



**COUNCIL OF
THE EUROPEAN UNION**

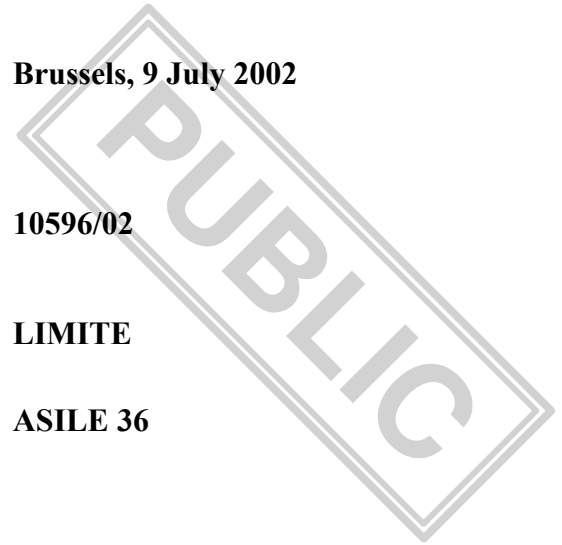
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OUTCOME OF PROCEEDINGS

from : Asylum Working Party
on : 2 and 3 July 2002

No. prev. doc. : 9038/02 ASILE 25

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 2 and 3 July 2002, the Asylum Working Party examined Articles 1 to 8 of the above proposal.

Changes to 9038/02 ASILE 25 are in bold.

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

II

Draft COUNCIL DIRECTIVE¹

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

CHAPTER I

General provisions

Article 1

Subject matter

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

Article 2

Definitions

For the purposes of this Directive:

- (a) “International protection” **consists of** refugee and subsidiary protection status **as defined in this Directive and means the protection applied for by third country nationals when national protection opportunities have been exhausted or, in the case of stateless persons, when the protection opportunities of the country of former habitual residence have been exhausted;**
- (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 Texts in bold result from compromise suggestions entered by the Chair in order to meet delegations concerns. Delegations are supposed to maintain scrutiny reservations concerning these changes.

- (c) “Refugee” means a third country national or a stateless person¹ who fulfils the requirements laid down by Article 1(A) of the Geneva Convention **set** out in Chapters II-III of this Directive;²
- (d) “Refugee status” means the **rights granted by a Member State to a refugee as well as the duties imposed** by a Member State **on** a refugee **who is permitted to remain and reside in** the territory of that Member State [...];
- (e) “Person eligible for subsidiary protection” is a person who does not qualify for refugee status but otherwise satisfies **the requirements** set out in Chapters II and IV of this Directive;³
- (f) “Subsidiary protection status” means the **rights** granted by a Member State to a third country national or a stateless person **as well as the duties imposed on a third country national or a stateless person** who is [...] eligible for subsidiary protection and is **permitted to remain and reside in** the territory of that Member State;
- (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. Without prejudice to Council Directive 2001/55/EC on temporary protection in the event of a mass influx of displaced persons,**⁴ any application for [...] protection is presumed to be an application for **international protection** save where the applicant explicitly requests another kind of protection that can be applied for separately;⁵

¹ F : instead of "stateless person", refer to "person who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it" (wording of Article 1(A)(2) of the Geneva Convention).

² D : scrutiny reservation.

³ E : scrutiny reservations on (e), (f), (g) and (i) pending the Opinion of the Council Legal Service concerning the legal basis of this proposal (see footnote re: heading of Chapter IV). OJ L 212, 7.8.2001, p. 12.

⁴ F : the second sentence should be transferred to the proposal for a Directive on asylum procedures.

NL : suggested the following text :

""Application for international protection" means a request for protection from a Member State, by a third country national or a stateless person, with which the applicant can be understood to **seek protection on the basis of Article 1(A) of the Geneva Convention or where the application seeks** subsidiary protection. (rest as Presidency text)".

