall authorise beneficiaries of subsidiary protection status to engage in employed or self-employed activities subject to rules **and conditions** generally applicable to the profession and to the public service immediately after the subsidiary protection status has been granted. **The situation of the labour market in the Member States may be taken into account, including for possible prioritization of access to employment.¹ Where necessary, Member States shall grant beneficiaries of subsidiary protection status and/or employers prior authorisation in accordance with national legislation.²**
4. **(deleted)**
5. Member States shall ensure that beneficiaries of subsidiary protection status have access to activities such as employment-related education opportunities for adults, vocational training and practical workplace experience, under conditions to be decided by the Member States.
6. The general law in force in the Member States applicable to remuneration, access to social security systems relating to employed or self-employed activities and other conditions of employment shall apply.

¹ The following Recital will be added to the Preamble:
"The principle of the access of beneficiaries of subsidiary protection status to the labour market, under the conditions set out in this Directive, should be the general rule; however, Member States should be able to examine the situation of their labour markets."

² **DE** : reservation on paragraph 3 and the Recital.
BE/AT/FI/SE : scrutiny reservations.
FR/NL : preferred the text of Article 24 as set out in 10576/03 ASILE 40.

Article 25
Access to education¹

1. Member States shall grant full access to the education system to all minors granted refugee or subsidiary protection status under the same conditions as nationals.
2. Member States shall allow adults granted refugee or subsidiary protection status access to the general education system, further training or retraining, under the same conditions as third country nationals legally resident.
3. Member States shall ensure equal treatment as between beneficiaries of refugee or subsidiary protection status and nationals in the context of the existing recognition procedures for foreign diplomas, certificates and other evidence of formal qualifications.²

¹ The following Recital will be added to the Preamble:
"This Directive does not apply to financial benefits from the Member States which are granted to promote education and training."

² The following Recital will be added to the Preamble:
"The practical difficulties encountered by beneficiaries of refugee or subsidiary protection status concerning the authentication of their foreign diplomas, certificates or other evidence of formal qualification should be taken into account."

Article 26
Social Welfare¹

1. Member States shall ensure that beneficiaries of refugee status and of subsidiary protection status [...] receive, in the Member State that has granted such statuses, the necessary assistance in terms of social assistance as nationals of that Member State.

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

¹ The following Recitals will be added to the Preamble :
"Especially to avoid social hardship, it is appropriate, for beneficiaries of refugee or subsidiary protection status [...], to provide without discrimination in the context of social assistance the adequate social welfare and means of subsistence."
"With regard to social assistance and health care the possibility of limiting the benefits for beneficiaries of subsidiary protection status to core benefits is to be understood in the sense that this notion covers at least minimum income support, assistance in case of illness, pregnancy, parental assistance and long-term care, insofar as they are granted to nationals according to the legislation of the Member State concerned. The modalities for granting such benefits should be determined by national law."

² DE : scrutiny reservation.
BE/FR/NL : preferred the text of Article 26 as set out in 10576/03 ASILE 40.

Article 27
Health care¹

1. Member States shall ensure that beneficiaries of refugee and of subsidiary protection status [...] have access to health care under the same conditions as nationals of the Member State that has granted the status.

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

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

¹ The following Recital will be added to Preamble:
"Access to health care, including both physical and mental health care, should be ensured to beneficiaries of refugee or subsidiary protection status."

² **DE** : scrutiny reservation.
BE/FR/NL : preferred the text of Article 27 as set out in 10576/03 ASILE 40.

Article 28
Unaccompanied minors

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

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

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

5. Member States, protecting the unaccompanied minor's best interests, shall endeavour to trace the members of his or her family as soon as possible. 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, so as to avoid jeopardising their safety.
6. Those working with unaccompanied minors shall have had or receive appropriate training concerning their needs.

Article 29

Access to accommodation

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

Article 30

Freedom of movement within the Member State

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

Article 31
Access to integration facilities

1. In order to facilitate the integration of refugees into society, Member States shall make provision for support programmes which they consider to be appropriate.
2. **Where it is considered appropriate by** Member States, [...] beneficiaries of subsidiary protection **shall be granted** access to integration programmes. [...] ¹

Article 32
Repatriation

Member States may provide assistance to beneficiaries of refugee or subsidiary protection status who wish to repatriate.

¹ NL : scrutiny reservation. Preferred the text as set out in 10576/03 ASILE 40.

CHAPTER VIII
Administrative cooperation

Article 33
Cooperation

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

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

CHAPTER IX
Final provisions¹

Article 35
Reports

By² 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, **24 and 31** [...]. Member States shall send the Commission all the information that is appropriate for drawing up that report by³. 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.⁴

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- ¹ The following Recital will be added to the Preamble :
"With respect to the treatment of persons falling within the scope of this Directive, Member States are bound by obligations under instruments of international law to which they are party and which prohibit discrimination."
- ² 18 months after the date provided for in Article 36(1).
- ³ 12 months after the date provided for in Article 36(1).
DE : scrutiny reservation on this time-limit.
- ⁴ Recital 24 will be amended as follows :
*"(24) The implementation of this Directive should be evaluated at regular intervals, taking into consideration in particular the evolution of the international obligations of Member States regarding non-refoulement, **the evolution of the labour markets in the Member States as well as the development of common basic principles for integration.**"*
DE : scrutiny reservation on this Recital as well as on Article 35.

Article 36
Transposition

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by¹ 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 37
Entry into force

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

Article 38
Addressees

This Directive is addressed to the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels,

For the Council
The President

¹ 24 months after the date of entry into force of this Directive.

Draft statements to be entered in the Council minutes

Re Article 4

"**The Council** states that the present Directive does not prevent Member States from allowing third country nationals or stateless persons found not to qualify for refugee status or subsidiary protection status to remain in their respective territories".

Re Article 9A

"For the purpose of applying Article 9 A, **the Council**, considering information from relevant international organisations, will endeavour to provide guidance on the question of whether an international organisation is actually in control of a State or a substantial part of its territory and whether this international organisation provides protection from persecution or suffering of serious harm, based on an assessment of the situation in the State or territory concerned."
