ECRE
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The Impact of the EU Qualification Directive on International Protection

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ELENA

EUROPEAN LEGAL NETWORK ON ASYLUM

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1. Introduction

The deadline for the transposition of Council Directive 2004/83/EC, on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (the Qualification Directive),[1] expired on October 10, 2006. This study examines the transposition of certain provisions of that directive, the differences in practice brought about by transposition, and some of the substantive social rights EU Member States extend to recipients of international protection under the directive. Members of ELENA, ECRE's European Legal Network on Asylum,[2] provided the basic data, in the form of answers to a questionnaire on law and practice.

This project is motivated by concerns about the directive's compatibility with international human rights standards. ECRE and UNHCR have taken the position that some of the directive's provisions do not reflect the 1951 Refugee Convention,[3] and have urged states to adopt higher standards as provided for in article 3.[4] This study seeks to complement a 2007 UNHCR study of the directive's application in five Member States.[5] It was undertaken in the context of a project funded by the European Refugee Fund and coordinated by the Dutch Council for Refugees on the implementation of certain of the directive's provisions.

[1] Available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML

[2] *See* http://www.ecre.org/about_us/elena.

[3] Convention Relating to the Status of Refugees, 28 July 1951, and Protocol of 31 January 1967.

[4] ECRE, *Information Note on the Directive on Minimum Standards for the Qualification for refugee status or international protection*, October 2006, p. 5, http://www.ecre.org/files/qualpro.pdf, (Information Note on the Qualification Directive); UNHCR, *Annotated Comments on the EC Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons who otherwise need International Protection and the Content of the Protection Granted*, January 2005, p. 13, http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=4200d8354&page=search.

[5] UNHCR, *Asylum in the European Union: A study of the implementation of the qualification directive*, November 2007, http://www.unhcr.org/protect/PROTECTION/47302b6c2.pdf. The study reviewed several thousand administrative and judicial decisions in France, Germany, Greece, Slovakia and Sweden, and identified some significant divergences in the application of the directive. ECRE has drawn on the questionnaire used to prepare this study for some of the questions below regarding articles 6 and 15.

2. Key Findings

It is difficult to assess the general impact of the directive on the law and practice of Member States, due to divergent approaches to transposition and a relative lack of case law. Many provisions were not transposed literally, and some are mistranslated in national laws.

In areas like subsidiary protection or the use of exclusion clauses, the questionnaire answers indicate that the directive has not reduced the level of protection provided to asylum seekers in the EU. The introduction of more detailed rules of evidentiary assessment and a clear definition of persecution are positive developments. Transposition also significantly advanced standards in some Member States where non-state actors of persecution were recognised for the first time, or subsidiary protection was introduced as a concept.

In other areas, implementation appears to have lowered standards, mostly around the definition of a particular social group, or insufficient safeguards against *refoulement*. However, some states have kept higher standards than the directive requires, in accordance with their international obligations.

2.1 Evidence

Transposition introduced more detailed and explicit rules of evidentiary assessment. However, the directive allows Member States to automatically consider lack of documents or their late submission as evidence of insufficient cooperation or lack of credibility, and to sanction asylum seekers on that basis. Furthermore, some countries do not extend to applicants the well-established international norm of the benefit of the doubt in the face of insufficient evidence. The use of Country of Origin Information (COI) varies greatly. Most surveyed countries require its use, but few countries have detailed COI databases to facilitate objective status determination. This can reduce both the quality of decision-making and recognition rates.

2.2 Non-state actors of persecution

Inclusion of non-state actors of persecution in the directive broadened the refugee definition in countries that previously did not provide protection against such persecution. In some countries this has led to protection against groups such as clans, tribes, criminal organisations, rebel groups, and perpetrators of domestic violence. Other countries have adopted a more restrictive approach.

2.3 Internal Protection Alternative

Most countries have transposed the provisions concerning the internal protection alternative (IPA), some of them introducing the concept into national legislation for the first time. The transposition and application by some countries of article 8(3) is particularly disturbing, as it allows for the use of the IPA when, due to technical obstacles, applicants cannot actually return to the region which is deemed safe. In such cases applicants are often afforded only a tolerated status with severely curtailed social rights, or are not given any legal status whatsoever.

2.4 Particular Social Group

The directive allows Member States to define "*particular social group*" restrictively, as requiring that applicants both share an innate characteristic that cannot be changed *and* be perceived as a distinct group by the surrounding society. Fortunately, many states interpret their obligations more broadly, requiring the fulfilment of only one of these criteria, and the study did not reveal a significant change in the level of protection of asylum seekers due to the directive's definition. Some states have also expanded protection by defining persecution solely by reason of gender as persecution based on membership in a particular social group.

2.5 Subsidiary Protection

Subsidiary protection is applied in all surveyed countries, all of which use a sequential procedure.[6] However there are widely divergent practices in the application of article 15(c), which concerns qualification for subsidiary protection against a "*serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict*." Where national courts have addressed this provision, the survey shows a tendency to narrow its scope in relation to other *non-refoulement* provisions. Most countries require an applicant to demonstrate an individual risk in cases of armed conflict. Furthermore, the definition of "*armed conflict*" varies: for example some, but not all, Member States have classified the situation in Iraq as "*internal armed conflict*." In addition, many states have chosen the restrictive interpretation of "*individual threat*." These differences in interpretation may be contributing to the large disparities in recognition rates for Iraqi nationals in different EU Member States.

2.6 Exclusion

Some of the most disturbing results of the survey pertain to Member States' use of articles 12 and 14 of the directive to exclude asylum seekers from refugee status. Article 14 is of particular concern, as it creates a meaningless distinction between exclusion and revocation of status, and uses it to purport to permit states to conflate the Convention grounds for exclusion (article 1F) with expulsion (articles 32 and 33(2)). Application of any such law would place a Member State in violation of the Convention, with potentially serious consequences, for example for the family members of a refugee improperly excluded from recognition.

Even some Member States whose law reflects the Convention's terminology have adopted dangerously broad interpretations of a "*serious non-political crime*" that can lead to exclusion. Some states have established thresholds as low as for example considering any acts punishable with as little as four years of imprisonment under their national law as "*serious crimes*" leading to exclusion. Many states improperly exclude people from refugee recognition based on criteria that lead only to expulsion under the Convention (and article 21 of the directive). Many of those states fall yet

[6] That means that an application for asylum is first evaluated with regard to refugee status, and the assessment of the applicability of subsidiary protection begins only after it has been determined that the applicant is not a refugee.

further short of international standards through very broad interpretations of concepts such as "*particularly serious crime*." When assessing cessation, revocation, or exclusion, Member States should refer to the Refugee Convention rather than to the directive's corresponding, flawed provisions.

2.7 Social Rights

Although the directive guarantees a broad set of social rights, various of its provisions also allow their restriction in application. Member States may grant different sets of rights to refugees and to beneficiaries of subsidiary protection, e.g. limiting the right to work for beneficiaries of subsidiary protection based on "*the situation on the labour market*." The directive also differentiates the positions of family members from those of the beneficiaries themselves, and allows Member States complete discretion to define "*conditions applicable to*" all social rights and benefits as they pertain to family members of subsidiary protection beneficiaries. Nevertheless, most of the surveyed countries grant the same rights to beneficiaries of subsidiary protection as to refugees.

2.8 Conclusions

In application, the Qualification Directive largely reflects pre-existing Member State practice, with notable exceptions such as the introduction of non-state persecutors and gender-based persecution in states that did not previously use them, and the institution of EU-wide subsidiary protection. The directive leaves considerable scope for states to use evidentiary rules to deny protection, leading some to fail to thoroughly investigate each claim. In applying subsidiary protection, states are increasingly redefining concepts such as "*internal armed conflict*" to deny protection. The directive's exclusion clauses do not reflect international law, and leave dangerous scope for states to deny protection to deserving refugees. The binding provisions requiring social rights for refugees are mostly respected, probably because they reflect obligations already present in the Refugee Convention.[7] By contrast, the directive leaves almost complete discretion to deny rights to subsidiary protection beneficiaries. Most states have chosen not to exercise this discretion, choosing instead to provide the same social rights to subsidiary protection beneficiaries as to refugees.

If the study leads to one overarching conclusion, it is that considerable scope remains for future harmonisation of EU qualification standards. The directive provides Member States with many opportunities to exceed its minimum standards – expand the definition of "*particular social group*"; reduce the scope for procedural penalties; fill the protection gaps opened by the IPA; and more - in ways that would make little difference to most states, but would greatly improve individual lives. States that apply restrictive evidentiary rules or use the IPA or exclusion clauses to refuse protection, for example, have not seen a dramatic change in the number of asylum applications they receive. Rather than exploring the lowest limits of protection it requires, Member States should recall the directive's fundamental purpose, and use it as a tool for "*the full and inclusive application*" of the Refugee Convention.[8]

[7] Refugee Convention, articles 17-30.
[8] Qualification Directive, recital 2.

3. Content of Study

3.1. Methodology and Aims

A study of this nature cannot expect to yield firm empirical conclusions. Instead it aims to identify broad patterns or trends in Member State application of certain parts of the Qualification Directive. Due to its small scale and subjective approach, the survey's findings should not be regarded as conclusive, but as indicating areas that may merit further research.

The survey was distributed in late 2007 to practicing asylum lawyers selected from the ELENA network, and completed during the first half of 2008. In most countries, a single respondent completed the survey based on an overview of national law and practice. In some cases, respondents elected to enlist the advice of others with expertise in particular areas. ECRE staff also updated a few parts of the study and this summary to reflect changes of law that occurred after the contributions were received from Greece, the Netherlands, and Portugal.

As Member States transposed differing combinations of the directive's non-mandatory provisions, this survey does not always provide direct comparisons between national laws. Usually, answers to particular questions on the survey fell into a small number of broad groups, largely reflecting "schools of thought" in pre-existing European law. In many cases, again probably as a reflection of gaps and overlaps in prior practice, a significant number of Member States reported no actual use of particular provisions (often accompanied by a literal transposition of those provisions). The study began when several states had yet to transpose the directive, and transposition continued as the study progressed. The outcome is a snapshot of the Qualification Directive as it came into use from the end of its transposition period through to the middle of 2008.

3.2. Structure

The provisions this study focuses on were identified in consultation with the ELENA coordinators as particularly important for guaranteeing sufficient protection. National representatives or ELENA coordinators then provided answers based on national law and practice to 42 questions concerning the following provisions:

- Article 4 on the assessment of facts and circumstances
- Article 6 on actors of persecution or serious harm
- Article 7 on actors of protection
- Article 8 on internal protection
- Article 9 on acts of persecution
- Article 10 on reasons for persecution
- Article 12 on exclusion from refugee status
- Article 14 on revoking, ending, or refusing to renew refugee status
- Article 15 on serious harm
- Article 17 on exclusion from subsidiary protection

- Article 19 on revoking, ending, or refusing to renew subsidiary protection
- Articles 20-34 on content of protection (focus on Arts. 23, 26, and 27 only)

Nineteen EU Member States were surveyed: Austria, Belgium, Bulgaria, the Czech Republic, France, Germany, Greece, Hungary, Ireland, Italy, Luxemburg, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Sweden,[9] and the United Kingdom. In most of these, asylum authorities or courts have referred to the directive in their decisions. Norway was included in the survey as well, because recent Norwegian legislation was broadly modelled on the directive.

This paper summarises the study, focusing on the provisions of the directive that present contrasts in state practice, or appear particularly problematic from a human rights point of view. Section 3.3 relates to evidentiary assessment, focusing on the obligations the directive imposes on protection seekers and state authorities, and the consequences for an applicant of non-compliance. Section 3.4 reviews the implementation of the provision covering non-state actors of persecution, which should improve the situations of many asylum seekers in states that had not applied this concept before, then focuses on the implementation of non-state actors of protection and the internal protection alternative (IPA), extensive use of which can deprive refugees of international protection. Section 3.5 looks at refugee status, emphasising the interpretation of "*particular social group*," as well as exclusion from and revocation of status, and section 3.6 covers subsidiary protection. Finally, section 3.7 studies the social rights accompanying refugee status and subsidiary protection, focusing on three rights that have significant influence on integration: the rights to family reunification, to work, and to education.

A summary of each article is accompanied by a brief discussion of the related findings, and recommendations regarding how states could more closely align their practices with their international obligations. An annex lists the recommendations ECRE has drawn from its findings, a second annex provides the questions presented in the survey, and a third annex provides a compilation of the answers to the survey. Following the publication of this study, ECRE will offer further analysis to inform the discussions leading to amendments of the Qualification Directive, as part of the 2nd phase of building the Common European Asylum System.

3.3 Assessment of Evidence

Article 4 – Assessment of facts and circumstances

This article introduces rules for the evidentiary assessment of protection claims. Most of its provisions, especially those emphasising the importance of individual statements and requiring authorities to assess the relevant elements of the application "*in cooperation with the applicant*," will probably raise protection standards. However, some provisions have the potential in practice to limit the procedural rights of applicants. The provisions that allow states to assess evidence based on the timing of the application (paragraph 5(d)), and to require the applicant to provide all

[9] At the time of publication, Sweden is the only Member State bound by the directive that has not yet transposed it.

"*relevant elements*" of his application or "*satisfactory explanation*" for their absence, are of particular concern.

In many countries implementation of article 4 brought rules of evidentiary assessment into asylum law for the first time, e.g. **Italy**, **Slovakia** and the **UK** in relation to article 4(5). In **Luxemburg**, legislation formalised rules established by jurisprudence, and in **Hungary** it refined existing rules to make them more detailed and explicit.

Article 4(1)

The article allows Member States to require that applicants submit all elements needed to substantiate an application for international protection "*as soon as possible*." It also imposes a duty on the authorities to assess the relevant elements of the application in cooperation with the applicant.

Implementation of the article

Austria, the **Czech Republic**, **Germany**, **Greece**, **Ireland**, **Italy**, **Luxemburg**, the **Netherlands**, **Poland**, **Romania**, **Slovenia**, **Sweden** and the **UK** oblige applicants to submit all elements required to substantiate the application. Some countries simply require an asylum seeker to take the initiative to provide all information relevant to the claim. Where there is no formal obligation to submit all necessary elements, in **France** the more details the applicant provides about personal and country of origin conditions, the better the prospects of protection, and in **Belgium** the law allows for "*punishment*" (through e.g. detention or rejection) of claimants who fail to meet time limits for submitting an application. Most other countries apply general provisions of administrative law, requiring asylum seekers to provide all available information and evidence concerning their claims such as identity documents or certificates, and to identify reasons for the fear of persecution. In **Slovenia** state authorities must assess the actual situation *ex officio*. Finally, failure to provide all necessary elements can often lead to a determination that the applicant is not credible, for example in the **Netherlands**, **Poland** and the **UK**.[10]

Duties of the authorities

The obligation imposed by the directive on authorities "*to assess the relevant elements of the application*" reflects well-established international practice.[11] In all surveyed countries the law imposes such a duty. In **Austria**, **Bulgaria**, **Hungary**, **Ireland**, **Luxemburg**, **Poland** and **Slovenia** this obligation is not always fulfilled in practice, leading to annulment of decisions by appellate courts. Obligations imposed on authorities vary from a requirement to merely conduct an interview, to an obligation to gather all relevant information concerning the case and assess the claim on individual basis. In some countries like the **Czech Republic** and **Portugal**, such obligations derive from general provisions of administrative law.

[10] See survey answers to question 7b, below.
[11] UNHCR, *Handbook on Procedures and Criteria of Determining Refugee Status*, Geneva 1992 ('UNHCR Handbook'), para. 196.

Definition of 'cooperation'

Most of the surveyed countries require cooperation from the applicant, although many do not specifically define the term. An applicant in **Germany** must provide all information, including available documents. Failure to comply may result in disregarding facts produced at a later stage, in particular if it would delay the decision. In **Irish** jurisprudence cooperation between an applicant and the decision maker is treated as a shared burden of proof.[12] In **Poland** an asylum seeker is obliged to cooperate with refugee status determination (RSD) authorities in providing all necessary evidence, and must be present at interviews. In **Portugal** national asylum law does not refer specifically to cooperation as in article 4(1), but in practice applicant and examiner share a duty to assess all relevant elements of the application.

Definition of 'as soon as possible'

Of the countries that transposed article 4(1) only **Austria**, **Belgium**, **Luxemburg**, **Romania**, **Slovenia** and the **United Kingdom** have interpreted the term "*as soon as possible*." In **Germany**, asylum seekers must present themselves "*without culpable delay*."[13] State practice varies from requiring that evidence be provided without unnecessary delay (**Austria**), or as soon as reasonably possible (**Ireland**), to setting specific dates. In the regular procedure in **Slovenia**, all evidence must be submitted by the time the personal interview is completed, while in the accelerated procedure, the determining authority must set a date for the submission of evidence. **Belgium** also imposes time limits, which depend on the legality of the entry or stay on the territory. In **France** the asylum decision is based on documents available to the authorities at the day of taking the decision; claimants must justify later submissions. In the **United Kingdom** documentary evidence should be submitted within 5 days of the substantive interview, unless good reasons can be given for the delay.

ECRE has recommended that asylum seekers be granted reasonable time to prepare and provide all necessary evidence for the determination procedure.[14] In most countries, however, lack of evidence or its late submission is in practice counted against the applicant's credibility.

Article 4(2)

Article 4(2) enumerates the elements the applicant should provide to comply with paragraph 1. These consist of "*the applicant's statements and all documentation at the applicant's disposal regarding the applicant's age, background, including that of relevant relatives, identity, nationality(ies), country(ies) and place(s) of previous residence, previous asylum applications, travel routes, identity and travel documents and the reasons for applying for international protection*."

[12] As set out in UNHCR Handbook, para. 197.

[13] U*nverzüglich* – this term is not defined in asylum law, but is generally recognised in the German Civil Code.

[14] See ECRE, *The Way Forward: Towards Fair and Efficient Asylum Systems in Europe*, September 2005, http://www.ecre.org/files/ECRE%20WF%20Systems%20Sept05.pdf.

Implementation of article 4(2)

Bulgaria, **Greece**, **Italy**, **Luxemburg**, **Romania** and **Slovenia** transposed this article literally, but the same or similar elements are required in most of the other surveyed countries, except the **Czech Republic** and **Slovakia**. In this latter group these evidentiary requirements are not mentioned in the law; instead, it is left to individual judges or administrators to specify what types of evidence applicants should provide to substantiate their applications. **Dutch** law requires not all documents at an applicant's disposal, but all existing documents, as well as all documents that should have been at the applicant's disposal.

Article 4(3)

Article 4(3) establishes the factors to be considered in evaluating an application for international protection, and emphasises that each application must be considered on an individual basis.

Individualised assessment and the use of Country of Origin Information (COI)

All countries require individualised assessment of each claim, in accordance with international standards; in some countries, however, many issued decisions are standardised in practice. Most of the countries explicitly require (either in legislation or jurisprudence) that an individualised assessment accompany the use of COI. The **Czech Republic** does not make such a link. Although **Portuguese** legislation does not explicitly require it, an individualised assessment is implicit in the obligation to consider the risk of persecution based on the applicant's personal circumstances.[15]

Use of COI in law and jurisprudence

Objective COI is essential for the accurate examination of an asylum claim. The availability and use of COI vary across the surveyed countries. In some of them, like **Austria**, **Hungary**, **Romania** and the **UK**, the requirements for establishing a COI database and using COI are provided by law. In others, COI is used in practice to substantiate the case, and it is also generally used to assess the applicant's credibility. In some countries like the **UK**, the regulations concerning COI and databases are well developed but in others such as **Italy**, the use of COI is still limited, and applicants do not have access to the reports used by the administrative body. The **Hungarian** legislation in particular reflects high standards, as it specifically indicates COI as mandatory evidence and provides detailed guidance for its research and use.[16]

Article 4(4)

Article 4(4) confirms the role of previous persecution or serious harm as an "*indication of the applicant's well-founded fear of persecution or real risk of*

[15] See article 18(2)(b) of Law number 27/2008 of 30th June 2008.
[16] Under this law, COI should be legally relevant, up-to-date, balanced, based on a variety of governmental, non-governmental and international sources, etc.

***suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.*"**

Implementation of article 4(4)

This provision is recognised in all countries except **Bulgaria**. In **Ireland**, **Poland**, **Romania**, **Slovakia** and the **UK** it is recognised in the legislation, and it is recognised in practice in the rest of the countries. This is a new practice in some countries, such as **Slovenia**; the Slovenian authorities once considered only continuous torture or torture conducted over a long period of time to be persecution. By contrast, in **Italy** past persecution, but not the fear of persecution, was previously taken into account. In cases of particularly harsh previous persecution, **France** applies a higher standard, in not requiring fear of persecution at the time of application.