- (h) (deleted)
- (i) "Application for subsidiary protection" means a request **made** by a third country national or a stateless person, **who seeks subsidiary protection status, provided he/she cannot be understood to seek refugee status, or the application for subsidiary protection status follows the rejection of a request for refugee status;**¹
- (j) "Family members"² **shall mean, insofar as the family already existed in the country of origin, the following members of the family of the beneficiary of international protection who are present in the same Member State in relation to the application for international protection:**
- (i) the spouse of the **beneficiary of international protection** or his or her unmarried partner in a stable relationship, where the legislation or practice of the Member State concerned treats unmarried couples in a way comparable to married couples **under its law relating to aliens;**
- (ii) the minor children of the couple referred to in point (i) or of the **beneficiary of international protection [...]**, 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;**
- (iii) (deleted)³

¹ NL suggested the following text :

""Application for subsidiary protection" means a request by a third country national or a stateless person, **with which the applicant seeks subsidiary protection, if he cannot be understood to seek protection on the basis of Article 1(A) of the Geneva Convention, or follows rejection of a request on the basis of Article 1(A) of the Geneva Convention.**"

² Text similar to the one agreed regarding draft Directive on reception of asylum seekers.

FIN : scrutiny reservation.

³ **NL/S** : reinsert this subparagraph as it appeared in the Commission proposal.

Cion : insert a subparagraph (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 of 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;"

- (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;¹
- (n) "Country of origin" means the country of nationality or, **for stateless persons**, former² habitual residence.

¹ E : this definition should be similar to that contained in Article 2(j) of draft Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an application for asylum.

² F : refer in French to the country where "ils avaient leur résidence habituelle" as it is said in the Geneva Convention.

Article 3

Scope

Once it has been decided to substantively examine an application for international protection, this Directive shall apply to all third country nationals and stateless persons who **has made such** an application [...] at the border or in the territory of a Member State [...] and to all those who receive such protection.

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
Qualification for international protection

Section I
International protection

Article 5
Refugee or person eligible for subsidiary protection

1. **"Refugee" shall apply** to any 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 to any stateless person, who, being outside the country of former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

2. **"Person eligible for subsidiary protection" shall**, without prejudice to existing constitutional obligations, **apply** to any third country national or stateless person¹ who does not qualify as a refugee, according to the **requirements** set out in Chapter III of this Directive, or whose application for international protection was explicitly made on grounds that did not include the Geneva Convention, and who,² owing to a well-founded fear of suffering serious and unjustified harm as **defined** in Article 15, has been forced to flee or to remain outside his or her country of origin and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.

3. (deleted)

¹ **E** : scrutiny reservation. Take into account the New York Convention of 1954 relating to the Status of Stateless Persons

² **NL** : say "on the basis of the grounds mentioned in Article 15" and delete the words "owing to a well-founded fear of suffering serious and unjustified harm as defined in Article 15".

E/F/NL/UK : use the terminology of the European Court on Human Rights.

The Chair asked the Council Legal Service to check this terminology.

Article 6

Maintaining family unity

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

Section II

Assessment of the applicant's fear of being persecuted or exposed to other serious and unjustified harm

Article 7

Assessment of applications for international protection

1. **It is for the applicant to submit the evidence needed to assess the veracity of the facts and circumstances put forward. The applicant shall be considered to have presented all the relevant facts of his/her case if he/she has provided statements and documentation at his/her disposal on his/her age, background, identity, nationality, travel routes, identity and travel documents and the reasons for his/her fear of persecution.**
2. **Once the credibility of the applicants statements has been sufficiently established, it will not be necessary to seek detailed confirmation of the facts put forward and the applicant should, unless there are good reasons to the contrary, be given the benefit of the doubt.**
3. **The assessment of the well-foundedness of an applicant's fear of being persecuted or exposed to other serious and unjustified harm should be carried out on an individual basis and includes the following matters:**
 - (a) **all relevant facts as they relate to the country of origin at the time of taking a decision on the application;¹ including laws and regulations of the country of origin and the manner in which they are applied.**

[...]

¹ **F/IRL/S/P** : subparagraphs (a) and (e) could be merged.
E : reproduce the wording of point 2 of Joint Position of 4 March 1996 (96/196/JHA) (OJ L 63 of 13.3.96, p.2) on the harmonized application of the definition of the term "refugee" :

"Each application for asylum is examined on the basis of the facts and circumstances put forward in each individual case and taking account of the objective situation prevailing in the country of origin".