According to the directive, past persecution or threats of persecution support an applicant's well-founded fear of future persecution "*unless there are good reasons to consider that such persecution or serious harm will not be repeated*." Outside of a few countries such as **Germany** and the **UK**, however, there are few well-defined judicial tests describing how to apply this provision. In **Germany** the judicial test is whether there is "*sufficient safety from repeated persecution*." The **UK** Court of Appeal held that decision-makers should not exclude any past events from consideration when assessing future risk, unless the decision maker is satisfied beyond real doubt that they did not occur.[17]

Article 4(5)

Article 4(5) establishes conditions under which an applicant's statements must be deemed credible even in the absence of "*documentary or other evidence*."

Implementation of article 4(5)

Twelve countries require the applicant to fulfill the conditions mentioned in article 4(5) in order to substantiate his credibility. **Bulgaria**, **Ireland**, **Italy**, **Slovakia**, **Slovenia**, **Sweden** and the **UK** have transposed it literally. Only a few countries do not apply this paragraph (the **Czech Republic** and **Hungary**) or some of its provisions (for example **France** did not transpose point (d)).

In the **Netherlands**, policy rules are stricter than this article allows in cases concerning undocumented asylum seekers, as well as for non-nationals using forged documents, residing irregularly or constituting a security threat.[18] In such cases an asylum application can be considered credible if it contains no gaps, vagueness, or inconsistencies in relevant details; the asylum account must have a "*positive persuasiveness*."

ECRE has expressed concerns about article 4(5)(b) and (d) (respectively, requiring the applicant to justify the absence of relevant evidence, or failure to apply for protection

[17] *Karanakaran*, (2000) ImmAR271.
[18] This is true for further categories of aliens according to Section 31 of the 2000 Aliens Act.

at "*the earliest possible time*"), as they do not take into account that asylum seekers often have to flee their country without an opportunity to collect documents, and also often have valid reasons for not immediately applying for asylum.[19]

Principle of the "benefit of the doubt"

According to established international practice, the applicant should enjoy the benefit of the doubt when all available evidence has been checked and when the examiner is satisfied as to the applicant's general credibility.[20] This principle is applied in most of the surveyed countries, but not in the **Czech Republic**, **France**, **Germany**, **Italy**, the **Netherlands**, **Poland** and **Slovakia.** In some countries, e.g. **Hungary**, **Luxemburg** and **Slovenia**, it is used only in very exceptional cases.

Recommendations:

1. Member States should not automatically consider lack of documents or their late submission as evidence of insufficient cooperation or lack of credibility. Late submission of evidence should not be allowed to preclude consideration of that evidence.

2. The Refugee Convention does not permit states to sanction refugees for a perceived lack of cooperation in any stage of the asylum determination process. Member States should not apply sanctions against applicants merely for failure to submit all available evidence, or to submit evidence in a timely manner.

3. Decision makers should be required to obtain, and treat as legally relevant, objective, up to date and transparent Country of Origin Information (COI). The COI used in arriving at decisions should be available to asylum applicants and their representatives. In the event of a negative decision based on COI, the decision maker should be required to indicate to the applicant in writing the information used to support that decision. The EU should establish and maintain a common, independent, and publicly available COI database.

4. The applicant should enjoy the benefit of the doubt if all available information has been examined and the applicant has shown a reasonable fear of persecution. Credibility analysis should be related to relevant aspects of the claim and based on trustworthy evidence. In the event of an adverse credibility determination, asylum seekers should be allowed to clarify the information they have provided.

[19] ECRE, Information Note on the Qualification Directive, p. 6
[20] UNHCR Handbook, paras. 203-204.

3.4 Actors of Persecution and Protection

Article 6 – *Actors of persecution or serious harm*

Article 6 defines actors of persecution or serious harm as the state, parties or organisations controlling the state or a substantial part of its territory, and non-state actors, if it can be demonstrated that the state and other actors including international organisations are unable or unwilling to provide protection.

Inclusion of non-state actors of persecution in the directive broadened the refugee definition in countries such as **Germany**. The interpretation and use of this provision should however be consistent with the Refugee Convention.

Implementation of article 6

Belgium, the **Czech Republic**, **France**, **Germany**, **Hungary**, **Ireland**, **Italy**, **Luxemburg**, **Poland**, **Romania**, **Slovakia**, **Slovenia** and the **UK** transposed article 6 literally. In other countries the concept of actors of persecution or harm is defined by jurisprudence or recognised in practice. In **Poland**, jurisprudence and administrative practice regarding non-state actors of persecution as defined in article 6(c) are inconsistent with each other.

Use of the "non-state actors" concept in practice

In most of the countries surveyed, groups such as families, clans, tribes, mafias, rebel groups, etc., are recognised as non-state actors. **Hungary**, **Italy**, **Luxemburg**, **Poland** and **Romania** have applied the non-state actors principle in situations such as in Somalia, where no protection is available because state authorities effectively do not exist.[21]

The survey did not reveal much information about types of non-state actors that are not recognised in practice. In **Poland**, however, organisations like militias, paramilitary groups, criminal groups (e.g. mafia), and tribes are often not recognised by authorities. Moreover, as a rule, perpetrators of domestic violence or honour crimes are not considered to be non-state actors of persecution. Similarly, non-state perpetrators of domestic violence and genital mutilation are not recognised as leading to refugee status in the **Netherlands**, although victims of these practices can receive subsidiary protection. Refusal to recognise refugee status arising from gender-based persecution that the state cannot or will not prevent is an unusual practice in the EU, and runs contrary to the modern mainstream understanding of "*particular social group*" in the context of the Refugee Convention.

[21] *See e.g.*, European Country of Origin Information Network (http://www.ecoi.net/somalia); UK Home Office-Border Agency, *Country of Origin Information Report: Somalia,* 30 July 2008 (http://www.homeoffice.gov.uk/rds/pdfs08/somalia-080808.doc).

Recommendations:

5. Member States should accept that the absence of a functioning state authority demonstrates that no state authority is able or willing to provide protection against persecution or serious harm.

6. A broad and inclusive interpretation of the Refugee Convention, which the Qualification Directive aspires to, must recognise gender-based persecution such as genital mutilation or domestic violence as persecution based on membership in a particular social group.

Article 7 – *Actors of protection*

Protection may be provided by a state or by parties, including international organisations, controlling the state or a substantial part of its territory. Protection is "*generally provided*" when those actors "*take reasonable steps to prevent [persecution or 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.*"

ECRE has emphasised that the use of non-state actors of protection per se raises concerns, as currently only states can be parties to international human rights instruments.[22] This makes it impossible for persons within their jurisdiction to hold non-state entities internationally responsible for ensuring that human rights standards are safeguarded.

Implementation of article 7

Despite these concerns, most of the surveyed countries have implemented article 7. In some of them actors of protection are not defined in legislation. Only **Hungary**, **Portugal** and **Sweden** do not recognise protection by non-state actors.

Use of concept of non-state actors of protection in jurisprudence

In **Austria**, **France**, **Germany**, **Luxemburg**, **Norway** and the **UK** there have been cases concerning non-state actors of protection, mostly referring to UN bodies such as UNMIK in Kosovo, or UNHCR camps, or organisations such as the Red Cross. In **Germany**, the definition depends on the political situation in the country and there is no systematic designation of organisations considered able to provide protection. In **France**, for example UN missions established under Chapter VII can be actors of protection (e.g. Bosnia, Kosovo), but those under Chapter VI cannot (e.g. Haiti).

Article 7(2) – definition of protection

Rather than requiring that a non-state actor actually protect a claimant, article 7(2) merely requires that such an actor "*take reasonable steps*" to prevent persecution or serious harm. Protection is defined in accordance with this article in **Austria**,

[22] ECRE, Information Note on the Qualification Directive, p. 7.

Belgium, the **Czech Republic**, **Germany**, **Ireland**, **Italy**, **Luxemburg**, **Slovakia** and the **UK**. A positive trend is the application of higher standards by **Austria**, **Belgium**, **France**, **Hungary**, **Ireland**, **Luxemburg**, the **Netherlands** and the **UK**, especially in requiring that the protection offered by non-state actors be effective, but nonetheless the concern remains that unlike states, non-state actors cannot be held accountable to binding human rights obligations. In **Germany**, **Greece** and **Poland** there is no relevant practice. In **Slovenia**, as a rule, the refugee status determination authorities take into account the legal system as such and not the applicant's actual access to legal remedies**.**

Recommendations:

7. Member States should not use the concept of non-state actors of protection to deny refugees asylum in Europe.

8. Member States should use their right to implement higher standards when applying article 7(2), and evaluate the actual availability of protection, rather than merely whether the state of protection "take[s] reasonable steps to" prevent persecution or serious harm.

Article 8 – ***Internal protection***

Article 8 allows Member States to refuse protection if they determine that the applicant would not be in undue danger in a part of the country of origin, and the applicant "*can reasonably be expected to stay in that part of the country*." It does not, however, preclude the application of this internal protection alternative (IPA) when persecution emanates from state actors. Finally, Member States may apply the IPA "*notwithstanding technical obstacles to return*" (article 8(3)).

Implementation of article 8(1), (2)

Internal protection is applied in accordance with article 8(1) in all countries surveyed except **Italy**, **Norway**, and **Portugal**. In **France** it is applied very seldom, mostly to claimants who actually lived in another part of the country of origin.

According to the survey, implementation of article 8 has not lowered the number of people granted protection in **Austria**, **Belgium**, **Bulgaria**, **Czech Republic**, **Italy**, **Luxemburg** and the **Netherlands**, of the countries that apply the IPA. In others the situation is unknown, for lack of relevant jurisprudence. All surveyed countries that use the IPA apply it to subsidiary protection as well as to refugee status.

Requirement of reasonableness in application of IPA

ECRE has welcomed the directive's requirement that "*the applicant can reasonably be expected to stay in that part of the country*," but remains concerned that it fails to provide guidance as to how to interpret "*reasonably*."[23] The requirement of reasonableness does not appear in general in the surveyed countries, but it often

[23] ECRE, Information Note on the Qualification Directive, p. 7.

derives from the requirement to consider the individual circumstances of the case (although there is no such requirement in **Bulgaria**, the **Czech Republic**, **Italy**, and **Slovenia**). In most of the countries the IPA is evaluated based on the general and individual circumstances of the case as well as factors such as a lack of threat of persecution or serious infringement of human rights, existence of family or other rights, and ability to support basic needs. Some jurisprudence refers directly or indirectly to UNHCR guidelines, and in **Hungary**, **Luxemburg** and **Romania** those guidelines are reflected in national law. In **Belgium**, **Germany**, **Ireland** and the **UK** they are reflected in jurisprudence. In **Sweden** the guidelines are applied in general but not in Afghani and Iraqi cases.

Individualised determination

The survey shows that in most of the countries' legislation the IPA is recognised on a case-by-case basis, after consideration of the merits of the claim. **Bulgaria**, **Germany**, **Ireland**, **Romania**, **Slovenia**,[24] and **Poland** (where the fact of registration of Chechens in Russia is considered a basis to apply the IPA) apply the IPA both case-by-case and as a blanket policy in relation to particular countries of origin.

States as actors of persecution

Even though refugees can rarely if ever expect durable protection anywhere in their countries of origin when the state is the actor of persecution, **Austria**, **Belgium**, **Bulgaria**, **Germany**, **Ireland**, the **Netherlands**, **Poland**, **Romania**, **Slovakia**, **Slovenia** and the **UK** nonetheless apply the IPA in such situations. **Hungarian** legislation adheres to a broad and inclusive understanding of international law in that it explicitly forbids such use of the IPA. In the **UK**, the instructions for migration officers state that the "*sufficiency of protection*" concept does not apply where the state or an organisation controlling the state is the actor of persecution.

Article 8(3)

States should not apply the IPA when applicants cannot return due to technical obstacles.[25] Most of the surveyed countries indeed have not transposed this provision, but the **Czech Republic**, **Germany**, **Luxemburg**, **Slovakia** and the **UK** have. Technical obstacles mentioned in the guidelines or jurisprudence of those countries include for example "*lack of transport links*" in **Germany**,[26] or in the **UK** problems with documentation needed to facilitate return, or problems temporarily affecting the possibility of return, such as natural disasters.

[24] This practice appears to contravene Slovenian law, which requires that personal circumstances be considered.
[25] ECRE, Information Note on the Qualification Directive, p. 8.; ECRE, *Submission from the European Council on Refugees and Exiles in response to the Commission's Green Paper on the Future Common European Asylum System (COM (2007) 301),* September 2007 ('Green Paper Response'), http://www.ecre.org/files/ECRE%20Green%20paper%20response%20final%20-%20Read%20only.pdf, p. 18.
[26] According to the guidelines of the Ministry of Interior.

Right to alternative status

When the IPA is applied in accordance with article 8(3), an alternative status, such as temporary residence permit, tolerance visa or tolerated status may be granted in the **Czech Republic**, **Germany**, **Luxemburg**, **Poland** and **Romania**. In **Germany** by contrast, the aliens' authority does not grant residence permits to people who cannot return to their country of origin. In other countries, those who cannot be deported due to technical obstacles are tolerated in practice without having any rights. Asylum seekers who for reasons beyond their control cannot return should not be left in such a 'legal limbo.' Member States should instead grant them an alternative legal status.[27]

Recommendations:

9. When applying the IPA, states should always ascertain that the country of origin would provide sufficient, accountable, and durable protection.

10. Member States should not apply the IPA when the state is the actor of persecution, or the persecution is in any way imputable to the state.

11. Member States should not apply the IPA as a blanket measure, as this contravenes the requirement to consider each asylum application on its merits.

12. Member States should not apply the IPA when return is in fact impossible due to technical obstacles. Without access, no IPA exists.

13. States that use article 8(3) to refuse protection despite technical obstacles to return should provide an alternative legal status to those who cannot return.

3.5 Refugee Status

Article 9 – *Acts of persecution*

Article 9(1) defines acts of persecution with reference to the fundamental rights protected by the European Convention on Human Rights (ECHR). The provisions in Article 9(2) defining persecution based on acts of a gender-specific or child-specific nature or acts of mental or sexual violence represent a particularly positive step.

Implementation of article 9

The definition of acts of persecution was transposed literally in **Belgium**, **Ireland**, **Italy**, **Luxemburg**, **Poland**, **Romania**, **Slovakia**, **Slovenia** and the **UK**. In **Bulgaria** and **Hungary** the definition has been partially adopted, and in **Austria** and **France** the law refers to the Refugee Convention.

[27] *See* ECRE, *The Way Forward: The Return of Asylum Seekers whose Applications have been Rejected in Europe*, June 2005, http://www.ecre.org/files/return.pdf, pp. 25-27.

Article 9(2)

Germany, **Hungary**, **Ireland**, **Italy**, **Luxemburg**, **Romania**, **Slovakia** and **Slovenia** have transposed the examples of acts of persecution listed in article 9(2) literally. Others countries have implemented them partially or not at all. For example in **France**, the authorities seem to have a broader understanding than article 9(2)(e) because acts of persecution can take the form of prosecution or punishment for refusal to perform military service in a conflict for political, religious or ethnic reasons. On the other hand, in **Poland** the Office for Aliens does not consider such refusal to perform military service as grounds for refugee status.

Article 10 – *Reasons for persecution*

Article 10 enumerates the reasons for persecution that Member States must consider in evaluating the risk of persecution. The article describes a particular social group as requiring that an applicant both share an innate characteristic that cannot reasonably be changed (*ejusdem generis*), and be viewed by society as a member of a distinct group (social perception test).

ECRE has previously expressed concern about this approach, as it can result in the denial of status to particular social groups who are defined by an innate characteristic but which are not seen as set apart from society, or vice versa.[28]

Implementation of article 10

State practice varies, as does the directive's impact on national legislation and jurisprudence. Legislation in **Greece, Hungary**, **Ireland**, **Luxemburg**, the **Netherlands**, **Norway**, **Romania** and **Sweden** requires fulfilment of only one of the criteria from article 10 (innate characteristic or social perception), in keeping with the majority view of international law. **Austria** and **Portugal** apply this definition in jurisprudence. **Belgium**, the **Czech Republic, France**, **Germany**, **Poland**, **Slovakia, Slovenia** and the **UK** require fulfilment of both criteria. The implementation of the directive has left the definition of a particular social group unchanged in seven countries. Inconsistency can be seen in the national decisions of courts or authorities within some Member States, such as **Poland**.

The **German** definition of persecution solely for reasons of gender as persecution for membership in a particular social group is worth noting. It encompasses such cases as female genital mutilation, forced marriages and honour crimes.

[28] ECRE, Information Note on the Qualification Directive, p. 10; ECRE, Green Paper Response, p. 18.

Recommendations:

14. "Particular social group" should be interpreted in a broad and inclusive way.

15. Member States should use the flexibility afforded by the words "in particular" in article 10(1)(d) to grant protection based on either an innate characteristic or social perception, rather than requiring both, as the remainder of article 10(1)(d) appears to indicate. This interpretation is consistent with the Refugee Convention, in that protection is provided solely on the basis of an innate characteristic, but if a persecutor perceives that characteristic, then whether or not an individual actually possesses the characteristic is immaterial to the risk of persecution.

Article 12 - *Exclusion*

Article 12 sets out criteria for exclusion from refugee status and is broadly based on article 1F of the Refugee Convention. It adds language requiring the exclusion of those who "*instigate or otherwise participate in*" the types of crimes referenced in the article, which could lead states to exclude persons who lacked the intent to commit such crimes and thus could not be deemed individually responsible under international criminal law.

ECRE has frequently recommended that exclusion clauses be narrowly interpreted,[29] due to the extremely serious consequences that can ensue from a refusal of international protection, and is also concerned by the lack of safeguards to ensure that exclusion is based solely on the asylum seeker's personal and knowing conduct.[30] At the same time, because of the severity of the acts that properly lead to exclusion, Member States bear a duty to establish criminal jurisdiction over them, and duly prosecute their perpetrators.

According to the survey replies, the transposition of the directive has not led to an increased use of exclusion in many countries. In **Hungary**, **Poland** and **Portugal** the situation is unknown due to a lack of case law. Exclusion has increased in **Italy**, where new exclusion criteria have been introduced since transposition, and in **Germany**, but this latter relates to new anti-terrorism legislation, not to the directive.

Implementation of article 12

Most surveyed countries apply the exclusion criteria in accordance with article 12. Only in **Belgium**, **Hungary**, **France** and the **UK** does the law directly refer to the Refugee Convention. In **Austria** and **Germany** the law provides additional criteria for exclusion that are not found in article 1F of the Refugee Convention, and thus causes violations of that Convention, and **UK** law has the same effect.

In some countries such as **Germany** or the **UK** exclusion clauses are used in the context of alleged terrorist activities. In the **UK** a separate institution has been

[29] ECRE, *Position on Exclusion from Refugee Status* (March 2004) ('Position on Exclusion'); ECRE, Information Note on the Qualification Directive, p. 10.
[30] *Ibid.*

established to process security cases. The Secretary of State can certify for a specific case the application of article 1F or article 33(2) of the Convention and declare an asylum applicant's removal "*conducive to public good*."[31] An appeal against a rejection can only succeed if the Special Immigration Appeals Commission rejects the Secretary of State's application of the exclusion clauses. Although the practical implications of these amendments are not yet clear, there is a danger that mere low-level support or association with alleged "terrorist" organisations may lead to exclusion and expulsion without consideration of the asylum request.

Protection from refoulement

Sometimes a person excluded from refugee status cannot be deported due to a risk of violation of international human rights instruments, particularly article 3 of the ECHR. People in such situations should be granted a form of legal status. The survey shows that **Hungary**, **Norway**, **Poland**, **Sweden** and the **UK** indeed allow applicants in this position to stay legally. In **Belgium**, **France**, **Germany** and the **Netherlands**, excluded people are usually tolerated, but often without any rights or status.

Interpretation of various provisions

The study does not reveal much about the interpretation of concepts used in article 12 such as "*particularly cruel actions*," "*instigate or participate*" and "*acts contrary to the purposes and principles of the United Nations*," due to a lack of case law. In legislation, the surveyed countries have adopted a range of definitions of "*particularly cruel actions*." For example in **Slovenia** the concept relates to crimes for which the prescribed sentence is longer than 3 years. In **France** the authorities take into account not only the seriousness of the acts but also the objective purposes of their authors and the legitimacy[32] of the violence used.[33] Likewise, **Germany**, **Italy**, **Romania** and **Slovenia** define "*instigate or participate*" with reference to their criminal laws. Authorities in **Poland** and the **Netherlands** refer to the Rome Statue of the ICC. Member States should define these terms with reference to accepted standards of international law, rather than national criminal codes.

"*Acts contrary to the purposes and principles of the United Nations*" are defined in accordance with recital 22 of the directive in **Italy**, **Luxemburg**, the **Netherlands**, **Romania** and the **UK**.[34] The laws in **Austria**, **Belgium**, **Hungary** and **France** implement this concept by referring directly to Refugee Convention article 1F.[35]

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[31] Section 33 of the Anti-Terrorism, Crime and Security Act 2001 (ATCS). As discussed in the next section of this summary, this use of article 33(2) necessarily violates the Convention, as it conflates the principles of exclusion and expulsion. Section 34 of the ATCS explicitly forbids the application of a balancing test for article 1F, meaning that the gravity of the fear or threat of persecution cannot prevent exclusion

[32] According to the UNHCR translation of the *Conseil d'Etat* decision, (CE, 28 February 2001, S.).

[33] France uses exclusion clauses in accordance with article 1(F) of the Refugee Convention. The *Conseil d'Etat* has recently pronounced proponents of the Liberation Tigers of Tamil Eelam ("Tamil Tigers") who participate directly or indirectly in the decision, preparation and execution of terrorist acts fall under the scope of article 1(F)(c) of the Refugee Convention.

[34] Recital 22 refers to the UN Charter and the UN resolutions concerning terrorism.

[35] The Hungarian Asylum Act, however, directly invokes recital 22 in its preamble.

Evidence of a confidential nature

Exclusion from protection on the basis of confidential evidence (as allowed by article 12(3)) is not used in most countries. In **Germany** such evidence is used for refugee status determination if the authorities deem it necessary, but reportedly this does not occur in many cases. In **Poland**, denial of refugee status on the basis of article 12 is sometimes based on confidential information, thus no reasons for exclusion are given.

Exclusion of family members

Although the directive does not forbid the automatic exclusion of family members of people excluded from refugee status, the study showed that in all countries family members in such cases have their claims considered on an individual basis. In **Sweden** excluded people usually get temporary permission to stay with the family.

Recommendations:

16. Member States should apply the exclusion clauses narrowly, on grounds relating only to acts contrary to international human rights principles, and civil crimes of the most serious nature committed before admission to the host state. States should establish and exercise criminal jurisdiction over such acts and crimes.

17. Properly excluded people who cannot be deported according to article 3 ECHR or other human rights instruments should receive an alternative status that allows them to remain and provides at least the basic social rights to which all people are entitled under international humanitarian law.

18. States should not exclude applicants who "instigated or otherwise participated in" the commission of crimes if they are not individually responsible under international criminal law.

19. Asylum seekers should not be excluded from protection on the basis of confidential evidence as such practices violate basic European principles of transparent and accountable decision making.

Article 14 – *Revocation of, ending of or refusal to renew refugee status*

Article 14(3), (4), and (5) lay out conditions for ending refugee status due to acts carried out by the refugee. Article 14(3) requires revocation of status when a refugee should have been excluded under article 12, or when his or her misrepresentation or omission of facts was decisive for the granting of refugee status. Under article 14(4), Member States may terminate refugee status when "*there are reasonable grounds for regarding a refugee as a danger to the security of the state in which he or she is present*" or "*he or she, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community*." Article 14(5) allows Member States to use article 14(4) to deny refugee status in cases where the status decision has not yet been taken.

Implementation of article 14

This article raises very serious concerns. First, it is misleading to call article 14 a revocation article (as opposed to article 12, the exclusion article), because there is no meaningful difference between revocation and exclusion.[36] Far more importantly, paragraph 14(4) lists national security concerns and conviction for a "*particularly serious crime*" as grounds for revocation of status. The Convention allows states to use those criteria not for exclusion, but rather to apply the much narrower sanction of revoking the right to *non-refoulement*.[37] A refugee without Convention protection against *refoulement* nevertheless remains a refugee,[38] and, if remaining on the territory of the host state, retains those Convention rights, other than *non-refoulement*, that accrue to a refugee lawfully present in a host state.[39] Furthermore, even if such a refugee is returned to the country of origin, any family remaining in the host state must retain their refugee status under the Convention, insofar as it derives from their relationship to the returned refugee. Therefore, paragraph 14(4) purports to permit state practices that literally cannot fail to violate the Refugee Convention.

Article 14(4) serves no purpose other than to attempt to expand the criteria for exclusion from refugee status in ways the Convention does not permit.[40] Furthermore, the directive elsewhere allows Member States to revoke the right to *non-refoulement* for the reasons provided for that purpose in the Convention, and therefore the directive already supports all permissible uses of "*danger to . . . security*" or "*particularly serious crime*" analysis.[41] Simply put, article 14(4) cannot lawfully be invoked. Paragraph 14(3) is also of concern because it requires the exclusion from status of a person recognised as a refugee who provided false or misleading information that proved decisive in the status determination process.[42] Nonetheless, in most of the surveyed countries national law purports to permit the revocation of refugee status in accordance with articles 14(3) and (4).

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[36] The Convention mentions neither 'exclusion' nor 'revocation,' but instead specifies that the Convention "shall not apply" to someone falling under the terms of article 1F. "Shall not apply" can refer to exclusion (forward looking) equally as well as to revocation (backward looking). Therefore the distinction the Qualification Directive attempts to make between exclusion (article 12) and revocation (article 14) is without meaning. *See* ECRE, Information Note on the Qualification Directive, p. 11. Article 14 is, in all but name, an additional exclusion article.

[37] *See* Convention article 33(2). *See also* ECRE, Position on Exclusion, paras. 62-64.

[38] *See e.g.*, UNHCR, *Asylum in the European Union: A Study of the Implementation of the Qualification Directive*, p. 94, November 2007.

[39] This legal fact can be quite significant, as instruments such as the ECHR or the Convention Against Torture might independently prevent *refoulement*. A refugee who loses the Convention right to *non-refoulement* but cannot be returned to the country of origin has obviously undergone a process of law, and having been allowed to remain in the host state, remains lawfully present. *See e.g., Celepli v. Sweden*, UN Human Rights Committee No. 456/1991(an author's application for refugee status was denied, but Sweden did not remove him, citing humanitarian grounds. The Committee considered that "following the expulsion order, the author was lawfully in the territory of Sweden") (emphasis added).

[40] Convention article 1F provides an exhaustive list of the permissible reasons for exclusion. Exclusion from status on any grounds not found in 1F violates the Convention. *See e.g.*, UNHCR, *Guidelines on International Protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, para. 3, September 2003.

[41] Directive article 21(2).

[42] It is of course entirely possible that a refugee could provide false information that proved decisive, yet still be at risk of persecution for a Convention ground if returned, for reasons entirely unrelated to the evidence actually presented during status determination.

Only **Belgium**, **France**, **Hungary** and **Poland** have elected not to apply article 14(4). In **Austria**, **Bulgaria**, the **Czech Republic**, **Germany**, **Hungary**, **Ireland**, **Luxemburg**, the **Netherlands** and **Sweden**, in cases of revocation on the basis of security issues, the burden of proof lies explicitly on the state authorities. In the **UK** it is enough if the Secretary of State is "*satisfied*" that the applicant constitutes a security risk, but if exclusion is due to the applicant's deception, then clear and justifiable evidence of deception is required.

Definition of a 'particularly serious crime'

Austria, **Bulgaria**, the **Czech Republic**, **Germany**, **Hungary**, **Italy**, **Romania**, **Slovakia**, **Slovenia** and the **UK** define "*particularly serious crime*" (article 14(4)(b)) with reference to the national criminal code. Some definitions refer to the severity of the punishment (e.g. **Romania** or **Slovenia**) while others (e.g. **Italy**) provide a specific list of crimes (such as murder, mafia affiliation, terrorism, import of weapons, some sexual crimes, some drug crimes). Such definitions encompass crimes that are not correctly considered "*particularly serious*" under the Convention, article 33(2).

Implementation of article 14(5)

Austria, **Germany**, **Hungary**, **Italy**, **Luxemburg**, **Slovenia**, **Sweden** and the **UK** have transposed article 14(5). **Germany** and the **Netherlands** are reported to have excluded applicants from refugee status before undertaking the basic refugee status analysis (this practice predates the implementation of the directive). According to German law,[43] a person may be excluded from refugee status in the initial procedure, if the prerequisites of article 14(4) are met.

Recommendations:

20. Article 14(4) cannot be applied without placing the state invoking it in violation of the Refugee Convention. While article 14(4) does not require such violations, it purports to allow them. Therefore, Member States have no lawful alternative but to never apply article 14(4).

21. For the purposes of article 21(2) (conditions under which Member States may* refoule *a refugee), the meaning of "reasonable grounds for regarding" a refugee as "a danger to the security" of a Member State should be carefully specified, to encourage compliance with the Refugee Convention. Similarly, Member States should define "particularly serious crime" with reference to recognised norms of international law, rather than national criminal codes.

[43] Section 60(8)1 Residence Act.

3.6 Subsidiary Protection

Article 15 – *Serious harm*

Article 15 in conjunction with article 2(e) (definition of "*person eligible for subsidiary protection*") establishes a new form of protection, granted to people facing a threat of serious harm but who do not qualify for refugee protection. According to article 15, "*serious harm consists of (a) death penalty or execution; (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.*"

In relation to subsidiary protection the study focuses primarily on the implementation of article 15(c), which raises the most concerns regarding its compliance with human rights standards. The requirement to demonstrate an "*individual threat*" can cause difficulties in addressing the protection needs of those fleeing situations of indiscriminate violence.[44]

Implementation of article 15

Subsidiary protection is applied in all surveyed countries, all of which use a sequential procedure. In **Germany** it is also possible to apply only for subsidiary protection on humanitarian grounds. According to the survey replies, in most countries the introduction of subsidiary protection has not narrowed the class of applicants entitled to protection, nor has it increased the number of people left without status. In **Romania** and **Slovenia**, however, the implementation of subsidiary protection has effectively narrowed the range of reasons for which people could have been granted protection, relative to the possibilities under previous laws.

Article 15(c)

Article 15(c) has recently been used by **Bulgaria**, the **Czech Republic** and **Slovakia** to award subsidiary protection to significant numbers of Iraqis, Afghans and Chechens. State practices vary, however, and courts have been asked to interpret article 15(c) in 12 surveyed countries.

Among the countries where courts have addressed the matter, the survey shows a tendency to narrow article 15(c) in relation to other *non-refoulement* provisions. For example in **Germany**, the Ministry of Interior guidelines require the violation of life or person to be "*virtually unavoidable*,"[45] as required by the law in force prior to the directive. In **Ireland** the High Court confirmed that this provision requires a "*different consideration*" of the risk of serious harm than used to apply the previous legislation on *non-refoulement*, which was the primary source of complementary protection in

[44] For more details see UNHCR, *Statement on Subsidiary Protection Under the EC Qualification Directive for People Threatened by Indiscriminate Violence,* http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=479df7472&page=search.

[45] The exact term in German is "*gleichsam unausweichlich*."

previous Irish law.[46] **UK** jurisprudence limits article 15(c) so as to leave only a subset of civilians eligible for subsidiary (humanitarian) protection: those who can show that as civilians they face on return a real risk of suffering certain types of serious violations of international humanitarian law caused by indiscriminate violence. It does not cover purely criminal violence or indeed any other type of non-military violence, nor collateral violence caused by combatants targeting adversaries in a legitimate way. The principal question that must be examined is whether the evidence as to the situation in the applicant's home area shows that indiscriminate violence there is of such severity as to pose a threat to life or person. If such evidence is lacking, then it will be necessary to identify personal characteristics or circumstances that give rise to a "*serious and individual threat*" to that individual's "*life or person*."

The European Court of Justice will soon interpret article 15(c), in response to questions submitted by the top **Dutch** administrative court.[47] That court asked: 1) whether article 15(c) provides protection equivalent to article 3 of the ECHR, or offers additional protection, and 2) if it offers additional protection, what criteria determine eligibility for that protection. In September 2008 the Advocate General delivered his opinion,[48] observing that article 15(c) must be interpreted independently from, although in the light of, the ECHR. In his view, there is a close connection between the degree to which an applicant is individually affected, and the seriousness of the indiscriminate violence. The more severe the violence, the less the need for an applicant to demonstrate an "*individual threat*."

Individual threat

Austria, **Belgium**, the **Czech Republic** and **Hungary** have not transposed article 15(c)'s requirement of an "*individual threat*." The interpretation of this notion in the surveyed countries varies from **Slovakia**, which requires a particular degree of individual harm, to **Austria** and **Poland**, which require persecution targeting the applicant individually, to **France**, which requires that the applicant be at greater risk of harm than the general population. **France**, **Germany**, and the **Netherlands** refer directly to recital 26 of the directive's preamble.

In cases of armed conflict the **Swedish** authorities do not require an individual risk. In **Germany**, such a situation is usually addressed by a general deportation ban, but the German *Länder* (states) do not always proclaim such bans when they should. Without a ban, the Federal Office must assess each applicant's risk on an individual basis, but the threshold of proof required to show that risk is very high. Some German courts have however directly applied article 15(c) and found that it is applicable in cases of generalised violence, as long as the applicant personally faces serious harm. In the **UK**, the examination of a threatened return (enforced or voluntary) must focus on its foreseeable consequences, taking into account the personal circumstances of the

[46] *H & Another v Minister for Justice, Equality and Law Reform*, Judgment delivered 27/7/07.
[47] Council of State, *200702174/1*, 12 October 2007.
[48] *Case C465/07, M. Elgafaji, N. Elgafaji v Staatssecretaris van Justitie,* Opinion of Advocate General Maduro, 9 September 2008, http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=Rechercher$docrequire=alldocs&numaff=C-465/07&datefs=&datefe=&nomusuel=&domaine=&mots=&resmax=100

applicant,[49] and the risk must be specific to the individual. Asylum applicants may find it difficult as a matter of evidence to demonstrate an individualised threat, with the result that imposing such a requirement can lead to their being returned to face serious harm for reasons unrelated to their actual protection needs. States should not require a demonstration of individual risk in situations of armed conflict.

Indiscriminate violence

In **Bulgaria**, the **Czech Republic**, **Germany**, **Hungary**, **Ireland**, **Luxemburg**, **Poland** and **Slovakia** this term has not yet been interpreted. In **Germany** it has been translated imprecisely as "*arbitrary violence*."[50] Some German courts discuss the concept of indiscriminate violence in conjunction with the term "*internal armed conflict*." The issue has been discussed especially with regard to Iraqi nationals who did not qualify for refugee status. **France** uses the notion of "*generalised violence*" instead. The situation in Iraq was considered to be one of generalised violence, characterised by the perpetration of attacks, exactions and threats targeting some special groups. Other countries with generalised violence according to French jurisprudence are Somalia, Colombia and Sri Lanka.[51] In **Austria** the term was interpreted as "*violence that can affect everybody*." In the **UK** a general situation of violence in the country of origin is not sufficient to merit subsidiary protection.[52]

Internal armed conflict

Bulgaria, **Hungary**, **Ireland**, **Italy**, **Luxemburg**, **Romania**, **Slovakia** and **Slovenia** have not yet interpreted "*internal armed conflict*." Elsewhere, interpretations range from referring to principles of international humanitarian law (**Belgium** and the **Netherlands**) to particular examples, such as parts of Iraq or Afghanistan (the **Czech Republic**, **France** and **Germany**), Chechnya (**Poland**), parts of Somalia (**France** and **Germany**), Sierra Leone (**Portugal**), Sri Lanka (**France**), Liberia (**Portugal**) or Colombia (**France**). In **Germany**, the classification depends on the intensity and duration of the conflict. Typically, civil or guerrilla wars constitute examples of internal armed conflict, but brief, local conflicts between armed bands do not. **Sweden** defines an internal armed conflict as a situation where armed factions hold control over a substantial part of the country in opposition to the state's army. This concept has been interpreted restrictively, for instance requiring Iraqi applicants to prove that they are at a greater risk than the general population, or at least to show a causal link between the individual and the risk of serious harm. **Romanian** courts do not consider the situation in Iraq to be an internal armed conflict. Finally, **Swedish** legislation provides for a somewhat wider scope as it considers that also people fleeing "*other severe conflict"* should be granted subsidiary protection. The term is defined as a conflict that does not reach the level of being considered as an armed conflict. However, in this case there is a requirement of individual risk.

[49] *Vilvaharajah v United Kingdom* (1991) 14 EHRR.
[50] The exact term in German is "*willkürliche Gewalt*." Slovenia has translated the term similarly.
[51] The situation in several areas of North and East Sri Lanka was considered one of indiscriminate violence, characterised by armed attacks, forced military enlistment including children, bombings, extortion of the civil population, forced displacements (CNDA, SR, 27 June 2008).
[52] *HLR v France* (1997), 26 E.H.R.R 29.

Recommendations:

22. Subsidiary protection should be granted to any individual entitled to* non-refoulement *under the ECHR or international law. It should be seen as a residual status for people in need of protection who clearly fall outside a full and inclusive interpretation of the Refugee Convention, not as a substitute for refugee protection.

23. Member States should elect to apply higher standards than the directive demands and refrain from applying the words "and individual" in article 15(c).

24. The Commission should provide guidance or guidelines to Member States to help them determine whether a situation of "international or internal armed conflict" exists in a given region at a particular time.

25. Member States should take a cautious approach in deciding whether an "international or internal armed conflict" is in progress, declaring when in doubt that such a situation exists, and that people fleeing from it merit protection.

Article 17 - *Exclusion*

Article 17 allows exclusion from subsidiary protection based broadly on the conditions listed in article 1F of the Refugee Convention, but also when the applicant "*constitutes a danger to the community or to the security of the Member State in which he or she is present.*"

It is of concern that this article does not explicitly confirm the absolute prohibition on returns that would breach international human rights law.

Implementation of article 17

Legislation allows exclusion from subsidiary protection in accordance with article 17 in 14 surveyed countries. **Germany** has not implemented this provision, instead denying residence permits based on factors similar to those in article 17. In practice, this denies access to the rights guaranteed in articles 20 to 34, except for *non-refoulement*, accommodation and limited social benefits. Exclusion is also broader in **Italy**, where the definition of a "*serious crime*" covers acts committed in or outside the country, for which Italian law prescribes at least a sentence between 4 and 10 years. In **Poland** not only subsidiary protection but also humanitarian status is withdrawn for *inter alia* reasons of public security and policy.

Protection against refoulement

The study shows that **Belgium**, **France**, the **Netherlands** and **Romania** implement *non-refoulement* very narrowly, allowing excludable people who cannot be deported to remain, but without extending them any social or civil rights. Other countries grant this category of people some form of legal status (residence permit, tolerated stay, temporary admission, discretionary leave to remain, etc.). The length of the permit and the rights that accompany it vary across the countries surveyed.

According to the survey findings the transposition of article 17 has not reduced the number of applicants being granted subsidiary protection who would previously have benefited from an equivalent status.

Definitions of particular terms

It is difficult to provide a clear overview of the interpretation of concepts used in article 17 such as "*serious crime*," "*danger*" or "*instigate or otherwise participate in*." Many countries have not yet developed jurisprudence. The most often interpreted concept is that of a "*serious crime*," usually defined with reference to the severity of punishment provided in national criminal codes, ranging from crimes for which the prescribed sentence is longer than 3 years (**Slovenia** and **Germany**) to 10 years (**Slovakia**). In the **UK** a crime in consideration of deportation (not necessarily as an interpretation of 17(1)(b)) is considered particularly serious if there are elements of sex, arson, violence or drugs.

Bulgarian legislation defines "*danger*" very broadly. The country is endangered if the individual has undertaken activity to threaten the basic rights and liberties of citizens, or the state's territorial integrity and sovereignty, or presents a serious danger of armed attack, *coup d'etat* or reversal of the constitutional arrangements to establish political dictatorship or economic coercion or endangers in any manner whatsoever the democratic functioning of the country. In **Germany** there is no exact definition of who constitutes "*a danger*," but Federal Office practice suggests that especially leaders of the exile branches of organisations on the United Nations or EU list of terrorist organisations are subject to this provision. The danger an individual actually constitutes to the security of the state is normally assessed with regard to the current danger from the organisation and the individual's involvement in that organisation. A high probability that the individual will continue such activities in the future is also considered necessary. In **Hungary** the wording of the asylum act, "*violates national security*," may be understood as requiring a higher standard than the directive, but this provision has not yet been applied in practice.