- (b) whether the applicant has already been subject to persecution or other serious and unjustified harm or to direct threats of persecution or other serious and unjustified harm [...],
- (c) the individual position and personal circumstances of the applicant, including factors such as background, gender, age, health and disabilities so as to assess the seriousness of persecution or harm.¹ [...] Persecution, within the meaning of the Geneva Convention, may be effected through sexual violence or [...] gender-specific means.

[...]

(Alternative text suggested by Cion :)

Article 7

Assessment of applications for international protection

1. In assessing an applicant's fear of being persecuted or exposed to other serious and unjustified harm, Member States shall take into account, **on an individual basis**, as a minimum, the following matters:
 - (a) all relevant facts as they relate to the country of origin at the time of taking a decision on the application, **including laws or regulations which are in force and applied in practice in the country of origin which authorise or condone the persecution of the applicant or the infliction upon the applicant of other serious and unjustified harm;**
 - (b) whether the applicant's fear of being persecuted or exposed to other serious and unjustified harm in the country of origin is objectively established, in that there is a reasonable possibility that the applicant will be persecuted or otherwise subjected to serious harm if returned to the country of origin;

¹ **F and IRL** : delete the words "including factors such as background, gender, age, health and disabilities so as to assess the seriousness of persecution or harm".

- (c) whether the applicant has already been subject to persecution or other serious and unjustified harm or to direct threats of persecution or other serious and unjustified harm [...];
- (d) the individual position and personal circumstances of the applicant, including factors such as background, gender, age, health and disabilities so as to assess the seriousness of persecution or harm. Where the form of persecution is gender-specific or child-specific, account shall be taken of the fact that persecution, within the meaning of the Geneva Convention, may be effected through sexual violence or other gender-specific means;

[...]

2.¹ In assessing an applicant's fear of being persecuted or being exposed to other serious and unjustified harm, Member States shall apply the following procedural rules and principles:

- (a) the applicant for international protection shall be requested to present as soon as possible all the relevant facts of his/her case;**
- (b) the applicant for international protection shall be considered to have presented all the relevant facts of his/her case if he/she has provided statements on his/her age, background identity, nationality, travel routes, identity and travel documents and the reasons for his/her fear for persecution;**
- (c) after the applicant has made an effort to support his/her statements concerning the relevant facts by any available evidence and has given a satisfactory explanation for any lack of evidence, the determining authority must, evaluating the evidence, assess the well-foundedness of the fear for persecution or being exposed to other serious and unjustified harm;**

¹ Paragraph 2 is based on Article 16 of amended proposal for a Directive on procedures for granting and withdrawing refugee status (10279/02 ASILE 33).

(d) **in assessing the well-foundedness, Member States shall ensure that the determining authority, despite a possible lack of evidence for some of the applicant's statements, gives the applicant the benefit of the doubt if the following conditions are met :**

- (i) **the applicant has made a genuine effort to substantiate his claim;**
- (ii) **all available evidence has been obtained and, where possible, checked;**
- (iii) **the examiner is satisfied that the applicant's statements are coherent and plausible and do not run counter to generally known facts relevant to his/her case.**

Article 8

International protection needs arising sur place¹

1. A well-founded fear of being persecuted or otherwise suffering serious 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 otherwise suffering serious 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, and they are related to the grounds for recognition of the need for international protection.
3. **The rule laid down in paragraph 2 does not apply where such** activities were engaged in for the sole purpose of creating the necessary conditions for making an application for international protection, **unless the applicant can demonstrate that these activities have exceptionally resulted in a well-founded fear of being persecuted or suffering serious and unjustified harm.**²

¹ D/EL : reservations. This provision should refer only to refugee status.

² D/S : scrutiny reservations.

NL, supported by F : replace this paragraph by : "The application of this provision shall not in any manner affect obligations that Member States have under international law."