Article 17(3)

This article allows Member States to exclude someone from subsidiary protection, if he or she "*has committed one or more crimes . . . 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.*"

In **Bulgaria**, the **Czech Republic**, **Ireland**, **Luxemburg**, **Poland**, **Romania**, **Slovakia**, **Slovenia** and the **UK**, legislation or jurisprudence allows exclusion from subsidiary protection on these grounds. The **Dutch** legislation has fewer requirements since it allows the exclusion of applicants even when the crime is not punishable by imprisonment and the applicant has not left the country of origin solely to avoid sanctions. On the other hand, **Hungary** and **Slovakia** require that the crime be punishable in national legislation with at least a 5 year imprisonment term.

Recommendations:

26. States should guarantee the right of* non-refoulement, *accompanied by legal status and rights, to everyone who needs it.

27. Although Member States are not generally bound by other comprehensive legal obligations to beneficiaries of subsidiary protection, they should not exclude people from subsidiary protection for reasons that would not lead to exclusion under the Refugee Convention. Subsidiary protection beneficiaries require international protection just as refugees do, and should not be subject to return to peril or faced with a life without social rights for any but the most serious reasons.

Article 19 – *Revocation of, ending of or refusal to renew subsidiary protection status*

Like article 17, article 19 fails to emphasise the absolute prohibition against returning an individual to face human rights violations, including torture or inhuman or degrading treatment.

Implementation of article 19

Revocation of subsidiary protection according to article 19 is permitted by the legislation of 15 surveyed countries. Elsewhere, the law and practice differ. In **Austria** national asylum legislation does not explicitly countenance revocation for misrepresentation or omission of facts, etc., but permits revocation of subsidiary protection if the reasons for granting it no longer exist. In the **Netherlands** the grounds for revocation or refusal are broader than in the directive, applying also when the person granted refugee status moves his main residence outside of the country.

Recommendations:

28. States should guarantee absolute protection against* refoulement *in accordance with a broad and inclusive understanding of international law.

29. Member States should not withdraw subsidiary protection for reasons other than those that would permit the withdrawal of refugee recognition under a broad and inclusive reading of the Refugee Convention.

3.7 Social Rights

Chapter VII of the directive sets out the content of international protection. Article 21 outlines the conditions for protection from *refoulement*. The directive also details the conditions under which persons granted protection have rights to residence permits (article 24), travel documents (article 25), and freedom of movement (article 32), and access to employment (article 26), education (article 27), social welfare (article 28), health care (article 29), accommodation (article 31), and integration facilities (article 33). Article 23 sets out provisions for maintaining family unity.

Despite the broad set of rights guaranteed, the directive allows Member States to grant different sets of rights to refugees than to beneficiaries of subsidiary protection, as well as to differentiate the position of family members of beneficiaries in comparison to the beneficiaries themselves. In particular, rights attached to subsidiary protection can be significantly reduced. Limiting rights diminishes the quality of the protection granted, and negatively influences integration into the host state.[53] The European Parliament recommended that the right to family reunification as enunciated in the Family Reunification Directive[54] should apply as well to people granted subsidiary protection, but these recommendations were not adopted.[55]

The study focused on three rights that influence integration particularly significantly: the rights to family reunification, to work, and to study.

Article 23 – *Maintaining family unity*

The directive provides protection beneficiaries the right to maintain family unity, and obliges states to provide family members with social rights. It leaves room for restrictions implied by "*national procedures*," and allows Member States complete discretion to define "*conditions applicable to*" these benefits as they pertain to subsidiary protection. However, article 23 does not permit states to reduce benefits granted to family members of subsidiary protection beneficiaries below a level required to guarantee an "*adequate standard of living*." ECRE has previously recommended that persons granted subsidiary protection and their family members receive the same rights as refugees, as they have similar needs.[56]

Family unity is provided to Convention refugees in accordance with article 23 in most of the countries surveyed. In others, e.g. **Austria**, there are differences in interpretation of a family,[57] or the content of the rights granted (**Belgium** and **France**) The **Netherlands** grants reduced rights to family members whose nationality differs from that of the protected person. The **UK** grants rights to the spouse and children of the applicant, but this is only mandatory as it pertains to pre-flight dependents who lived in the same household. Any other family members are subject to the discretion of the Home Office and normally have to show exceptionally compelling reasons.

[53] *See e.g.*, France Terre d' Asile, *Asile. La protection subsidiaire en Europe: une mosaïque de droits*, September 2008 (providing a comparative analysis of the rights granted to beneficiaries of subsidiary protection in 5 Member States). A summary of findings can be accessed at: http://www.france-terre-asile.org/index.php?option=com_content&task=view&id=64&Itemid=91.
[54] Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.
[55] See also ECRE, Information Note on Family Reunification, p. 2.
[56] ECRE, Information Note on the Qualification Directive , p. 14; ECRE, *The Way Forward: Towards the Integration of Refugees in Europe*, July 2005 ('Way Forward Integration'), http://www.ecre.org/files/Integ.pdf, pp. 23-25; ECRE*, Information Note on the Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification*, http://www.ecre.org/files/frdirective.pdf.
[57] The notion there is not interpreted in accordance with article 8 ECHR.

Subsidiary protection

The **Czech Republic**, **France**,[58] **Hungary**, **Ireland**, **Luxemburg**, the **Netherlands**, **Romania**, **Slovenia** and **Sweden** grant essentially the same rights to beneficiaries of subsidiary protection as to refugees. Family reunification is excluded for this group in **Germany**, and some other countries apply additional regulations. For example in **Austria**, if the family member of a person with subsidiary status is outside Austria, that person is granted entry only following the first extension of the limited right of residence of the family member who enjoys subsidiary protection.

Article 26 – *Access to employment*

The directive grants refugees access to employment, but allows the limitation of this right for beneficiaries of subsidiary protection based on "*the situation on the labour market*." Similarly, Member States may apply unspecified "*conditions*" to vocational training for beneficiaries of subsidiary protection. States should not treat beneficiaries of subsidiary protection differently than refugees. Lack of the right to work forces them to work illegally and risk exploitation, or to depend on social assistance.[59]

Thirteen countries grant refugees the right to work in accordance with the directive. **Slovenia** does not provide the right to "*vocational training and practical workplace experience*" (article 26(4)).

Subsidiary protection

As with family reunification, not all of the countries allow beneficiaries of subsidiary protection to work. In **Austria**, people with subsidiary protection still need a work permit during their first year of protection status. In **Germany**, people with subsidiary protection have limited access to the labour market, depending on a review of the availability of "*privileged aliens*" for each job.[60] Moreover, although this review is no longer required after 4 years of residence or 3 years of employment, whether or not to actually cease reviews is at the discretion of the administrative authorities.

Article 27 – *Access to education*

The directive provides access to education for all minors granted protection. It also requires that adults granted protection have access to general education and vocational training on the same level as other legally resident third country nationals.

Most of the surveyed countries grant the right to education to refugees and beneficiaries of subsidiary protection. The provision has not been transposed in **Austria**, **Germany** and **Portugal**. Limited access to higher education is available to those granted subsidiary protection in **Germany** and **Poland**.

[58] With the exception of residence permits that are valid for one year.
[59] ECRE, Information Note on the Qualification Directive, p.16; ECRE, Way Forward Integration, p.29.
[60] According to information received outside the context of this study, the work permit is valid for a year, but this review can take six months. Considering the time required for a job search and hiring procedures, this can all but destroy the right to work in practice.

In **Slovenia**, practical problems can arise regarding minors who will become adults before they finish primary or secondary school, because they will no longer be entitled to the same level of rights. The Ministry of Education has explained that they will be enrolled in the schooling system according to quotas for foreigners and will have the possibility to finish although they will become adults in the meantime.

Recommendation:

30. Beneficiaries of refugee status and subsidiary protection should receive the same substantive rights, as they have identical protection and social needs. Provision of social rights promotes the speedy and successful integration of protected people into their host societies.

Annex 1: List of Recommendations

1. Member States should not automatically consider lack of documents or their late submission as evidence of insufficient cooperation or lack of credibility. Late submission of evidence should not be allowed to preclude consideration of that evidence.

2. The Refugee Convention does not permit states to sanction refugees for a perceived lack of cooperation in any stage of the asylum determination process. Member States should not apply sanctions against applicants merely for failure to submit all available evidence, or to submit evidence in a timely manner.

3. Decision makers should be required to obtain, and treat as legally relevant, objective, up to date and transparent Country of Origin Information (COI). The COI used in arriving at decisions should be available to asylum applicants and their representatives. In the event of a negative decision based on COI, the decision maker should be required to indicate to the applicant in writing the information used to support that decision. The EU should establish and maintain a common, independent, and publicly available COI database.

4. The applicant should enjoy the benefit of the doubt if all available information has been examined and the applicant has shown a reasonable fear of persecution. Credibility analysis should be related to relevant aspects of the claim and based on trustworthy evidence. In the event of an adverse credibility determination, asylum seekers should be allowed to clarify the information they have provided.

5. Member States should accept that the absence of a functioning state authority demonstrates that no state authority is able or willing to provide protection against persecution or serious harm.

6. A broad and inclusive interpretation of the Refugee Convention, which the Qualification Directive aspires to, must recognise gender-based persecution such as genital mutilation or domestic violence as persecution based on membership in a particular social group.

7. Member States should not use the concept of non-state actors of protection to deny refugees asylum in Europe.

8. Member States should use their right to implement higher standards when applying article 7(2), and evaluate the actual availability of protection, rather than merely whether the state of protection "*take[s] reasonable steps to*" prevent persecution or serious harm.

9. When applying the IPA, states should always ascertain that the country of origin will provide sufficient, accountable, and durable protection.

10. Member States should not apply the IPA when the state is the actor of persecution, or the persecution is in any way imputable to the state.

11. Member States should not apply the IPA as a blanket measure, as this contravenes the requirement to consider each asylum application on its merits.

12. Member States should not apply the IPA when return is in fact impossible due to technical obstacles. Without access, no IPA exists.

13. States that use article 8(3) to refuse protection despite technical obstacles to return should provide an alternative legal status to those who cannot return.

14. "*Particular social group*" should be interpreted in a broad and inclusive way.

15. Member States should use the flexibility afforded by the words "*in particular*" in article 10(1)(d) to grant protection based on either an innate characteristic or social perception, rather than requiring both, as the remainder of article 10(1)(d) appears to indicate. This interpretation is consistent with the Refugee Convention, in that protection is provided solely on the basis of an innate characteristic, but if a persecutor perceives that characteristic, then whether or not an individual actually possesses the characteristic is immaterial to the risk of persecution.

16. States should apply the exclusion clauses narrowly, on grounds relating only to acts contrary to international human rights principles, and civil crimes of the most serious nature committed before admission to the host state. States should establish and exercise criminal jurisdiction over such acts and crimes.

17. Properly excluded people who cannot be deported according to article 3 ECHR or other human rights instruments should receive an alternative status that allows them to remain and provides at least the basic social rights to which all people are entitled under international humanitarian law.

18. States should not exclude applicants who "*instigated or otherwise participated in*" the commission of crimes if they are not individually responsible under international criminal law.

19. Asylum seekers should not be excluded from protection on the basis of confidential evidence, as such practices violate basic European principles of transparent and accountable decision making.

20. Article 14(4) cannot be applied without placing the state invoking it in violation of the Refugee Convention. While article 14(4) does not require such violations, it purports to allow them. Therefore, Member States have no lawful alternative but to never apply article 14(4).

21. For the purposes of article 21(2) (conditions under which Member States may *refoule* a refugee), the meaning of "*reasonable grounds for regarding*" a refugee as "*a danger to the security*" of a Member State should be carefully specified, to encourage compliance with the Refugee Convention. Similarly, Member States should define "*particularly serious crime*" with reference to recognised norms of international law, rather than national criminal codes.

22. Subsidiary protection should be granted to any individual entitled to non-*refoulement* under the ECHR or international law. It should be seen as a residual status for people in need of protection who clearly fall outside a full and inclusive interpretation of the Refugee Convention, not as a substitute for refugee protection.

23. Member States should elect to apply higher standards than the directive demands and refrain from applying the words "*and individual*" in article 15(c).

24. The Commission should provide guidance or guidelines to Member States to help them determine whether a situation of "*international or internal armed conflict*" exists in a given region at a particular time.

25. Member States should take a cautious approach in deciding whether an "*international or internal armed conflict*" is in progress, declaring when in doubt that such a situation exists, and that people fleeing from it merit protection.

26. States should guarantee the right of non-*refoulement*, accompanied by legal status and rights, to everyone who needs it.

27. Although Member States are not generally bound by other comprehensive legal obligations to beneficiaries of subsidiary protection, they should not exclude people from subsidiary protection for reasons that would not lead to exclusion under the Refugee Convention. Subsidiary protection beneficiaries require international protection just as refugees do, and should not be subject to return to peril or faced with a life without social rights for any but the most serious reasons.

28. States should guarantee absolute protection against *refoulement* in accordance with a broad and inclusive understanding of international law.

29. Member States should not withdraw subsidiary protection for reasons other than those that would permit the withdrawal of refugee recognition under a broad and inclusive reading of the Refugee Convention.

30. Beneficiaries of refugee status and subsidiary protection should receive the same substantive rights, as they have identical protection and social needs. Provision of social rights promotes the speedy and successful integration of protected people into their host societies.

Annex 2: ELENA Qualification Directive Questionnaire

TRANSPOSITION

1. Has the Qualification Directive been transposed into national law?

2. If yes, on what date and in what form was it transposed?

3. If the directive was transposed, please note any mistranslation of relevant provisions in your national legislation, especially those related to the articles listed above:

4. With regard to these articles, please note any provisions in respect of which your Member State has adopted (or kept) a higher standard than that found in the directive:

5. If the directive has not been transposed, has it been implemented (e.g. by regulations or instructions, or in binding jurisprudence by courts or administrators)? Please comment:

QUALIFICATION

CHAPTER 2: ASSESSMENT OF APPLICATIONS FOR INTERNATIONAL PROTECTION

ARTICLE 4

6. Have rules concerning evidentiary assessment in refugee status determination significantly changed in your country since the directive was adopted?

ARTICLE 4(1)

7a. Does your country's legislation impose a duty on the applicant to submit all elements needed to substantiate the application for international protection, as allowed in article 4(1)? Please comment.

7b. What duties regarding procedures and evidence does the legislation place on the Member State when assessing an application? How it is applied in practice?

7c. How has the term "cooperation" in article 4(1) been interpreted in national legislation and jurisprudence?

7d. Has national legislation or jurisprudence interpreted "as soon as possible" as contained in article 4(1)?

7e. If the answer is yes, please specify any time limits regulated by law or imposed in practice. Are there exceptions to these limits? What is the practice when the limits are waived? What consequences can occur if the applicant fails to submit all elements needed to substantiate the application "as soon as possible"?

ARTICLE 4(2)

8. What are the elements required to substantiate an application for international protection in national law or practice? Are any elements beyond those enumerated in article 4(2) considered necessary to substantiate a claim? Please explain.

ARTICLE 4(3)

9a. Is the assessment of applications carried out in accordance with article 4(3)?

9b. In what form does the requirement of "individualised" assessment of asylum claims appear in national legislation or jurisprudence? Does the legislation establish a link between this requirement and the research/use of country of origin information?

9c. Does the requirement in Article 4(3)(a) "the manner in which they are applied" appear in your country's national legislation? If yes, how is it formulated?

9d. Are there any additional requirements for the assessment of the facts and circumstances surrounding an application for international protection?

ARTICLE 4(4)

10a. Does your national legislation or practice perceive previous persecution as an indication of the applicant's well founded fear of persecution? Please comment.

10b. Has domestic legislation or jurisprudence specified the criteria to establish "good reasons" to consider that persecution or serious harm will not occur again?

ARTICLE 4(5)

11a. Does domestic legislation or jurisprudence require an asylum seeker who is not able to present adequate evidence to substantiate his/her claim to meet the conditions listed in article 4(5)?

11b. If yes, are the conditions required identical to those in article 4(5)? Please indicate any differences.

11c. Is the principle of the "benefit of the doubt" mentioned in your country's asylum legislation in connection with refugee status determination? Is it used in practice?

ARTICLE 6

12a. Has the definition of non-state actors of persecution or serious harm (Article 6(b) and (c)) been transposed literally in domestic legislation? If not, please explain the differences.

12b. Are non-state actors of persecution or serious harm as defined in article 6(c) recognised in practice?

12c. If yes, please state what types of non-state actors has been accepted as such (both in relation to countries with and without functioning state authorities). If no, please give an example.

12d. Are there any types of non-state actors of persecution or serious harm that have not been accepted as such? For what reason?

12e. Is domestic legislation on the actors of persecution as regards assessment of eligibility for refugee status different from legislation on actors of serious harm as regards assessment of eligibility for subsidiary protection status?

ARTICLE 7

ARTICLE 7(1)

13a. Does your national legislation define actors of protection in accordance with article 7(1)?

13b. If the answer is no, please explain who can be an actor of protection according to your national legislation.

13c. Have there been cases concerning non-state actors of protection, either before or after the enactment of the directive?

13d. If yes, how is the term defined in jurisprudence? Does it reflect the directive?

13e. How is "a substantial part of the territory of the State" interpreted in your national legislation/jurisprudence?

13f. Does national law concerning actors of protection in the assessment of refugee status differ from that concerning the assessment of qualification for subsidiary protection? If yes, please explain how these differ.

ARTICLE 7(2)

14a Is the definition of protection applied in accordance with article 7(2)? If the answer is no, please explain any differences.

14b. In assessing the availability of protection, must the 'reasonable steps' required by article 7(2) actually be effective?

ARTICLE 7(3)

15. Does national legislation state the obligation to refer to relevant Council acts for guidance on whether an organisation controls a state or a substantial part of its territory? Please comment.

ARTICLE 8

ARTICLE 8(1)

16a. Does your national legislation/jurisprudence allow the use of 'internal protection' in accordance with article 8(1) of the directive?

16b. If article 8(1) was not applied previously, has its transposition led to fewer people being granted protection status?

16c. Is the requirement of "reasonableness" included in the definition, or does it otherwise appear in your national legislation when discussing the internal protection alternative? If yes, please explain what criteria apply for the applicant to "reasonably" be expected to stay in a part of the country.

16d. Are any other criteria required in order to assess the possibility of internal protection? Especially, does your national legislation/jurisprudence reflect the UNHCR's guidelines?

16e. Does the internal protection alternative apply to determination procedures of both refugee status and subsidiary protection?

16f. During the determination procedure, is the internal protection alternative considered before or after the assessment of well founded fear? Please comment.

16g. Is the internal protection alternative evaluated based on individual circumstances, or as a blanket measure applied to certain categories of applicants? Please comment.

16h. Does article 8 apply in cases where protection is granted by non-state actors? Please comment.

16i. If the state is the actor of persecution, or tolerates the persecution, is the internal protection alternative considered?

16j. If yes, is there a strong presumption against finding an internal protection alternative? Please describe. If no, please cite relevant national legislation or examples from case law.

ARTICLE 8(2)

17. What kinds of "personal circumstances" and "general circumstances" are considered when assessing whether internal protection applies as established in article 8(1)?

ARTICLE 8(3)

18a. Does your national legislation or jurisprudence allow the application of 'internal protection' in accordance with article 8(3)?

18b. If yes, has national legislation elaborated on the requirements to be met in order to return an applicant to the country of origin despite "technical obstacles"? Please comment.

18c. Has such a provision been applied in practice? If so, please describe.

18d. If article 8(3) is applied, is an alternative status granted to those refused protection on this basis but unable to return to the proposed destination of internal protection? If the answer is yes, please briefly explain the status conferred.

CHAPTER III: QUALIFICATION FOR BEING A REFUGEE

ARTICLE 9(1)

19a. Has the definition of acts of persecution been transposed literally into national law?

19b. If the answer is no, how have these acts been defined?

ARTICLE 9(2)

20a. Have the examples of persecution defined in article 9(2) been transposed literally into national law?

20b. If the answer is no or partially, please state which provisions of article 9(2) were transposed literally, which were not, and whether additional examples of persecution are given.

ARTICLE 9(3)

21. How does your national law interpret the necessary "connection" between persecution and the five Convention grounds? Is a nexus between the five grounds and the *lack of protection* sufficient, or is a connection *with the acts of persecution* required?

ARTICLE 10

22. Are reasons for persecution assessed in accordance with article 10? If the answer is no, please state where national law/practice differs.

ARTICLE 10(1)

23a. Does national law require that a "particular social group" share an "innate characteristic" or "common background," *and* be perceived as a distinct group by the surrounding society, or will satisfaction of either of these criteria establish a particular social group?

23b. Has the implementation of the directive changed this interpretation?

ARTICLE 10(2)

24a. Has article 10(2) been transposed literally into national legislation?

24b. If not, does national legislation provide that the applicant need not actually possess the characteristic that attracts the persecution?

ARTICLE 12

25a. Are the criteria to exclude an asylum seeker from refugee status applied in accordance with article 12? If the answer is no, please state where national law and/or practice differs.

25b. Are you aware of cases where applicants were refused refugee status on the grounds set out in article 12?[61]

25c. If the answer is yes, were they protected from *refoulement* under article 3 ECHR or under other international human rights instruments? Please explain on which ground they were excluded and what is their legal status.

25d. In your opinion (or if you have statistics/figures), has the transposition of the directive led to an increase in excluded applicants?

25e. If the answer is yes, please explain the (new) arguments developed by national authorities. Otherwise, please comment if you expect this to happen in the future.

ARTICLE 12(2)

26a. Has article 12(2)(b)'s concept of "particularly cruel actions" been defined more specifically? Has it been used in practice? If the answer is yes, please explain.

26b. Are "acts contrary to the purposes and principles of the United Nations" defined in accordance with recital 22 of the Qualification Directive? Please comment.

ARTICLE 12(3)

27a. Has article 12(3) been used to exclude an applicant from refugee status by using evidence of a confidential nature? If the answer is yes, please give some more details on the case.

27b. Are family members of a person excluded under article 12 also automatically excluded from protection? Please comment.

27c. How are 'instigation' and 'participation' defined in national legislation or case law?

[61] Articles 1 and 2 of the United Nations Charter relate to international peace and security and peaceful relations between States. Hence UNHCR has argued that only people who have been in power could violate these provisions. (UNHCR, 2005, p. 28).

CHAPTER IV: REFUGEE STATUS

ARTICLE 14

ARTICLE 14(3)

28a. Does your national legislation allow revoking, ending or refusing to renew the right to refugee status in accordance with article 14(3)? Please comment.

28b. Have there been cases concerning the "misrepresentation or omission of facts, including the use of false documents"?

28c. If the answer is yes, please expand below and assess the extent to which these criteria are sufficient for revoking, ending or refusing to renew refugee status.

28d. In your Member State, can a refugee have his/her status revoked after recognition, for crimes outside the scope of Convention Article 1F(a) or 1F(c)?

If the answer is yes, please describe the case(s).

ARTICLE 14(4)

29a. Does national legislation permit the revocation of, or refusal to grant, refugee status on the grounds set out in article 14(4)? Please comment.

29b. Is the burden of proof explicitly on the Member State applying the provision? Please comment.

29c. Has the term "particularly serious crime" in article 14(4)(b) been defined more precisely in your national legislation and/or jurisprudence? If the answer is yes please describe.

ARTICLE 14(5)

30a. Does your Member State apply article 14(5)?

30b. If the answer is yes, have there been cases where an applicant was refused refugee status on grounds set out in article 14(4) before a decision to grant refugee status was taken?

30c. If the answer is yes, please explain how the "danger to the security of the Member State" or "a danger to the community of that Member State" was interpreted.

30d. What status was the applicant given or was s/he deported?

CHAPTER V: QUALIFICATION FOR SUBSIDIARY PROTECTION

ARTICLE 15

31a. Is refugee status assessed before subsidiary protection is considered? Are there two distinct applications or is it treated as a sequential procedure?

31b. Who qualifies for subsidiary protection according to your national legislation and/or jurisprudence? Has the transposition of the directive expanded the category of persons who can receive protection?

31c. Has the transposition of the directive effectively narrowed the definition of previous national de facto statuses? If so, has this left a category of persons without a legal status that would previously have been granted a status, or resulted in subsidiary protection status for any persons who previously would have been recognized as refugees?

ARTICLE 15(b)

32. Is article 15(b) interpreted in your Member State in line with its international obligations, i.e. European Court of Human Right's interpretation of article 3? (are the words "in the country of origin" added to the wording of article 3?)

ARTICLE 15(c)

33a. Have there been cases concerning the applicability and interpretation of article 15(c)? If yes, please explain the scope and interpretation given by the relevant authority.

33b. How has your Member State interpreted 'individual'? Is recital 26 used by your Member State? Is the applicant required to show a particular degree of individual harm?

33c. How has your Member State interpreted 'indiscriminate violence'? Please give examples of situations that were considered to be of 'indiscriminate violence.'

33d. How has your Member State interpreted 'internal armed conflict'? What situations has your Member State considered to be a situation of armed conflict?

ARTICLE 17

34a. Does national legislation allow exclusion from subsidiary protection in accordance with article 17? If the answer is no, please state where national law differs.

34b. What rights and status are accorded to people excluded from subsidiary protection who cannot be returned under article 3 ECHR or other international human rights instruments?

34c. Has the transposition of article 17 served to reduce the number of applicants being granted subsidiary protection who would have benefited from that status previously?

34d. If the answer is yes, which provisions are most often used to exclude applicants?

ARTICLE 17(1)

35a. Has national legislation or case law defined "serious crime" from article 17(1)(b)? If the answer is yes, please provide the definition or give examples from case law.

35b. Has national legislation/practice given a more detailed definition of "danger" and whether the authorities will test the balance between the community and the applicant as provided for in article 17(1)(d)?

35c. If the answer is yes, please explain the interpretation given, how the balance is assessed, and give example(s) if applicable.

ARTICLE 17(2)

36. How has article 17(2)'s "instigate or otherwise participate in" language been applied?

ARTICLE 17(3)

37a. Does your national legislation or jurisprudence provide for the exclusion of a person from subsidiary protection on the ground established in article 17(3)? Please comment.

37b. Are there additional national law criteria for exclusion from subsidiary protection status? If the answer is yes, please describe and give some examples.

CHAPTER VI: SUBSIDIARY PROTECTION STATUS

ARTICLE 19

38. Does your national legislation or jurisprudence permit the revocation of subsidiary protection status on the grounds set out in article 19? If not, please indicate where national law/jurisprudence differs.

CHAPTER VII: CONTENT OF INTERNATIONAL PROTECTION

This section does not attempt a comprehensive evaluation of the impact of Chapter VII. Rather, it seeks a general view of the effect of a few articles of particular importance to the integration of protection beneficiaries: articles 23 (family unity), 26 (access to employment), and 27 (access to education).

ARTICLE 23

39a. Has article 23 been transposed into national legislation? Please comment.

39b. If refugees and recipients of subsidiary protection are treated differently with respect to family unity, please indicate the main differences.

ARTICLE 26

40a. Has article 26 been transposed into national legislation? Please comment.

40b. If refugees and recipients of subsidiary protection are treated differently with respect to employment access, please indicate the main differences.

ARTICLE 27

41a. Has article 27 been transposed into national legislation? Please comment.

41b. If refugees and recipients of subsidiary protection are treated differently with respect to access to education, please indicate the main differences.

ARTICLES 20-34

42. Please share any additional information you consider relevant regarding how your Member State has upheld the rights of protection beneficiaries pursuant to Articles 20-34. In particular, please highlight ways in which your state recognizes different sets of rights for refugees versus those granted subsidiary protection.

Annex 3: Country Reports

Countries surveyed:

Austria, Belgium, Bulgaria, Czech Republic, France, Greece, Hungary, Ireland, Italy, Luxemburg, Germany, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Sweden[62] and the United Kingdom (Norway was partially surveyed as well, although it is not subject to the Qualification Directive, because its pertinent law was drafted using the directive as a comparative model).

In the following discussion, due to late transposition, answers regarding the Netherlands, Portugal and Sweden refer to pre-transposition legislation and practice. This is true of some answers regarding Greece as well. In all cases, answers that refer to pre-transposition legislation or practice are marked with an asterisk, *. In the foregoing summary, however, all references to these countries relate to the current state of the law as known to the survey editors. In the following tables, omission of a country indicates a lack of relevant data.

CHAPTER I: TRANSPOSITION

1. Has the Qualification Directive been transposed into national law?

2. If yes, on what date and in what form was it transposed?

Country	Date (in force)	Name of Act/Legislation
Austria	01.01.2006	Asylum Act (Asylgesetz) 2005
Belgium	03.10.2006 (10.10.2006) (Royal decree)	Law of 15.09.2006 modifying the law of 15.12.1980 on territorial access, stay, establishment and removal of foreigners (introducing subsidiary protection) (hereafter Law)
	27.04.2007 (01.06.2007) (Royal decree)	Law of 15.09.2006 (provisions other than subsidiary protection, e.g. establishing a council for litigation involving foreigners)
Bulgaria	29.06.2007	Asylum and Refugees Act Amendment
Czech Republic	01.09.2006	Act No. 165/2006
France	10.12.2003	Act n° 2003-1176 adopted on 10th December 2003 amending The Act n° 25-893 adopted on 25th July 1952 on asylum law (*Loi n° 2003-1176 du 10 décembre 2003 modifiant la loi n° 52-893 du 25 juillet 1952 relative au droit d'asile*) The 1952 Act is now incorporated into the 7th Part of the Code of Entry and Residence of Foreigners and of Asylum Law (*Code de l'entrée et du séjour des*

[62] At the time of publication, Sweden has not yet transposed the directive.

		étrangers et du droit d'asile) (hereafter CESEDA).
Germany	27.08.2007 (in force) 01.01.2005 (in force)	Law on the Transposition of EU Directives on Immigration and Asylum 2007 (transposing most of the directive) Immigration Act 2004 (transposing parts of the directive, notably Art. 6 and Art. 10(d))
Greece	25.07.2008	Presidential Decree 96/2008, Official Gazette 92 A'
Hungary	28.06.2007 (01.01.2008) 09.11.2007 (01.01.2008)	Act LXXX of 2007 on Asylum Government Decree No. 301/2007 (XI.9) on the implementation of the Act LXXX of 2007 on Asylum (hereafter Government Decree)
Ireland	10.10.2006	Statutory Instrument No. 518 of 2006.
Italy	01.01.2008	Legislative decree on transposition of Directive 2004/83/EC
Luxemburg	05.05.2006	Law regarding the right to asylum and other forms of protection
Poland	18 .03 2008 (in force since May 29th 2008)	Act of 13 June 2003 on granting protection to aliens on the territory of the Republic of Poland (Journal of Laws of 2003, No 128, item 1176, with latest amendments) amended by Act of 18 March 2008 amending the Act on granting protection to aliens at the territory of Republic of Poland and some other acts (*Ustawa z dnia 18 marca 2008 o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych innych ustaw*) Journal of Laws of 2008, no 70, item 416. Hereinafter Act on granting protection
Romania	18.05.2006 (12.08.2006) 13.09.2006	Asylum law 122/2006 Government Decision no. 1251/2006 for Approval of Methodological Norms of Asylum Law
Slovakia	01.01.2007 (in force)	Act no. 480/2002 as amended on asylum
Slovenia	04.01.2008	International Protection Act
United Kingdom	09.10.2006	Refugee or Person in Need of International Protection (Qualification) Regulations 2006 (SI 2525/2006) Statement of Changes in Immigration Rules Cm6918

3. If the directive was transposed, please note any mistranslation of relevant provisions in your national legislation, especially those covered in this survey:

Austria	Articles 9 and 10 have not been transposed. The law refers only to Article 1(A)(2) of the Geneva Convention, without further specification as in the Directive (therefore current jurisprudence is relevant); reference is additionally made to the directive for interpretation
Belgium	Article 4 is not transposed literally and its application results from practice and from procedural aspects in the law such as: - The consignation of the declaration of the refugee concerning his/her identity, origin and itinerary by the Foreign Office, the delivery of a questionnaire by the same authority (article 51/10, Law), and the interview by the General Commissariat for Refugees and Stateless Persons (CGRA) (Royal Decree of 11 July 2003 defining the procedures before the CGRA) - The possibility to reject an application introduced out of the time limit (Article 52, Law) - The possibility to detain a refugee who refuses to communicate his/her identity or nationality, or gives false information or documents (Article 74/6, § 1 er bis, 10°, Law); - The possibility to detain a refugee who got rid of his/her travel or identity documents (Article 74/6, § 1 er bis, 11°, Law); Article 10(1)(d), al. 2 is not explicitly transposed in the law. Concerning Article 15, the law excludes the possibility to take health problems into account within subsidiary protection (Article 48/4, Law). It creates a specific and less protective status for persons who are seriously ill. The transposition of Article 17 in Belgian law focuses among others on serious crime, translated as "*crime grave*," instead of "*crime grave de droit commun*," according to the French version of the directive. However, the legislature refers to the interpretation of §§ 155 to 158 of the handbook on procedures and criteria for determining refugee status. Belgium hasn't transposed article 25.2.
Bulgaria	The transposition approach selected by the government was to make explicit reference in §1A of Additional Clauses of the ARA amendment from 29.06.2007 to the provisions of the Qualification Directive alongside many other EU acts, such as the Asylum Procedures Directive, Reception Directive, etc. The legality of this approach is questioned both by academics and legal practitioners.
France	France transposed the Directive from the French language version.

	However, when it comes to the dispositions listed above, there are some differences in the wording. Please see questions 12a, 13a, 14a, 19a below.
Czech Republic	No material mistranslation noted.
Germany	In Article 15(c) the terms "*indiscriminate power*" and "*serious individual threat*" are not used. One of the most discussed problems in German jurisprudence is the correct understanding of Article 15(c) ("*indiscriminate violence*") in relation to recital 26 ("*Risks, to which a population ...*"): Are these understood as the same kind of risks? Has Article 15c to be interpreted in the light of recital 26? Does Article 15(c) offer more possibilities for subsidiary protection without recourse to recital 26? Art 15(c) is transposed in Section 60(7)(2) Residence Act: "*A foreigner shall not be deported to another state in which he or she will be exposed, as a member of the civil population, to a substantial individual danger to life or limb as the result of an international or internal armed conflict. Dangers pursuant to sentence 1 or sentence 2 to which the population or a segment of the population to which the foreigner belongs are generally exposed shall receive due consideration in decisions pursuant to Section 60(a)(1), sentence 1.*" The wording "*by reason of indiscriminate violence*" is left out.
Greece	None noted.
Hungary	See question 12a on non-state agents of persecution.
Ireland	No material mistranslations noted.
Italy	Article 21(b) has been adopted in an extensive way with a presumption that persons sentenced for any crime for which Italian law provides a sentence of at least 4 years and at most 10 years constitute a danger and can be expelled. Article 12(b) has been transposed in the following way "*who has committed in or outside the State a serious crime. The seriousness of the crime is assessed also considering the sentence provided by the Italian law for that sort of crime of no less than 4 years at the minimum and 10 years at the maximum*."
Luxemburg	Article 24.1.§ 2 of the directive has not been transposed.
Poland	Art. 13 par. 4(4) of the act on granting protection provides that a form of act of persecution is a denial of the right to appeal to a court against disproportionate or discriminatory punishment. However the implication of this provision differs from that in art. 9 par. 2(d) of the Directive. The Act on granting protection concerns judicial redress against disproportionate or discriminatory punishment, rather than a denial that caused (resulted in) a discriminatory or disproportionate punishment. Art. 14 par. 1(4) of the act on granting protection concerns the concept of political opinion mentioned in Art. 10 par. 1(e) of the Directive. It says that the concept of political opinion in particular includes the holding of an opinion, thought or belief on a matter related to the

	actors committing the acts of persecution and to their policies or methods, whether or not that opinion, thought or belief has been acted upon by the person applying for the refugee status. The Directive however mentions "*the potential actors of persecution*" not the actors committing those acts. Art. 18 of the Act on granting protection concerns the internal protection alternative. Taking Art. 18 par. 1 literally an applicant is not in need of international protection if in a part of their 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 live (settle) in that part of the country. Art. 8(1) of the Directive mentions '*stay*.' Art. 20 par 1 (2b) concerns exclusion where an alien has committed in the territory of Poland or outside this territory a crime, which is defined in the Polish criminal law (art. 17 par. 1(b) of the Directive). The expression '*serious crime*' used in the QD is unclear and could be just any prohibited act (which is serious), crime or other offence, depending on the legislation.
Romania	Article 4(1) was translated as follows in the Article 13 of the Government Ordinance no. 1251/13.09.2006 (1) The authorities with competence in solving asylum applications shall be bound to analyze all the relevant aspects of the asylum application in cooperation with the applicant, if the case, or upon his/her request." The following were also not transposed: 4(3)(a), 7(article 7 is transposed in a personal translation and interpretation in the article 11 of the Methodological norms for the implementation of Law no. 122/2006 on asylum in Romania**,** Government Ordinance 1251/13.09.2006 "Agents of persecution Article 11 When establishing the actions and facts of persecution, the competent authority shall take into account whether these were exercised especially by the following agents of persecution: a) the State; b) parties or organizations controlling the State or a substantial part of the state territory; or c) non-governmental agents, if the agents mentioned at points (a) and (b), including international organizations, are not able or do not want to ensure protection against persecution or when they take responsibility for or tolerate the acts of non-governmental agents") , 8(2)-article 8 is missing entirely, 9(3), 22
Slovakia	No material mistranslations noted.
Slovenia	Article 15(c) (serious harm): - "*threat to civilian's life or person*" was translated as: "*threat to civilian's life of personality*";

	- "*indiscriminate violence*" as "*arbitrary violence*."
United Kingdom	1. Article 4 on the assessment of facts and circumstances has been transposed word for word into paragraphs 339I to 339L of the Immigration Rules. Paragraph 339M allows the State Secretary for the Home Department to consider a person not to have substantiated his claim in a variety of circumstances leading to non-compliance. Paragraph 339N allows for the provisions in s8 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 when assessing credibility. This is less favourable to the claimant. 2. Article 6 on actors of persecution or serious harm has been transposed word for word into Paragraph 3 the 2006 Regulations. 3. Article 7 on actors of protection has been transposed into regulation 4 of the 2006 Regulations, but the Regulations fail to include the provisions of Article 7(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*." 4. Article 8 on internal protection has been transposed word for word into Paragraph 339O of the Immigration Rules. It is defined in UK law as internal relocation. 5. Article 9 on acts of persecution has been transposed into regulation 5 of the 2006 Regulations. At 5(3) reference is made to Article 1(A) of the Geneva Convention rather than the following Article of the Qualification Directive. 6. Article 10 on reasons for persecution has been transposed into regulation 6 of the 2006 Regulations, with the exception of the statement at Article 10(1)(d) "*Gender related aspects might be considered, without by themselves alone creating a presumption for the applicability of this Article*." 7. Article 12 on exclusion from refugee status has been transposed but by reference to the exclusion clauses of the Geneva Convention rather than the Qualification Directive. 8. Article 14 on revoking, ending, or refusing to renew refugee status has been transposed into Paragraph 339A of the Immigration Rules with reference to regulation 7 of the 2006 Regulations. 9. Article 15 on serious harm has been transposed into Paragraph 339C of the Immigration Rules. 10. Article 17 on exclusion from subsidiary protection has been transposed into Paragraph 339D of the Immigration Rules. 11. Article 19 on revoking, ending, or refusing to renew subsidiary protection status has been transposed into Paragraph 339G of the Immigration Rules. 12. Articles 20-34 on content of protection (focus on Arts. 23, 26, and 27 only) have been transposed into various Paragraphs of the Immigration Rules. Rules 352A-FI refer to rights of family reunion/unity but no provision has been given for other close

	relatives as suggested by the Directive at Article 23(5). The extent of family unity therefore is at the discretion of the Secretary of State.