Article 9

Sources of harm and protection

1. Member States shall consider that the fear of being persecuted or of otherwise suffering unjustified harm is well-founded whether the threat of persecution or other serious unjustified harm emanates from:
 - (a) the State;
 - (b) parties or organisations controlling the State;¹
 - (c) non-State actors where the State is unable or unwilling to provide effective protection.²

2. In evaluating the effectiveness of State protection where the threat of persecution or other serious unjustified harm emanates from non-State actors, Member States shall consider whether the State takes reasonable steps to prevent the persecution or infliction of harm, and whether the applicant has reasonable access to such protection. There must be in place a system of domestic protection and machinery for the detection, prosecution and punishment of actions which constitute persecution or other serious and unjustified harm.³ Where effective State protection is available, fear of being persecuted or otherwise suffering serious unjustified harm shall not be considered to be well founded, in which case Member States shall not recognise the need for protection.

¹ **NL** : add "or a substantial part of it".

² **EL and E** : a definition of "non-State actors" should be included in the Directive.

F : scrutiny reservation. In principle, no protection should be offered in these cases, unless certain conditions are met (e.g. that these activities of non-State actors are tolerated or encouraged by the public authorities).

IRL : modify this text on the lines of paragraph 65 of the UNHCR Handbook on procedures and criteria for determining refugee status : "if they are knowingly tolerated by the authorities or if the authorities refuse, or prove unable, to offer effective protection".

³ **D and NL** : delete the second sentence of this paragraph.

IRL : modify the text in line with the wording of the explanatory memorandum.

3. For the purpose of this Directive, “State” protection may also be provided by international organisations and stable quasi-State authorities who control a clearly defined territory of significant size and stability,¹ and who are able and willing to give effect to rights and to protect an individual from harm in a manner similar to an internationally recognised State.²

Article 10

Internal protection³

1. Once they have established that the fear of being persecuted or of otherwise suffering serious and unjustified harm is well-founded,⁴ Member States may examine whether this fear is clearly confined⁵ to a specific part of the territory of the country of origin and, if so, whether the applicant could reasonably be returned to another part of the country where there would be no well-founded fear of being persecuted or of otherwise suffering serious and unjustified harm.⁶

In carrying out this examination there shall be a strong presumption⁷ against finding internal protection to be a viable alternative to international protection if the agent of persecution is, or is associated with the national government.⁸

¹ **D** : the concepts of "significant size and stability" of a territory should be defined.

² **NL** : this provision should be moved to Article 10.

³ **F** : scrutiny reservation linked to its reservation to Article 9.

⁴ **L**, supported by **D, IRL, A and UK** : suppress the words "Once they have established that the fear of being persecuted or of otherwise suffering serious and unjustified harm is well-founded".

⁵ **A** : clarify the expression "this fear is clearly confined".

⁶ **D** : this provision should only apply in cases of subsidiary protection.

D and NL : in cases involving asylum procedures, more scope for return must be left to Member States.

D : specify that a minimum level of subsistence and health care must be possible in that part of the territory of the country of origin.

⁷ **D, IRL and NL** : clarify the expression "strong presumption".

⁸ **NL** : delete the words "or is associated with the national government".

2. In examining whether an applicant can be reasonably returned to another part of the country in accordance with paragraph 1, Member States shall have regard to the security, political and social circumstances prevailing in that part of the country, including respect for human rights, and to the personal circumstances of the applicant, including age, sex, health, family situation and ethnic, cultural and social links.¹

¹ **D, IRL, NL and A** : this list of circumstances (both personal or concerning a part of the country) is too vague and could raise interpretation problems.

CHAPTER III
Qualification for refugee status

Article 11

The nature of persecution

1. In the determination of whether a well-founded fear of being persecuted has been objectively established, the term persecution shall be considered to cover as a minimum any of the following situations:
 - (a) the infliction of serious and unjustified harm or discrimination¹ on the grounds of race, religion, nationality, political opinion or membership of a particular social group, sufficiently serious by its nature or repetition as to constitute a significant risk to the applicant's life, freedom or security² or to preclude the applicant from living in his or her country of origin;³
 - (b) legal, administrative, police and/or judicial measures when they are designed or implemented in a discriminatory manner on the grounds of race, religion, nationality, political opinion or membership of a particular social group and if they constitute a significant risk to the applicant's life, freedom or security or preclude the applicant from living in his or her country of origin;⁴

¹ **D and A** : the concept of discrimination should be clarified and aligned with the provisions of the Geneva Convention.