4. With regard to these articles, please note any provisions in respect of which your Member State has adopted (or kept) a higher standard than that found in the directive:

Austria	Article 5(3) (*sur place* refugees): status may be granted despite an *ex post facto* application, if the risk of persecution is based on circumstances created by his own decision since leaving the country of origin, especially if the respective activities are legal in Austria and constitute the expression and continuation of convictions or orientations held in the country of origin. Art 8(3) of the Directive was not transposed.
Belgium	The transposition of article 2(e) refers only to "*motifs sérieux*" whereas the French version of the directive concerns "*motifs sérieux et avérés*." It means that the Belgian law is less restrictive than the French version of the Directive. Article 8(3) of the Directive wasn't transposed, according to the international obligations of Belgium. The transposition of article 9(2)(e) adds "*en particulier*" before "*in a conflict…*" This signifies that it's only a hypothesis *inter alia* and that other circumstances can be taken into account (art. 48/3, §2, al. 2, Law).
Bulgaria	§1 of Additional Amendments of the Asylum and Refugees Act gives a higher standard than Article 2f QD's definition of "*member of the family*." Pursuant to the ARA definition: §1(3) "*Members of the family*" are: a) The spouse or person with whom he/she is in a proven stable and long-term relationship and their underage and unmarried children; b) Children of legal age who are not married and are not able to support themselves on their own, due to serious health reasons; c) Parents of each of the spouses who are not able to take care of themselves due to age or serious illness and when the support of their children needs to be provided in shared household.
Czech Republic	A higher standard was adopted on serious harm (Article15), as the Czech legal regulations extended the definition of serious harm. Serious harm is also defined as deportation against obligations arising from international agreements by which the CR is bound. It is also possible to grant subsidiary protection for a family member for the purpose of reunification (§14b Act.n.325/1999, Asylum Act).
Germany	As the Directive refers to the application of the Geneva Convention, German judges and the Federal Office of Migration and Asylum

	(BAMF) are starting now to make up their minds that the "*religious minimum*" in the understanding of the Geneva Convention does not only mean exercising one's belief in private, but also in public – this was since very recently strictly denied by German jurisprudence (and still is not accepted by all courts in Germany). Section 60 (1) 3 Residence Act (adopted in 2004) provides for higher protection standards than Article 10(d) QD; it reads: "*When a person's life, freedom from bodily harm or liberty is threatened solely on account of their sex, this may also constitute persecution due to membership of a certain social group*."
Greece	Concerning internal protection (Article 8 of the Directive) paragraph 3 has not been transposed in Presidential Decree 96/2008. Also, regarding reasons for persecution (Article 10 of the Directive) satisfaction of either of the criteria - sharing an "innate characteristic" or "common background," *or* perception as a distinct group by the surrounding society - establishes a particular social group. Finally Presidential Decree 96/2008 grants most of the same social rights to beneficiaries of subsidiary protection as to refugees.
Hungary	Article 4(5)(d) of the QD - the Hungarian regulation does not deal with the notions of "*genuine effort to substantiate his application*" nor do requirements refer to the time limit of submitting the application ("*earliest possible time*"). Article 7 of the QD Hungarian legislation, based on the 1951 Refugee Convention, rejects the concept of non-state agents of protection, thus not transposing one of the most contradictory and criticised provisions of the QD – see details in question 13. The content of protection against persecution/serious harm: Hungarian law foresees a higher requirement of state action in order to ensure protection against persecution/serious harm than the QD – see details in question 14. Article 8 of the QD - Hungarian law sets forth concrete conditions of reasonableness when discussing the internal protection alternative (with a rather protection-oriented approach), instead of the mere reference made by the QD to this concept – see details in question 16. Article 10 of the QD - the nexus with Convention grounds can be established with either the lack of protection, or the acts of persecution (and not only with the latter) – see details in question 21. Article 10(1)(d): the applicability of the "social perception" test and the "protected characteristics" test are not conjunctive conditions, "*or*" instead of "*and*" – see details in question 22. Article 15(c) – There is no requirement of an "*individual*" threat to the life or physical integrity of a civilian person as a consequence of

	indiscriminate violence used in the course of an international or internal armed conflict. Just the term "*serious threat*" is used – see details in question 33.
Ireland	Section 1 of the Refugee Act 1996 provides that "*membership of a particular social group*" includes membership of a trade union and membership of a group of people whose defining characteristic is their belonging to the female or male sex or having a particular sexual orientation. Regulation 5(2) of S.I. No. 518/2006 transposes Article 4(4) in relation to previous persecution. It adds that: "*Compelling reasons arising out of previous persecution or serious harm alone may nevertheless warrant a determination that the applicant is eligible for protection*." With regard to access to employment and education, Regulation 19(1)(b) of S.I. No. 518/2006 goes further than Article 27 of the Directive in that it affords subsidiary protection recipients and declared refugees the same rights of access as Irish citizens.
Italy	Italy hasn't adopted the concept of internal protection alternative (article 8).
Luxemburg	Regarding articles 28.2 and 29.2 of the directive, the transposition in Luxemburg law foresees no limitation of social assistance and health care for beneficiaries of refugee status or subsidiary protection.
Netherlands*	In the Netherlands the rights of refugees and persons eligible for subsidiary protection are equal. This aims to prevent further engagement in the proceeding by a person who received subsidiary protection.
Norway	The directives are not directly binding for Norway. In the proposition for a new Alien's Act, however, they are referred to frequently and the law is harmonised with the directive to a large extent. In some areas there will be a higher standard: Those given residence due to international obligations relating to protection needs, especially ECHR article 3, will be given refugee status. This means that Norway will operate with a broader understanding of the concept of a refugee than other European countries. There will be no equivalent to directive Article(10)(1)(d) on same sex and social group. Past victims of human trafficking shall be considered members of a particular social group. The definition of religion-based persecution is broader and includes persecution targeted at those who convert.

	The practice on *sur place* cases will be more liberal in the sense that activities do not have to be a natural continuation of activities in the home country. The need for protection is decisive. As a main rule, refugee status will be given in subjective *sur place* cases, but there may be exceptions in cases where the need is caused by criminal acts or if it seems most probable that the main purpose of the activities has been to gain a residence permit. Because persons with protection needs will be given refugee status, they will have stronger rights than persons granted subsidiary protection according to the Directive.
Poland	In Art. 13 of the Qualification Directive, which provides a definition of a refugee, the expression "*third country national*" is used. In the Act on granting Protection "*an alien*" is used, thus theoretically EU member state citizens are not excluded from lodging a claim for a refugee status. Art. 19 of the Act on granting protection concerns exclusion clauses. It does not transpose art. 12(2)b of the Directive. According the art. 19(3c) of the Act on granting protection "*refugee status is refused if there are serious grounds to consider that an applicant committed a serious non-political crime outside the territory of the Republic of Poland, prior to lodging an application for refugee status*." It is in line with the Geneva Convention (or even introduces a higher standard: "*prior to lodging an application*" instead of "*prior to admission to the country as refugee*"), while Art. 12(2)b extends Art. 1F in stating that a non-political crime could be committed prior to the applicant's admission as a refugee "*which means the time of issuing a residence permit based on the granting of refugee status*." Revocation of, ending of or refusal to renew refugee status laid down in art. 14 (4) of the QD were not transposed, and do not exist in the Polish legislation. However according to Art. 89g sec. 2 of the Act on granting protection, a recognized refugee or subsidiary protection recipient may be expelled from Poland if the conditions described in articles 32(1) or 33(2) of the Geneva Convention are met. Thus refugee status or subsidiary protection are not revoked, but in fact the person concerned is not protected any more. See also comments to Art. 14 below. According to the Administrative Procedure Code there is discretion in evidence assessment. A relevant authority decides whether and how to assess all available evidence. Consequently Poland did not transpose article 4(5). Article 8(3) of the QD was not transposed. Regarding the content of international protection (chapter VII of the QD), Poland adopted higher standards, treating refugees and

	subsidiary protection recipients in the same way (concerning the majority of rights mentioned by the QD). Regarding Art. 25 of the QD, recognized refugees are provided with travel documents valid for 2 years. Moreover exclusion on the ground of national security or public order as mentioned in Art. 25(1) of the QD was not transposed (see Art. 89i sec. 1 of the Act on granting protection). Subsidiary protection recipients are entitled to receive a Polish Travel Document for an Alien valid for a maximum of 2 years (Art. 73sec. 1 of the act on aliens). The document can be issued if a person granted subsidiary protection has lost her/his travel document, her/his travel document was destroyed or its validity has expired, if obtaining a new travel document is not possible. According to Art. 73 sec 2 of the Act on Aliens "*the Polish travel document for an alien, within the period of its validity, shall entitle its holder to multiple border crossings*." Rights described in Articles 26, 28, 29, 33 of the QD are provided to both refugees and subsidiary form of protection recipients on the same conditions. Regarding Art. 27 of the QD, both recognized refugees and subsidiary protection recipients have access to higher education on the same conditions as Polish citizens.
Romania	No higher standards adopted.
Slovakia	No higher standards adopted.
Slovenia	Article 8(3) was not transposed; Article 24 was transposed in the way that grants refugees a right to permanent residence; Article 28(2) was not transposed; Article 29(2) was not transposed.
United Kingdom	Article 15 on serious harm has been transposed into Paragraph 339C of the Immigration Rules with an additional definition of serious harm at (iv)(ii) as "*unlawful killing*." Articles 24 on residence permits has been transposed into Paragraph 339Q of the Immigration Rules and granted for a period of 5 years, rather than 3.

5. If the directive has not been transposed, has it been implemented (e.g. by regulations or instructions, or in binding jurisprudence by courts or administrators)? Please comment:

France	Some provisions of the Directive have not been transposed by the 2003 Act. Some provisions were already recognised by French law and especially by French case law.

Netherlands	No, it has not been implemented.
Portugal	No, it has not been implemented.
Sweden*	No, it has not been implemented.

QUALIFICATION

CHAPTER II: ASSESSMENT OF APPLICATIONS FOR INTERNATIONAL PROTECTION

ARTICLE 4

6. Have rules concerning evidentiary assessment in refugee status determination significantly changed in your country since the directive was adopted?

Hungary	The transposition of the QD did not lead to any major change concerning the principles of evidentiary assessment (such as the burden or standard of proof, means of evidence, etc.) However, the new Asylum Act and the Government Decree on its implementation have introduced much more detailed and explicit rules in certain areas of evidentiary assessment, including the use of country information as evidence.
Italy	Until the transposition the administrative decision was almost free from objective criteria (apart from the reference to the Geneva Convention) and judicial decisions should adhere to the general principle of civil procedure for which the burden of proof is entirely on the person that applies for the recognition of a right (even with some mitigation for the peculiarity of the cases).
Luxemburg	Yes, the guarantees have increased since a certain number of principles, formerly only recognised in a restrictive way by jurisprudence, have been transposed into the legislation and therefore gained a higher status.
Netherlands*	The rules concerning evidentiary assessment have not yet been significantly changed since the directive was not adopted. Some issues which were just regulated in the policy or case law are transferred to binding regulations. Article 31(3) of the Aliens Act will be amended to extend the ground for delegation in article 31(1) Aliens Act. As a consequence of this extended ground for delegation it will be possible to create further rules on the division of the burden of proof. This possibility will be used to work out article 4(5) QD in lower rules.
Poland	It is too early to assess the impact of transposition of the QD in this regard. Poland did not transpose art. 4(1), 4(3) and 4(5) of the QD.
Slovakia	Article 4 was implemented almost literally. Such provisions were introduced in the RSD process for the first time.
Slovenia	In general, transposition has not introduced significant changes. The role of the applicant is more stressed, but it is still the obligation of the authority to assess the actual situation *ex officio* and issue a lawful and correct decision. There is only one provision on the assessment of COI, which is not clear and precise – saying that in case an applicant is not credible, generally known information on country of origin will not be taken into account.
United	The Immigration Rules were amended at Paragraph 339L to provide for

Kingdom	scenarios where there is no documentary or other evidence to support the claim, but where: (i) the person has made a genuine effort to substantiate his asylum claim or establish that he is a person eligible humanitarian protection or substantiate his human rights claim; (ii) all material factors at the person's disposal have been submitted, and a satisfactory explanation regarding any lack of other relevant material has been given; (iii) the person's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the person's case; (iv) the person has made an asylum claim or sought to establish that he is a person eligible for humanitarian protection or made a human rights claim at the earliest possible time, unless the person can demonstrate good reason for not having done so; and (v) the general credibility of the person has been established.

Countries reporting no significant change :
Austria, Belgium, Bulgaria, Czech Republic, Germany, Greece, Ireland, Romania.

ARTICLE 4(1)

7a. Does your country's legislation impose a duty on the applicant to submit all elements needed to substantiate the application for international protection, as allowed in article 4(1)?

Austria	Yes		Especially concerning name, date of birth, country of origin, travel routes, previous applications for international protection, personal circumstances, available documentation, reasons for the application, etc.
Belgium		No	The law does not mention clearly such a duty. However, as said above, the law allows for the "*punishment*" of the applicant who does not respect the time limit for the introduction of the application, etc., by rejection of the case and/or detention. It must be stressed that the new law has significantly increased the hypothesis of rejection and detention of the applicant on procedural reasons (art. 52 and 74/6, Law). In practise lack of information or contradictions in the declarations can also lead to the rejection of the case. Finally, except in particular circumstances, "new" elements cannot be brought before the appellate court (*Conseil du contentieux des étrangers*).
Czech Republic	Yes		The applicant's duty to submit all evidence is imposed by general legal regulations – Code of Administrative procedure (Act.n.500/2004). Moreover the applicant is obligated to cooperate with an administrative agency

			(§49a Asylum Act). In the majority of cases the most important evidence is the interview with the applicant.
France		No	Asylum seekers just have the duty to submit all documents about their civil status (identity cards, passports, birth certificates, marriage certificates…) that they have taken to France. In the asylum application form, an asylum seeker must answer questions about his/her civil status, family members (this information will be used in case of family reunification), mother language, religion, qualifications and so on. He or she has to provide the reasons for his flight. The more precise he/she is about the life in the country of origin and the persecutions undergone or that he/she fears, the better it is for the examination of the application. However, the term "*obligation*" or "*duty*" is not used in the law.
Germany	Yes		Before the transposition of the QD there was already a general duty on the applicant to co-operate in establishing the facts of the case (Section 15 and Section 25 Asylum Procedure Act). This includes, in the RSD procedure in particular, the obligation to provide the necessary information, to submit relevant documents such as passport and certificates and to undergo an identification procedure. The alien him/herself shall explain the facts underlying his/her fear of political persecution and shall provide the necessary details, including information concerning residences, itineraries, stays in other states and information on whether a procedure aimed at obtaining recognition as a refugee has already been initiated or completed in Germany or in another state. Further, the alien has to indicate all other facts or circumstances that preclude deportation. However, the applicant is not exclusively responsible for substantiating his or her claim; the Federal Office for Migration and Refugees is obliged to clarify the facts of the case and to compile the necessary evidence. The Federal Office is further obliged by law to take due regard of the difficulties refugees are faced with in order to establish proof of their fear of persecution.
Greece	Yes		The obligation is phrased identically as in the directive.
Hungary		No	Section 41 of the Asylum Act regulates the establishment of evidence in the refugee status determination procedure. *(1) To verify or substantiate in the course of the*

			refugee procedure whether the criteria of recognition as a refugee, a beneficiary of subsidiary or temporary protection exist in respect of the person seeking recognition, the following means of providing evidence may be used in particular: *a) Facts and circumstances giving rise to the act of fleeing disclosed by the person seeking recognition and the documents supporting the same;* *b) The travel document or any other document presented by the person seeking recognition, on the basis of which it is possible to infer his/her identity and/or nationality;* *c) All relevant up-to-date information relating to the country of origin of the person seeking recognition, including the statutory or any other mandatory legal provisions of the country of origin and the method of application thereof.* *(2) The refugee authority and – in case of need - the court shall obtain the report of the agency responsible for the provision of country information under the supervision of the Minister.* The above provision allows the asylum-seeker only to substantiate the criteria for recognition as a refugee that exist in his/her case and thus introduces a lower "standard of proof", as compared to other administrative or civil procedures. In accordance with the procedural principles laid down in Sections 1-8 of the Act CXL of 2004 on Administrative Procedure (hereinafter referred to as Administrative Procedure Act), the authorities are charged with the responsibility of duly establishing the facts of the case in administrative procedures. The asylum-seeker is meanwhile obliged to act cooperatively (see Question 7c) during the refugee status determination procedure. Moreover, misleading the asylum authority may have unfavorable impact on the asylum application or may lead to the revocation of refugee status. Section 11(2)(i) of the Asylum Act prescribes: "*recognition as a refugee shall be revoked if the refugee ... concealed a material fact or facts in the course of the refugee procedure or issued an untrue declaration in respect of such a fact or facts or used false or forged documents, provided that this was decisive for his/her recognition as a refugee.*"

			In addition, the Government Decree specifies the asylum-seeker's obligations concerning the evidentiary assessment. Section 62 (5) imposes that the asylum-seeker has to enclose the documents foreseen in Section 41 (1) (a) of the Asylum Act (*"facts and circumstances giving rise to the act of fleeing disclosed by the person seeking recognition and the documents supporting the same"*) and he/she is obliged to present his/her official documents required in Section 41 (1) (b) of the Asylum Act ("*the travel document or any other document presented by the person seeking recognition, on the basis of which it is possible to infer his/her identity and/or nationality*"). According to Section 75 (1) of the Asylum Act, the applicant is obliged to present all available evidence at his/her disposal at the hearing conducted by the asylum authority. Therefore, despite the fact that the Hungarian Asylum Act does not literally transpose Article 4 (1) of the QD and the refugee authorities remain charged with the evidentiary assessment, the applicant is expected to act cooperatively and proactively by revealing and presenting all relevant documents and other pieces of evidence.
Ireland	Yes		This duty exists in Irish Legislation. The duty is set out in Section 11 of the Refugee Act 1996 as the "Duty to Co-operate". As the duty existed prior to the Directive it was not transposed in S.I. 518.
Italy	Yes		The decree reads "*The applicant must present with the protection request, or as soon as available, all the elements and documentation needed to substantiate the request. The assessment is done in cooperation with the applicant and concerns all the significant elements of the application*."
Luxemburg	Yes		Article 6 (4) of the law of the 5th of May 2006 foresees the obligation for the applicant to submit its identity documents and "any other document worth for the examination of his request". There are no sanctions for the default of delivering the identity documents. However, in practice, the lack of identity documents is jeopardizing the positive outcome of the request within the framework of the credibility assessment.
Netherlands*	Yes		Article 3.114 of the Aliens Order states that the applicant is required to submit all relevant elements. Not submitting any document is not an independent ground for refusal and lack of documents should be considered in the light of the whole asylum story.

			In practice an unexplained lack of documents often affects the credibility of the asylum story and requires from the applicant more effort to prove his/her need of protection.
Poland	Yes		According to Art. 37 sec. 1(2) of the Act on granting protection, "*an alien applying for the refugee status is obliged to provide all evidence at his/her disposal to prove the circumstances that justify granting refugee status.*" Moreover an authority which admits an application (i.e. the Border Guard) is obliged to determine the following information concerning the asylum seeker: country of origin, spouse and minor children staying in Poland or in relation to the Dublin Regulation, visas or residence permits issued to him/her by other countries, route of travel to the border and the place of border crossing, whether he has applied for refugee status in another country. In practice an applicant is considered unreliable if s/he did not provide related documents and testimony, mislead in his/her testimony, changes facts etc.
Portugal*		No	According to article 11(3) of Asylum Law (Act 15/98, 26th of March) *"the asylum application shall comprise the identification of the applicant and the members of his/her family, the description of the circumstances or facts that justify asylum and the indication of any available evidence (...)"*
Romania	Yes		According to the Article 19 of the Asylum law, an alien who applies for protection has the following obligations throughout the asylum procedure: a) To present to territorial authorities of the Ministry of Administration and Interior, in writing, the motivated application including all the data that the authority to which it is being submitted has requested, as well as to be photographed and fingerprinted. Fingerprinting is not carried out for aliens who have not yet turned 14 years of age; b) To present to the qualified authorities complete and real information regarding his person and the asylum application; c) To submit all the documents at his disposal which are relevant to his personal circumstances; d) To hand in the document for crossing the border, subsequently to receive the document stipulated in article 17, paragraph (1) letter h; According to article 15 *"when part or all of the reasons submitted in the asylum application, which*

			would justify granting a form of protection, are not proven with documents or other evidence, then the benefit of the doubt is granted, if all of the following conditions are fulfilled: *a) The applicant has done all in his power to support the asylum application;* *b) All the relevant elements that are at the disposal of the applicant have been presented, and the lack of such elements has been reasonably justified*";
Slovakia		No	Such duty is not imposed on the applicant. The applicant has the obligation to report truly and fully all the facts that are related to his/her application for asylum.
Sweden*	Yes		The applicant has the burden of proof.
Slovenia	Yes		This obligation is not as strong as the above-mentioned obligation of the authority, to assess the actual situation *ex officio*. At the same time, it is important to note that the Act on general administrative procedure, which also applies in the asylum procedure, defines a general principle according to which the authority is obliged to ascertain the actual situation and ascertain all the circumstances that are important for a lawful and correct decision.
United Kingdom	Yes		339L. It is the duty of the person to substantiate the asylum claim or establish that he is a person eligible humanitarian protection or substantiate his human rights claim.