² **D** : instead of "security", refer to "life, freedom and physical integrity".

³ **D** : the reference to the applicant's preclusion from living in his country of origin should be either deleted or linked to the seriousness of the persecution. The relationship between this provision and Article 5(2) should be clarified.

E and P : modify this draft on the lines of the Joint Position of 4 March 1996 (96/196/JHA) on the harmonized application of the definition of the term "refugee".

⁴ **D** : this subparagraph should be merged with subparagraph (a) as a list of examples clarifying its content.

- (c) prosecution or punishment for a criminal offence if, on the grounds of race, religion, nationality, political opinion or membership of a particular social group:
- (i) the applicant is either denied means of judicial redress or suffers a disproportionate or discriminatory punishment;¹
 - (ii) the criminal offence for which the applicant is at risk of being prosecuted or punished, purports to criminalise the exercise of a fundamental right;
- (d) prosecution or punishment for refusal to meet a general obligation to perform military service on the grounds of race, religion, nationality, political opinion or membership of a particular social group:
- (i) if the conditions stated in paragraph (c) (i) apply;
 - (ii) in situations of war or conflict, if the person can establish that performance of military service will require his or her participation in military activities which are irreconcilable with the applicant's deeply held moral, religious or political convictions, or other valid reasons of conscience.²

¹ **D** : the scope for appeals against disproportionate or discriminatory punishment should be considered.

² **D, EL, E, P and UK** : this provision should not be based on the subjective opinions or political convictions of the applicant.

D, EL, E and P : objective criteria should be established (E : by referring to the laws of war).

UK : delete this provision.

A : reservation concerning point (ii).

2. The following principles shall, as a minimum, govern the determination of whether a well-founded fear of being persecuted should result in the recognition of an applicant as a refugee :¹
- (a) it is immaterial whether the persecution stems from the State, parties or organisations controlling the State, or non-State actors where the State is unable or unwilling to provide effective protection;²
 - (b) 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 agent of persecution;³
 - (c) it is immaterial whether the applicant comes from a country in which many or all persons face the risk of generalised oppression.⁴

¹ **EL** : scrutiny reservation on the negative form in which this provision has been drafted.

A : these criteria are too vague and could raise problems of interpretation.

D and P : the drafting of this provision should be clarified.

² **D** : this situation seems to be already covered by Article 9(1).

³ **D** : this situation should be inserted in Article 12.

⁴ **D** : reservation; the cases of civil war in the country of origin should be specified. Drafting should be similar to Joint Position of 4 March 1996 (96/196/JHA) on the harmonized application of the definition of the term "refugee".

UK : specify that an individual claim is always needed and that the simple fact of a civil war situation in the country of origin is not sufficient.

Article 12

The reasons for persecution

In determining whether a well founded fear of persecution is based on reasons of race, religion, nationality, political opinion or membership of a particular social group, the following elements shall, as a minimum, be taken in account: ¹

- (a) the concept of race shall include considerations of colour, descent, or membership of a particular ethnic group;
- (b) the concept of religion shall include the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public,² 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 nationality³ shall not be confined to citizenship but shall include membership of a group determined by its cultural, ethnic, or linguistic identity, common geographical or political origins or its relationship with the population of another State;
- (d) the concept of social group shall include a group which may be defined in terms of certain fundamental characteristics, such as sexual orientation,⁴ age or gender, as well as groups comprised of persons who share a common background or characteristic that is so fundamental to identity or conscience that those persons should not be forced to renounce their membership. The concept shall also include groups of individuals who are treated as "inferior" in the eyes of the law;⁵

¹ **D, E and NL** : establish more general criteria. The ones provided for here are too specific and would raise problems of application in the future.

² **D** : the Geneva Convention protects the private practice of religion, not the public one.

³ **D** : avoid defining nationality, which is a well-known concept.

⁴ **D and NL** : avoid referring to sexual orientation as an example of a social group.

S : was opposed to the D and NL suggestion.

A : this concept of "social group" is too large.

⁵ **E** : delete the last sentence.

- (e) the concept of political opinion shall include the holding of, or the being conceived of as holding, an opinion on a matter related to the State or its government or its policy, whether or not that opinion has been acted upon by the applicant.

Article 13

Cessation of refugee status¹

1. Member States shall maintain refugee status until and unless the refugee:²
- (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

¹ **D** : the title should refer to "duration" of refugee status.

² **D/F/I** : read (as in Article 1C of the Geneva Convention) : "Refugee status shall cease to apply to any person if he or she :". In the same line, **IRL** suggested "Refugee status shall be revoked in the following circumstances :".

IRL : add the following subparagraph :

"is a person whose presence in the State poses a threat to national security or public order or is a person to whom refugee status has been given on the basis of information which was false or misleading." In the same line, **P**, supported by **E/F/A** suggested adding:

- cases envisaged in Article 33(2) of the Geneva Convention, i.e. when there are reasonable grounds for regarding the refugee as a danger to the security of the country in which he is or when, having been convicted by a final judgment of a particular serious crime, he constitutes a danger to the community of that country,
- cases where the status was obtained through fraud or false evidence.

- (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;¹
- (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 the cases referred to in points (a) to (f), the residence permit may be revoked.

In considering point (e), Member States shall have regard to whether the change of circumstances is of such a profound and durable nature that the refugee's fear of persecution can no longer be regarded as well-founded.

- 2. The Member State which has granted refugee status shall bear the burden of proof in establishing that a person has ceased to be in need of international protection for one of the reasons stipulated in paragraph 1.³

¹ **A** : refer only to cases where the refugee's fear of being persecuted is not well founded and may be allayed.

² **NL** : this case refers to withdrawal of refugee status and not to cessation.
D/NL/FIN : consistency between this text and the proposal for a Directive on Asylum procedures should be ensured.

I : subparagraphs (e) and (f) should be merged.

³ **D/I/A** : a definition of "burden of proof" is needed in Article 2.

F : delete the words "of proof".

IRL : scrutiny reservation. The burden of proof should not fall always on the Member State.

NL : suggested the following alternative text for paragraph (2) :

"The circumstances in which refugee status may be withdrawn shall be examined on an individual basis".

Article 14

Exclusion from refugee status

1. Member States shall exclude from refugee status any applicant:¹
 - (a) who is at present receiving protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees;
 - (b) who is recognised by the competent authorities of the country in which he or she has taken up residence as having the rights and obligations attached to the possession of the nationality of that country;
 - (c) where there are serious reasons for considering that:
 - (i) the applicant 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;
 - (ii) the applicant has committed a serious non-political crime prior to his or her admission as a refugee;²
 - (iii) the applicant has been guilty of acts contrary to the purposes and principles of the United Nations.³

¹ **D/A** : add cases under Article 33(2) of the Geneva Convention. Include cases where the national security of the host State may be endangered as well as cases where protection may be ensured in third countries.

D : situations where the applicant has engaged in activities since he left his country of origin for the sole purpose of creating the necessary conditions for making his application for international protection should be included here, and not in Article 8(2).

² **E** : add the following text, as included in the Council Joint Position on the harmonized application of the definition of the term "refugee" :
"Particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes. This applies both to the participants in the crime and to its instigators."
Reference to the International Criminal Court and related obligations on Member States should also be included here.

³ **F** : the reference to the purposes and principles of the UN should be clarified.

2. The grounds for exclusion shall be based solely on the personal and knowing conduct of the person concerned.¹
3. Member States shall ensure that persons so excluded have the right to bring proceedings before a court against a decision to exclude them from international protection.²
4. The application of the exclusion shall not in any manner affect obligations that Member States have under international law.

¹ **F** : the conduct of the person is relevant only with reference to subparagraph (1)(c). Subparagraphs 1(a) and (b) refer to "de facto" situations. Delete the words "solely" and "knowing".

NL : international jurisprudence related to the personal conduct of the person concerned should be taken into account.

² **F/FIN/IRL/NL/S** : consistency with the draft Directive on asylum procedures should be ensured.

F/IRL : delete this paragraph.

S : scrutiny reservation.