7b. What duties regarding procedures and evidence does the legislation place on the Member State when assessing an application? How is it applied in practice?

Austria	*Legislation:* It is the duty of the state to work towards specifying and collecting information and evidence relevant to a future decision in all stages of the procedure. If necessary the authorities have to bring forward evidence *ex officio*. The duty of the applicant to cooperate is linked to his general credibility. *Practice:* In practice applicants often do not have enough time to substantiate their claim or understand which questions might be important to the decision. Authorities, particularly in the first instance, often do not fulfil their duties regarding procedures and evidence and in numerous cases decisions have to be annulled accordingly.
Belgium	The law holds that the Foreign Office put the declaration of the refugee concerning his/her identity, origin and itinerary down in writing. The same authority delivers a questionnaire (art. 51/10, Law) that must be filled in by the applicant and sent back to the *Commissariat Général aux Réfugiés et Apatrides*. An interview takes place before this authority, whereby the applicant can be assisted by an interpreter, a lawyer, and benefit from a different set

	of rights such as the right to ask for an examination by a person of the same gender (see "*arrêté royal du 11 juillet 2003 fixant la procédure devant le CGRA ainsi que son fonctionnement*"). This "*arrêté royal*" from 2003 holds that if new evidence is produced, the authority can ask the applicant why he/she didn't produce it before. The "*commissariat général*" can also send to the applicant a request for information. Since the introduction of the new law, this letter must be answered within 15 days (instead of one month) on sanction of refusal.
Bulgaria	Article 75 of the Asylum and Refugees Act transposes Arts.4 (3)(a) and (c), and (5)(a). Practice in this respect is not very rich. The text itself spells out that in order to reach a decision on the asylum application all relevant facts shall be assessed, including personal circumstances and facts that relate to the country of origin of the applicant or to third countries. Where the applicant's statements are not supported by documents or other evidence they shall be deemed credible only if the applicant has made efforts to substantiate the application, and satisfactory explanations regarding the lack of other relevant elements have been provided. The lack of sufficient evidence of persecution, even when it is due to failure to conduct an eligibility interview following Art. 63(a)(5), cannot be a reason of refusal to grant protection of the type applicable. In this sense the law is more generous than the QD. Nonetheless, in practice it is never applied that generously and in fact if the interviewer is not satisfied with the coherence of the statements, protection is refused. Thus it can be concluded that in practice, the decision-maker applies the QD even more restrictively.
Czech Republic	The administrative agency that is responsible for the international protection procedure is the Ministry of Interior – Department of Asylum and Migration Policy (OAMP). This agency is obligated according to the Code of Administrative Procedure to find out the real facts (§ 3 Code of Adm. proc.). In practice the OAMP bases the evidence on the applicant's interview.
France	The first instance authority (OFPRA[63]) has the obligation to interview the asylum seeker except for the following cases: when it is about to take a positive decision, when the asylum seeker is from a country for which article 1C5 of the Geneva Convention is applied, when the application is manifestly unfounded and for medical reasons. In 2006, 81% of asylum seekers were invited for an interview and 63 % were actually heard. There is no clear provision regarding the assessment of the evidence provided by the applicants. According to Article R.723-2 CESEDA, the OFPRA shall take its decisions based on the

[63] *Office Français de Protection des Réfugiés et des Apatrides* (French Office for the Protection of Refugees and Stateless Persons).

	elements and information at its disposal. Article L723-2 states that the applicant shall be in a position to submit all the elements that substantiate his/her application before OFPRA. Article L.733-1 states that the claimant can submit his/her explanations before the CNDA.[64]
Germany	The evidence (documents, testimonials, etc.) has to be presented by the applicant. The BAMF checks the "*validity*" of the evidence given. The Federal Office clarifies the facts of the case and compiles the necessary evidence. It informs the foreigner about the course of procedure, about his or her rights and duties, especially about time limits within which actions have to be taken, and about the consequences of failure to observe such time limits, in a language that the foreigner can reasonably be expected to understand. There is also an obligation to interview the applicant personally (Section 24 Asylum Procedure Act).
Greece*	According to art. 1(6) of Presidential Decree 61/1999: *"In any case the benefit of the doubt is in support of the claimant."*
Hungary	According to Section 50 of the Administrative Procedure Act, "*The authority shall ascertain the relevant facts of the case in the decision-making process. If the information available is insufficient, the authority shall initiate an evidence procedure ex officio or upon request.*" If an action for court review is submitted, at second instance the Court may change or annul the resolution of the authority due to failure to establish the facts of the case. Section 111 of the Administrative Procedure Act defines the scope of judicial review: "*The court of jurisdiction for administrative actions shall annul the administrative decision if found unlawful - with the exception of any violation of a procedural rule that does not affect the merits of the case - and shall order the authority to reopen the case. The court of jurisdiction for administrative actions may be authorized by law to reverse administrative decisions in certain specific actions of the administrative authorities.*" In practice, asylum-seekers and their legal representatives often use these provisions in order to challenge negative first-instance decisions. Deficiencies in evidentiary assessment (COI, credibility issues, etc.) can be denounced with reference to the above sections, and the Metropolitan Court sometimes annuls first-instance decisions on this basis.
Ireland	The procedures and evidentiary assessment requirements as set out in Article 4(3)–4(5) are directly transposed into Irish legislation in Regulation 5 of S.I 518. In practice, it is routinely stated in all

[64] *Cour nationale du droit d'asile*: National Court of Asylum Law. Before November 2007, the Appeal Board was called Commission des Recours des Réfugiés.

	decisions (for both refugee status at first and second instance, and in subsidiary protection applications) that due regard has been had to all relevant statutory provisions.
Italy	Assessment of the case is done on an individual basis. All conditions listed in art. 4 QD have been transposed literally.
Luxemburg	The responsible authority (Ministry of foreign affairs and immigration) must ensure that the asylum requests are examined and decisions are taken individually, objectively and impartially. The authority must obtain objective information about the general situation in the applicant's country. In practice, the general information used by the Luxemburg authorities often comes from refugee boards from other European countries (i.e. "*Bundesasylamt*" of Austria regarding the situation in Kosovo). Some decisions are taken without regard for UNHCR's position regarding the country in question, but, generally, the court will follow UNHCR's position and change the ministry's decision accordingly.
Netherlands*	Article 3(2) of the General Administrative Law Act determines that organs of the state gather the necessary information concerning the relevant facts and interests. For decisions on applications of article 4(2) GALA requires the applicant to submit the relevant documents that he can reasonably have at his disposal. The obligation implied on the Minister to gather the necessary information implies that he should inform the applicant on the kind of information that he has to submit. It also implies that when applicants submit insufficient information, the minister should point this out to them (Council of State, 16 July 2001, JV 2001/S249). It is clear that there usually is no time for this in the Dutch fast track procedure. Article 31(1) of the Aliens Act states that the application will be refused when the applicant did not make credible that there is a ground for granting a status. According to the Council of State this article implies that it is up to the applicant to make credible the facts and circumstances underlying the application (3 August 2001, JV 2001/258). The Council of State judged (28 January 2002, nr. 200105344/1, NAV 2002/61) that the Minister should assess the credibility of an asylum story on the basis of a thorough interview and a comparison of the applicant's story with what is known of the situation in the country of origin from general reports of the Minister of Foreign Affairs and other objective sources and from what has been previously examined as a result of interviews of other applicants in comparable situations. This framework will enable him to assess the application comparatively and objectively. Because of this manner of assessment the judge is only allowed to review the assessment with restraint. Any mention of cooperation is

	lacking in this judgment. Article 37 Aliens Act allows the administrative authority to set out rules (implementing regulations) concerning the assessment of the application. Article 38 of the Aliens Act states that applicants will be interrogated in a language which it can be assumed that they understand (with the aid of an interpreter). Article 42(1) of the Aliens Act determines that the decision on the application will be given within six months; this can be extended for six months (on individual grounds) or one year (on collective grounds).
Poland	The Administrative Procedure Code (Journal of Law of 1960, No 30, item 168 with latest amendments) states that administrative authorities should rely on all available materials and evidence when assessing whether circumstances are attested or not. Thus, the authority should assess all collected evidence one by one and as a whole. An assessment of the evidence and relevant documents is discretionary (Article 80 of the APC) thus the authority carrying out the proceedings decides whether to accept provided documents or not (this decision should be clarified). According to Art. 75 of the APC everything that is allowed by law and relevant to the particular case should be considered as evidence. Lack of clear criteria and definition of evidence and its assessment can have, on the one hand, positive results for the refugees, but negative on the other, especially in connection to the discretionary provision mentioned above. The Supreme Administrative Court elaborated that *the main ground which constitutes the ability to be granted refugee status is well founded fear of persecution of the applicant. Fear is a subjective factor, which is not* recognizable *directly and cannot be verified. Thus, if an applicant states that s/he is persecuted, the burden of proof should lie on objective circumstances: whether s/he has objective reasons for fearing persecution. It is particularly difficult to establish if an application for refugee status is a camouflage for migration reasons, especially economic ones. Thus if an applicant applies for refugee status and states that s/he fears of being persecuted, the burden of proof lays on him/her.* (NSA V SA 3685/00 18 III 2002). Moreover, the Refugee Board stated in many decisions that *information given in application for refugee status lodged at the beginning and testimonies provided in the very first hearing are paid more attention to. Spontaneous testimonies given just after fleeing from the country of origin are considered to be more reliable comparing with those presented after consultations and with assistance.* (RdU-1468-3/s/01, 23 September 2002).

Portugal*	Asylum legislation does not refer specifically to duties concerning procedures and evidence of the Member State when assessing an application, which means that this subject should be analysed within the general administrative legislation.
Romania	The active role of the authorities is described in article 12 of the Asylum Law. According to its provisions "*the authorities qualified to resolve asylum applications can officially investigate any circumstances in fact and by right which could lead to the resolution of the case, even if these circumstances have not been submitted or mentioned in the asylum application or appeal*." Article 49 describes the role of authorities in collecting the relevant information to evaluate the asylum application: (1) In the decisional process, the officials stipulated in article 48, paragraph (2) have the right to demand examinations and to consult experts. (2) The National Refugee Office can request of any public institution, agency or organization that operates on Romanian territory any documents necessary to analyse the situation of the applicant and to make a decision on the asylum application of the latter, but the authorities must abide by the confidentiality clause clause under the conditions stipulated in article 10. In these cases it is not necessary to obtain the agreement of the applicant. (3) The Ministry of Foreign Affairs periodically supplies summary reports regarding the situation in the countries of origin of the asylum-seekers, as well as answers to the precise requests of the National Refugee Office, necessary to come to a decision on the asylum applications. (4) The National Refugee Office will consult the Ministry of Foreign Affairs in charge of the establishment of the safe countries of origin and safe third countries.
Slovakia	The duties regarding RSD are mentioned below. However, they are rarely used in the reasoning of decisions. The Ministry shall assess each application for asylum independently and shall take into account: a) All relevant facts that relate to the applicant's country of origin at the time of taking a decision on the application, including legal regulations of the country of origin and the manner in which they are applied, b) Statements and documentation presented by the applicant including information on whether the applicant has been or may be subject to persecution or serious harm, c) The individual position and personal circumstances of the applicant, including his/her origin, gender and age, d) Whether the applicant engaged in activities, since leaving the country of origin, for the sole or main purpose of creating the necessary conditions for applying for international protection,

	e) Whether the applicant could reasonably be expected to avail himself/herself of the protection of another country where he/she could assert citizenship. The fact that the applicant has already been persecuted or suffered serious harm or was subjected to direct threat of persecution or serious harm shall constitute a significant sign of justification of the applicant's fear of persecution or threat of a serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated. If the applicant fails to support his/her statements by evidence, the Ministry shall not take it into account during the assessment of his/her application for asylum when: a) The applicant has made a genuine effort to substantiate his/her application, b) The applicant submitted all relevant elements at his/her disposal and provided a satisfactory explanation regarding any lack of other relevant elements, c) The applicant's statements are found to be coherent and plausible and do not run counter to available information relevant to the applicant's case, The applicant has applied for asylum or subsidiary protection immediately after entering the territory of the Slovak Republic or, in the case of an authorised stay on the territory of the Slovak Republic, immediately after learning about the facts justifying international protection, and the general credibility of the applicant has been established. When assessing the reasons for persecution, the Ministry shall take into account that: a) The concept of race shall in particular include considerations of colour, descent or membership of a particular ethnic group, b) 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, c) The concept of religion shall in particular include the holding of theistic, non-theistic or atheistic beliefs, the participation in or abstention from religious ceremonies, other religious acts or expression of view, or forms of personal or communal conduct based on or mandated by any religious beliefs, d) The concept of political opinion shall in particular include the holding of an opinion, thought or belief on a matter related to the potential actors of persecution and to their policies or methods, whether or not that opinion, thought or

	belief has been acted upon by the applicant. 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 the identity or conscience that a person should not be forced to renounce it, and 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. However, this orientation cannot be understood to include acts considered to be criminal in accordance a separate regulation. When assessing an application for asylum, it is immaterial whether the applicant actually possesses the racial, religious, national, social or political characteristic that attracts the persecution, provided that such a characteristic is attributed to the applicant by the actor of persecution. When assessing an application for asylum, the Ministry shall begin with the assumption that protection against persecution or serious harm is usually provided in the country of origin when the State, political parties, political movements, or organisations controlling the State or a substantial part of its territory, take reasonable steps to prevent the persecution or suffering of serious harm, in particular, by means of 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.
Slovenia	See the answer above. In practice, the Ministry of Interior as a first instance decision-maker does not respect this provision in due manner. At the same time, this is a reason why the Administrative Court would remand the case to the first instance Court in order to assess the actual situation once again, respecting the guidance of the Court.
Sweden*	If the applicant's general credibility is accepted, then the obligation to investigate is heavier upon the authorities. However, the burden of proof does not shift.
United Kingdom	It is the duty of the claimant to submit to the Secretary of State as soon as possible all the material factors needed to substantiate the claim. It is then the duty of the Secretary of State to assess the claim on an individual basis, taking into account in particular: (i) all relevant facts as they relate to the country of origin or country of return at the time of taking a decision on the grant; including laws and regulations of the country of origin or country of return and the manner in which they are applied; (ii) relevant statements and documentation presented by the person including information on whether the person has been or may be subject to persecution or serious harm; (iii) the individual position and personal circumstances of the

	person, including factors such as background, gender and age, so as to assess whether, on the basis of the person's personal circumstances, the acts to which the person has been or could be exposed would amount to persecution or serious harm; (iv) whether the person's activities since leaving the country of origin or country of return were engaged in for the sole or main purpose of creating the necessary conditions for making an asylum claim or establishing that he is a person eligible for humanitarian protection or a human rights claim, so as to assess whether these activities will expose the person to persecution or serious harm if he is returned to that country; and (v) whether the person could reasonably be expected to avail himself of the protection of another country where he could assert citizenship. The Secretary of State is obliged to take into consideration the fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, and regard this as a serious indication of the person'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. In practice the claimant is screened, then substantively interviewed. At or within 5 days of the substantive interview applicants are expected to submit any further statements/documents/representations in order for a decision to be made. If the claimant is referred to the Medical Foundation for Victims of Torture then the decision is put on hold until a medico-legal report is produced. A delay in claiming can have a severely negative impact on the credibility of the asylum seeker in the eyes of the Home Office, and is commonly used as a reason for refusal, despite there being numerous possible reasons for such a delay including lack of access to legal advice. Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 makes further provisions for adverse credibility findings.

7c. How has the term "cooperation" in article 4(1) been interpreted in national legislation and jurisprudence?

Austria	See above
Belgium	As this article is not formally transposed, there is no precision in the law. According to the usual jurisprudence the burden of proof is on the applicant ("la procédure de reconnaissance de la qualité de réfugié n'échappe pas au principe général de droit selon lequel la charge de la preuve incombe au demandeur, même si en cette matière le niveau de preuve exigé doit s'entendre de manière souple, eu égard à la situation particulière dans laquelle se trouvent les demandeurs (en ce sens, voir « *Guide des procédures et critères à appliquer pour déterminer le statut de réfugié* », Haut Commissariat des Nations Unies pour les

	Réfugiés, Genève, septembre 1979, par. 196, p. 51) (CPRR, 00-1967/R9674, du 22 mai 2001 ; CPRR, 00-2220/R9675, 16 mai 2001) (…) » (CPRR n° 05-0285/R13110, 25 janvier 2006, Cameroun). On the question, see also B. MAQUESTIEAU, N. RONSE: « Les décisions du Commissaire général soumises au contrôle du Conseil d'Etat (chambres francophones). Chronique de Jurisprudence 2000-2006, RDE, 2006, n° 141, spéc. p. 711 et s). See also *Conseil du contentieux des étrangers, arrêt n°1541 du 4 septembre 2007*, Togo
Bulgaria	The requirement for cooperation does not derive from the Asylum and Refugee Act but from Art. 34(3) of the general Administrative Procedures Code that requires cooperation with the applicant in fact assessment during an administrative procedure.
Czech Republic	Cooperation is strictly required. For example, if the applicant avoids the interview the procedure is stopped and international protection is not granted (§ 25 lt. d) Asylum Act).
France	The term "cooperation" is not used in national legislation or jurisprudence.
Germany	Section 15 of the Asylum Procedure Act provides details of the "*general obligations to co-operate*." The applicant has the duty to provide all the information, including documents, available to him or her. Failure to comply with this responsibility may result in disregarding those facts produced at a later stage, in particular if such late provision of facts and circumstances would lead to a delay in the decision of the Federal Office. Notwithstanding those duties imposed on the alien, the Federal Office for Migration and Refugees is responsible for clarifying the facts of the case and compiling the necessary evidence.
Greece	It has not been interpreted.
Hungary	According to Section 5(2) of the Asylum Act, the asylum-seeker is obliged to "*cooperate with the asylum authority and in particular to reveal the circumstances of his/her flight, to communicate his/her personal data, to facilitate the clarification of his/her identity and to hand over his/her documents*." This provision indicates that the person seeking recognition has to act proactively during the asylum procedure and submit him/herself to the measures taken by the asylum authority. On the other hand, the authority is responsible for making a well-founded decision by taking into consideration all the circumstances of the case, e.g. the asylum authority shall obtain the report of the agency responsible for the provision of country information. The following provisions can be considered most important in connection with the obligation to cooperate on the part of the applicant: General cooperation is required from the asylum-seeker according to Section 5(2)(a) of the Asylum Act. In addition, Section 5(2)(b), (c) and (d) of the Act specify other forms of cooperation of an obligatory nature imposed on the person seeking recognition in more detail.