CHAPTER IV
Qualification for subsidiary protection status¹

Article 15
The grounds of subsidiary protection

In accordance with Article 5(2), Member States shall grant subsidiary protection *status* to an applicant for international protection who is outside his or her country of origin, and cannot return there owing to a well-founded fear of being subjected to the following serious and unjustified harm:²

- (a) torture or inhuman or degrading treatment or punishment; or³
- (b) violation of a human right, sufficiently severe to engage the Member State's international obligations or;⁴

¹ The Working Party asked the Council Legal Service for its opinion on the legal basis of this proposal.

EL wanted to know whether Article 63(2)(a) TEC allows such a level of detail on rules concerning subsidiary protection.

² **F**, supported by **E/L/P** : it should be clearly stated that the person concerned must demonstrate that his fear is well founded in his particular case.

E : the grounds should be linked to the Geneva Convention, albeit insufficient to obtain refugee status.

NL : the conduct of the person concerned must be better defined in Article 15. Moreover, an order of precedence should be introduced concerning the grounds for obtaining subsidiary protection under (a), (b) and (c).

P : the expression "serious and unjustified harm" should be clarified. A paragraph (2) should be added in order to specify that subsidiary protection status is an individual right based on individual circumstances.

³ **D/A** : add risk of being condemned to death penalty in the country of origin.

NL : add the concepts of "real risk" and "cruel treatment", as defined by the European Court of Human Rights.

EL : grounds under (a) and (b) are more appropriate for refugee status. Differences between refugee status and subsidiary protection are not clearly established.

⁴ **E/F/NL/FIN** : specify which violations of human rights would give grounds for subsidiary protection.

NL/FIN : add that in these cases the person shall not be deported or expelled.

IRL : cases under (b) are already covered by (a) and (c).

- (c) a threat to his or her life, safety or freedom as a result of indiscriminate violence arising in situations of armed conflict, or as a result of systematic or generalised violations of their human rights.¹

Article 16

Cessation of subsidiary protection status²

1. Member States shall ensure that subsidiary protection status is maintained until such time as it is established by the competent authorities that such protection is no longer required, in which case the residence permit may be revoked.³
2. Subsidiary protection may be withdrawn if the circumstances in the country of origin which led to the granting of such status under Article 15, cease to exist, or if a change in circumstances is of such a profound and durable nature that it eliminates the need for subsidiary protection.⁴

¹ **EL** : grounds under (c) should be specified, the present wording being too general.
E/NL : refer to "indiscriminate generalized violence".

E : add grounds where there is an international agreement designed to offer protection to certain persons or to persons in a particular situation.

NL : the differences between the grounds under (b) and (c) should be better defined.

FIN : there is no international obligation of not returning a person to a country at war.

² **A/E/FIN/IRL/P** : add additional grounds as for cessation of refugee status (see comments on Article 13).

³ **FIN** : specify the consequences of revoking the residence permit.

⁴ **FIN** : the difference between withdrawal and revocation of status should be specified : withdrawal should refer to cases where the circumstances change and revocation to situations where the status was obtained on the basis of false or wrong reasons.

Article 17

Exclusion from subsidiary protection status¹

1. Member States shall exclude from subsidiary protection status any applicant where there are serious reasons for considering that:
 - (a) the applicant 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) the applicant has committed a serious non-political crime prior to his or her admission as a **beneficiary of subsidiary protection status**;
 - (c) the applicant has been guilty of acts contrary to the purposes and principles of the United Nations.²
2. The grounds for exclusion shall be based solely on the personal and knowing conduct of the person concerned.
3. Member States shall ensure that persons so excluded have the right to bring proceedings before a court against a decision to exclude them from international protection.³
4. The application of the exclusion shall not in any manner affect obligations that Member States have under international law.⁴

¹ **A/E/F/NL/IRL/P** : similar comments to those on Article 14. Other grounds for exclusion, such as national security and public order, must be cited, as well as those in Article 33(2) of the Geneva Convention.

D : reservation. Subsidiary protection should be clearly differentiated from refugee status and not simply be an alternative for the person asking for protection.

² **F** : reservation. This ground for exclusion should be clarified.

³ **IRL** : specify the right to review or appeal.

S : scrutiny reservation.

⁴ **F** : scrutiny reservation.

CHAPTER V

Refugee status and subsidiary protection status

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.¹
2. The rules laid down in this Chapter shall apply both to refugees and persons eligible for subsidiary protection unless otherwise indicated. The level of rights attached to a protection status shall not be lower than that enjoyed by applicants during the determination process and shall be enjoyed equally by the accompanying family members of the qualified beneficiary.²
3. When implementing the provisions of this Chapter, Member States shall take into account the specific situation of persons who have special needs such as: minors in general , unaccompanied minors, disabled people, elderly people, single parents with minor children, victims of torture or sexual abuse or exploitation, pregnant women and persons suffering from infirmity, whether mental or physical. Member States shall also take into account the specific situation of single women who, are subject to substantial gender-related discrimination in their country of origin.³

¹ **E/FIN/P** : this provision should be more precise, above all on whether or not the Geneva Convention applies to subsidiary protection status.

² **A/IRL** : a very narrow concept of family members is needed. Same comments as on Article 2(j).

D : the second sentence of this paragraph should be simplified. Article 6 already covers these situations.

EL/P : treatment under refugee status and under subsidiary protection status should be better differentiated.

EL/E : take into account exceptions depending on the nationality of the family members (i.e. cases where they have the nationality of the State where the applicant seeks protection or the nationality of one of the Member States).

A/FIN/L : accompanying family members should meet the same conditions as applicants for obtaining international protection status.

A : accompanying family members should also submit an application.

³ **E/FIN/L/NL/P** : the last sentence could create confusion when implementing this provision.

L/P : delete the last sentence.

NL : avoid reference to discrimination.

Article 19
Protection from refoulement and expulsion

Member States shall respect the principle of non-refoulement and shall not expel persons enjoying international protection, otherwise than in accordance with their international obligations.

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

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.

Article 21
Residence permits

1. As soon as their status has been granted Member States shall issue to refugees and their accompanying family members¹ a residence permit which must be valid for at least five years² and renewable automatically.³

2. As soon as the status has been granted Member States shall issue to persons enjoying subsidiary protection status and their accompanying family members⁴ a residence permit which must be valid for at least one year.⁵ This residence permit shall be automatically⁶ renewed at intervals of not less than one year, until such time as the granting authorities establish that such protection is no longer required.⁷

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]⁸ 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.⁹

¹ **FIN** : scrutiny reservation concerning family members.

² **NL** : prefers three years.

³ **E/FIN/L/NL** : delete "automatically".

L : read "renewable ipso jure" ("de plein droit" in French).

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

⁵ **S** : add "or, in specific cases, for six months".

⁶ Same comments as for paragraph 1.

⁷ **D** : scrutiny reservation.

FIN : delete the second sentence.

⁸ OJ L

⁹ **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 selfemployed 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

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.

3. Member States shall ensure that unaccompanied minors are placed:¹
 - (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 ensure² that siblings are kept together. Changes of unaccompanied minors' residence shall be limited to a minimum.
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.³
6. Member States shall ensure that those working with unaccompanied minors receive appropriate training⁴ on their needs.

Article 29

Access to appropriate accommodation

The Member States shall ensure that persons enjoying international protection have access to suitable accommodation⁵ or, if necessary, receive the means to obtain housing.

¹ **D/S** : ensure that none of the language versions make this list of possibilities an order of preference.

² **I/NL** : add "as far as possible".

³ **FIN/NL** : this tracing must be undertaken when proceedings concerning international protection status start, and not after status has been granted.

⁴ **D** : read "are trained" instead of "receive appropriate training".

⁵ **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".

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.¹

Article 31

Access to integration facilities²

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.³

Article 32

Voluntary return⁴

Member States shall grant persons enjoying international protection access to voluntary return programmes⁵ for those who wish to return on a voluntary basis to their country of origin.

¹ **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).

² **P/UK** : scrutiny reservations.

³ **FIN/NL/S** : delete the following words "not later than one year after their status is granted".

A/D : scrutiny reservations.

⁴ **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.

⁵ **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 cooperation 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 harmonization 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. 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.

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

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