	Thus, cooperation is widely interpreted in Hungarian regulations as the applicant's duty to declare his/her financial situation, to stay at the designated accommodation facility keeping the rules of conduct and to submit him/herself to medical checks and various treatments if needed, etc. These provisions remarkably influence the asylum-seeker's personal freedom; therefore it can be considered as an obligation imposed on the person in question during the refugee status determination procedure. Concerning reception conditions and accommodation facilities provided to asylum-seekers, the revocation of these material conditions is a strict and serious sanction to be laid on the applicant in case of violating the obligation of cooperation as prescribed in Section 30 (1) of the Asylum Act: *30 (1) (a) repeatedly or grossly violates his/her obligation of cooperation;* *(b) leaves the accommodation facility designated for him/her for a period of more than twenty-four hours without the permission of the refugee authority;* *(c) repeatedly or grossly violates the rules of conduct which govern at the designated accommodation facility;* *(d) has departed from the designated accommodation facility for an unknown destination and a period of fifteen days has elapsed since his/her departure;* Regarding the procedural rights and obligations of the asylum-seeker according to Section 35(2) "*The person seeking recognition shall proceed in the asylum procedure in person*." and according to Section 35(4) "*Upon the presentation of the application for recognition, the person seeking recognition shall appear before the asylum authority in person*." The above indicate that the asylum-seeker has to be proactive and cooperate with the asylum authority.
Ireland	Article 4(1) has not been transposed into Irish legislation thus the term co-operation has not been directly transposed or interpreted, however the concept of co-operation between an applicant and decision maker is set out in S. 11 of the Refugee Act 1996. Co-operation between applicant and decision maker is recognised as a shared burden of proof in Irish jurisprudence (as set out in para. 197 of the UNHCR Handbook) and this is broadly followed in the national asylum procedure.
Italy	It has not been considered so much until now in general, nor in the first comments by experts. The impression is that the idea of any duty of the state in the word "*cooperation*" does not exist.
Luxemburg	- at their arrival, the applicants are questioned by a member of the police regarding their identity and their itinerary from their country of origin to Luxemburg - except for the situation where another EU member state is responsible for the examination of the request, the applicant has the

	right to be interviewed personally by a civil servant regarding his request. The applicant can be assisted by a lawyer during the interview. The interview is transcribed into a report and can even be subject to audio recording.
Norway	Cooperation has in many cases been tied in with the will/ability to provide identification documents.
Netherlands	The Council of State has judged that the duty of cooperation does not entail more than the possibility for the applicant to submit all relevant elements for the application and that cooperation can repair a possible lack of evidence (after having been informed of this lack by the Immigration and Naturalisation Service (IND)) before the IND will make a final decision. The Council of State considers it the duty of the applicant to submit all relevant evidence and when he fails to do so, the term of cooperation does not oblige the State Secretary to bring in an expert to examine the authenticity of the applicant's documents. In another judgment, the Council of State again considered it the duty of the applicant to submit all relevant elements. In case he fails to do so, the term cooperation does not imply an obligation to conduct a language analysis to remove the remaining doubts as to the nationality of the applicant.
Poland	An asylum seeker is obliged to cooperate with the RSD authorities in providing all necessary evidence. Moreover s/he has to be present at hearings. Often, if an asylum seeker is not able to provide RSD authorities with evidence regarding his/her case, s/he is considered to be unreliable, even though s/he simply cannot collect any related evidence.
Portugal*	National asylum law does not refer specifically to the term "*cooperation*." However, in practice and according to UNHCR's "*Handbook on Procedures and Criteria for Determining Refugee Status*" both the applicant and the examiner share the duty to assess all relevant elements of the application.
Romania	Government Ordinance no. 1251/13.09.2006 provides in article 13(1) "*The authorities with competence in solving asylum applications shall be bound to analyze all the relevant aspects of the asylum application in cooperation with the applicant, if the case, or upon his/her request*."
Slovakia	No interpretation was adopted so far. The article was not transposed as it is in the Directive.
Slovenia	The term "*cooperation*" was not transposed. The international protection Act tends to separate the role of the applicant and the authority and in this respect also defines the role of the applicant as the subjective (grounding his application) and the role of the authority as the objective element (verification of the application) of the procedure.
Sweden*	In practice the authorities should verify, or help the applicant verify, certain circumstances that would be to the applicant's advantage.
United Kingdom	"*...the Secretary of State shall assess [material factors] in cooperation with the person*." IR 339I

7d. Has national legislation or jurisprudence interpreted "as soon as possible" as contained in article 4(1)?

7e. If the answer is yes, please specify any time limits regulated by law or imposed in practice. Are there exceptions to these limits? What is the practice when the limits are waived? What consequences can occur if the applicant fails to submit all elements needed to substantiate the application "as soon as possible"?

Austria	Yes		National legislation uses the wording "without unnecessary delay." Delays are in practice mostly used as arguments for a lack of credibility. This practice varies largely from case to case. For example if an asylum seeker provides new arguments quite late in the procedure (or in the second instance) that he already knew before, authorities would tend to argue that he is enhancing his arguments to have better chances to get status. Of course if there is a reason for providing this argument later on or if he has clear evidence to support them this is not an obstacle.
Belgium	Yes		The principle in the law concerns formally the introduction of the application, not the production of proof, etc. The time limit for the introduction of the application depends on the legality of the entry/stay on the territory: 1. Entry without documents: the application must be introduced immediately before the authorities at the border (article 50) or within 8 days of the entry (article 50); 2. Short stay: within 8 days (article 51, al. 1); 3. Long stay (more than 3 months): before the expiration of the stay. If these conditions are not respected the application can be rejected. There is no specific sanction if all the elements are not submitted as soon as possible, except regarding credibility. However before the instance of appeal (see above), they can't be taken into consideration, except in certain circumstances.
Bulgaria		No	--
Czech Republic		No	--
Germany		No	If the applicant has submitted a request for protection to the aliens' authority or the police, he or she is obliged to appear in person and without delay ("*unverzüglich*") at the respective Federal Office branch office for the purpose of filing his or her asylum application. The term

			"*unverzüglich*" is not defined in asylum law, but there is a generally accepted definition in the German Civil Code that states that "*unverzüglich*" means without culpable delay. If the formal asylum application is not lodged without delay, the examination of the application may be restricted to newly arising facts (Sections 19, 20, 22, 23 Asylum Procedure Act). However, subsidiary protection might be granted without these restrictions. In practice, applicants who fail to submit their application "*as soon as possible*" might face further difficulties in establishing credibility of the claim.
Greece		No	--
France		No	The OFPRA and the CNDA take their decisions according to the information and documents they have the day the decision is taken. However, in practise, if a claimant submits some element late in the procedure, for instance only before the CNDA, he will have to justify himself.
Hungary		No	--
Ireland		No	The Refugee Act 1996 which pre-dates the Qualification Directive requires an applicant to furnish the examining body with all information "*as soon as reasonably practicable*" (Section 11C2). The decision maker is obliged to consider whether the applicant has complied with this requirement in assessing credibility (Section 11B).
Italy		No	Not yet, it is too soon to know how it will be interpreted in practice.
Luxemburg	Yes		"*As soon as possible*" has been transposed literally. The Ministry can consider being in possession of all the necessary documents if the applicant has made declarations and given documents regarding his age, his personal and his family's situation, identity, country, places of residence, former asylum requests, travel documents and the reasons for his asylum request. In practice it takes 4 to 8 weeks between the applicant's request and the interview. Also in practice, the Ministry gives applicants only 15 days to submit the requested documents. There is however no sanction linked to this delay and the Ministry is obliged to consider all documents, even if it is submitted later. The interview can be postponed for physical or psychological problems of the applicant, if necessary following a medical examination.

			If the applicant does not contact the Ministry during two months, the request can be considered as tacitly retired.
Netherlands*		No	--
Poland		No	There is no interpretation of the term "*as soon as possible*" in practice. However the RSD authorities as a rule do not regard as credible additional information or testimony given after the first asylum interview has taken place. As mentioned above, testimony presented at the border checkpoint is considered the most credible of all the testimony provided during the proceedings. Any inconsistencies between the initial interview (at the border) and the asylum interview are interpreted against the applicant.
Portugal*		No	--
Romania	Yes		There are no time limits but it is a condition to be granted the benefit of the doubt. According to article 15(d) of the Asylum law the applicant must have submitted an asylum application as soon as possible and any delay should be justified with solid reasons.
Slovakia		No	--
Slovenia	Yes		Law defines that all the evidence has to be submitted until the end of the personal interview in the regular procedure. In an accelerated procedure, authorities define the date with regard to the concrete case. Law also requires that the applicant has to be notified of this date. In practice there are no problems with too short dates. If the applicant fails to submit all elements and he has well founded reasons why he did not submit them, he may ask the Court to take them into account (in general, Courts interpret "*well founded reasons*" in a due manner). But if there are no such reasons, the application might be rejected as manifestly unfounded in an accelerated procedure.
Sweden*		No	--
United Kingdom	Yes		Failure to attend an interview, failure to report to a designated place to be fingerprinted, failure to complete an asylum questionnaire or failure to comply with a requirement to report to an immigration officer for examination can and will lead to a refusal of an asylum claim on non-compliance grounds. Documentary evidence should be submitted within 5 days of the substantive interview, unless good reasons can be given as to the delay, and this is agreed with the Home Office Case Owner. Paragraph 353 of the Immigration Rules allows for further submissions which will constitute a fresh claim for asylum if the material has not already been considered and if the material creates a realistic prospect

			of success. Under the judgement in SD (treatment of post-hearing evidence) Russia [2008] UKAIT 00037, if a judge receives fresh evidence prior to the promulgation of a determination, then they can admit it unless it could not have been previously obtained with due diligence for use at the trial, would probably have had an important influence on the result and was apparently credible.

ARTICLE 4(2)

8. What are the elements required to substantiate an application for international protection in national law or practice? Are any elements beyond those enumerated in article 4(2) considered necessary to substantiate a claim? Please explain.

Austria	*See above*
Belgium	According to the law (article 51/10) the elements are: - Identity; - Origin; - Itinerary; - Motives of the application and possibilities to return to the country he/she fled that has to be filled in the Questionnaire According to this questionnaire elaborated by the Commissariat General, applicants are also asked about: - Their educational qualification and profession - If they were detained or condemned - If they know compatriots living in Belgium or in another European country (name, relationship, status) This questionnaire advises the applicant to present documents that establish the origin, itinerary, facts, etc., as soon as possible and if possible in original.
Bulgaria	Article 4(2) was transposed literally.
Czech Republic	In the Czech regulations there is no list of elements required to substantiate an application. It depends on administrative discretion of the OAMP, subject to judicial review.
France	According to the asylum application form, the asylum seeker must provide information about: - His/her identity (with an identity card, passport or other civil status documents if possible), the identity of his/her family (parents, siblings, spouse, children); - His/her country of origin and his/her ethnic group - Countries of residence in the last 10 years - Native language, other languages spoken, religious group, qualification, profession, city of residence, military service - When he/she fled his/her country of origin

	- How he/she arrived to France - If he/she was protected in another country - The reasons why he/she fled his/her country
Germany	The "story" has to be proved in as much detail as possible with any kind of evidence (i.e. for example boarding card to prove the direct flight with destination Germany), driver's license, passport or I.D. card, sentence or warrant if available, etc. The relevant German provision mentions information concerning residences, itineraries, stays in other states and information on whether a procedure aimed at obtaining recognition as a foreign refugee or an asylum procedure has already been initiated or completed in other states or on the Federal Territory (Section 25 Asylum Procedure Act). In practice, the questions arise at two stages of the procedure (at the pre-interview on the travel route and in the full interview). Usually in these two interviews the elements enumerated in article 4(2) QD are covered.
Greece	Elements required are the same as those listed in art. 4(2).
Hungary	According to Section 41 of the Asylum Act: *(1) To verify or substantiate in the course of the refugee procedure whether the criteria of recognition as a refugee, a beneficiary of subsidiary or temporary protection exist in respect of the person seeking recognition, the following means of providing evidence may be used in particular:* *a) Facts and circumstances giving rise to the act of fleeing disclosed by the person seeking recognition and the documents supporting the same;* *b) The travel document or any other document presented by the person seeking recognition, on the basis of which it is possible to infer his/her identity and/or nationality;* *c) All relevant up-to-date information relating to the country of origin of the person seeking recognition, including the statutory or any other mandatory legal provisions of the country of origin and the method of application thereof.* *(2) The refugee authority and – in case of need - the Court, shall obtain the report of the agency responsible for the provision of country information under the supervision of the Minister.* The Asylum Act thus presents a list of suggested means of evidence ("*may*", "*in particular*"), not referring to a detailed list similar to that foreseen by Article 4 (2) of the QD (see in the context of Question 7).
Ireland	Article 4(2) is not directly transposed into Irish legislation. Section 11C(2) of the Refugee Act 1996 states that in compliance with the duty to cooperate an applicant is obliged to furnish to the decision maker as soon as reasonably possible "*all information* in his or her possession, control or procurement *relevant* to his or her application" (emphasis added).

	Pursuant to Section 11(B) of the Refugee Act 1996 an examining body shall have regard to the following in the examination of a claim: (*a*) Whether the applicant possesses identity documents, and, if not, whether he or she has provided a reasonable explanation for the absence of such documents; (*b*) Whether the applicant has provided a reasonable explanation to substantiate his or her claim that the State is the first safe country in which he or she has arrived since departing from his or her country of origin or habitual residence; (*c*) Whether the applicant has provided a full and true explanation of how he or she travelled to and arrived in the State; (*d*) Where the application was made other than at the frontiers of the State, whether the applicant has provided a reasonable explanation to show why he or she did not claim asylum immediately on arriving at the frontiers of the State unless the application is grounded on events which have taken place since his or her arrival in the State; (*e*) Where the applicant has forged, destroyed or disposed of any identity or other documents relevant to his or her application, whether he or she has a reasonable explanation for so doing; (*f*) Whether the applicant has adduced manifestly false evidence in support of his or her application, or has otherwise made false representations, either orally or in writing; (*g*) Whether the applicant, without reasonable cause, having withdrawn his or her application and not having been refused a declaration under section 17, has made a subsequent application under section 8; (*h*) Whether the applicant, without reasonable cause, has made an application following the notification of a proposal under section 3(3)(*a*) of the Immigration Act 1999; (*i*) Whether the applicant has complied with the requirements of section 11C; (*j*) Whether the applicant has, without reasonable cause, failed to comply with the requirements of section 9(4)(*a*); (*k*) Whether the applicant has, without reasonable cause, failed to comply with the requirements of section 9(4A); (*l*) Whether the applicant has, without reasonable cause, failed to comply with the requirements of section 9(5); (*m*) Whether, in the case of an application to which section 16 applies, the applicant has furnished information in relation to the application that he or she could reasonably have furnished during the investigation of the application by the Commissioner but did not so furnish.
Italy	The elements of art. 4 have been transposed literally.
Luxemburg	The elements required are those of article 4.2 of the directive: age, personal and family's situation, identity, country, place of residence, former asylum requests, travel documents and the reasons for the asylum request.
Netherlands*	There are no other specific elements required beyond those enumerated in article 4 paragraph 2 QD, but there is an essential

	difference between the text of article 4 paragraph 2 QD and the Dutch practise. Article 4 paragraph 2 QD mentions "*at the applicant's disposal*." The applicant should submit all the relevant documents that are "*at his disposal*." According to the Dutch rules all relevant documents (all existing documents and all documents that should have been at the applicants disposal) should be submitted as soon as possible. Documents submitted after the decision or in a subsequent application are often left out of consideration.
Poland	All elements required to substantiate an application enumerated in the Directive are collected by the authority accepting an application (the Border Guard). Thus it: - Verifies whether the application has been filled in correctly and whether an alien has indicated his/her name and surname as well as his/her country of origin; - Determines the identity of the alien; - Takes photographs and fingerprints of the alien; - Seeks information related to: a refugee's country of origin, data of his/her spouse and minor children staying in Poland, visas or residence permits issued to him/her, the route of travel to the border and the place of border crossing, whether the applicant has applied for refugee status in another country, the refugee's family members residing in another Member State within the meaning of art. 2(i) of the Dublin Regulation. *Also see notes 7a and 7b.*
Portugal*	In relation to national law please refer to question 7a. In practice, elements enumerated in article 4(2) are required.
Romania	The elements from article 4(2) are considered necessary to substantiate an application for international protection. Article 16 of the Government Ordinance 1.251/13 September 2006 provides at paragraph 1 letter c) "*the individual situation or personal circumstances of the applicant, including factors such as background, gender, age, so as to assess whether, on the basis of the applicant's personal circumstances, the acts to which he/she has been or could be exposed would amount to persecution or serious harm, for the purpose of Article 23 (1), respectively Article 26(1) of the law, if the case may be*;"
Slovakia	The applicant has the obligation to report truly and fully all facts related to his/her application for asylum. There is no other specification in the law
Slovenia	The elements are in line with those defined in Article 4(2). In practice, authorities rely mostly on written documentation.
Sweden*	The applicant must state his or her claim, the reasons for the claim and evidence supporting it. Therefore, the applicant must present the elements stated in 4(2). The Swedish Migration Board has however the responsibility to make sure that the asylum case is investigated as fully and correctly as possible.
United Kingdom	Paragraph 339I of the Immigration Rules; material factors (elements): *(i) the person's statement on the reasons for making an asylum claim*

	or on eligibility for a grant of humanitarian protection or for making a human rights claim; *(ii) all documentation at the person's disposal regarding the person's age, background (including background details of relevant relatives), identity, nationality(ies), country(ies) and place(s) of previous residence, previous asylum applications, travel routes; and* *(iii) identity and travel documents*. There are no elements or material factors required beyond those enumerated in Article 4(2) of the Directive.

ARTICLE 4(3)

9a. Is the assessment of applications carried out in accordance with article 4(3)?

Austria			n/a
Belgium	Yes		
Bulgaria		No	
Czech Republic	Yes		
Germany	Yes		
Greece	Yes		
France	Yes		
Hungary	Yes		
Ireland	Yes		
Italy	Yes		
Luxemburg	Yes		
Netherlands*		No	
Norway			n/a
Poland[65]	Yes		
Portugal*			n/a
Romania[66]	Yes		
Slovakia	Yes		
Slovenia	Yes		
Sweden*	Yes		
United Kingdom	Yes		

9b. In what form does the requirement of "individualised" assessment of asylum claims appear in national legislation or jurisprudence? Does the legislation

[65]There is often no COI in decisions issued by the RSD authorities on sources of facts, data etc. As a rule the first instance authority does not refer to the original sources, but invokes a query response prepared by the COI Unit in the Office for Aliens. The query response is available only in the case file, which in practice makes it impossible for an asylum seeker to verify on what grounds the decision was issued.
Moreover, as a rule, written statements provided by asylum seekers or recognized refugees who know the applicant and are familiar with her/his situation in the country of origin are not taken seriously. RSD authorities use the phrase "mutual adoration" to explain why these documents have no value as evidence and are not considered as reliable. According to the Office for Aliens or the Refugee Board this kind of document is issued only to support someone's application and are not trustworthy.

[66]Especially the courts do not mention country of origin information used to conclude that the situation in the country of origin does not support the applicant's claim.

establish a link between this requirement and the research/use of country of origin information?

Austria	The term "*individualised*" is not explicitly transposed. Jurisprudence generally requires an individualised assessment. As the authority has the duty to bring forward evidence if necessary, and the Asylum Act provides for a COI-database, a link can be seen.
Belgium	The individualised assessment is based on the administrative file case that includes the declarations and elements produced by the applicant. It includes general or individual information from the country of origin. This subject isn't governed by legislation but is elaborated by practice. The jurisprudence considers that such information has to be reliable and relevant, and to appear in the file case (CE, n° 177.614 du 26 mars 2003, n° 122.030 du 5 août 2003, n° 130.107 du 2 avril 2004, n° 155.562, du 24 février 2006, cites par B. MAQUESTIEAU, N. RONSE, op. Cit., p. 714, note 318).
Bulgaria	There is only one case where the Court explicitly said that while considering the claim the general situation of the country of origin should be taken into consideration.
Czech Republic	The requirement of individualised assessment does appear especially in the jurisprudence of the Supreme Administrative Court. There is no defined link between individualised evidence and general information about the country of origin. Mostly it depends on the credibility of the applicants.
France	This principle, recognised by the Constitutional Council, appears in a disposition regarding the notion of safe countries of origin. Art. L.741-4 CESEDA states that "*the taking into account of the safety of the country of origin does not preclude the individual examination of each application"*. However in practice, much of the decisions of the OFPRA and the CNDA are stereotyped.
Germany	The individualised assessment is primarily guaranteed by the mandatory personal interview to be carried out (Section 24(1)(3) Asylum Procedure Act. Exceptions only apply in "safe third country" cases and in cases where the Federal Office intends to directly grant asylum, without further investigation, (Section 24(1)(4) Asylum Procedure Act). It is also reflected in the obligation to issue an individual decision containing reasoning. After the facts given by the applicant are established, the BAMF or the Court control the "validity" and "credibility" of the facts submitted. BAMF and the Courts have extremely precise archives and documentation on every country, so that in most of the cases they know more about the political situation in the country than the applicant does. And they will confront him with their vast knowledge – if there is any contradiction in his report to the facts gathered in the archives – the reasons are not found credible and the application is denied.
Greece	Article 4(3)(a) was transposed literally.
Hungary	Section 40 of the Asylum Act stipulates that "*the decision relating to*

	the application for recognition shall be based on the individual assessment of the situation of the person seeking recognition." However, no special guidance is provided about what factors are to be considered to this end. An interesting exception (where concrete individual factors to be considered are provided) is the analysis of the internal protection alternative. According to Section 63(2) of the Asylum Act *"(2) Protection ... may also be regarded as duly granted if in the state from which the applicant is forced to flee, the requirement of well-founded fear or the effective risk of serious harm does not prevail in a part of the country, and the applicant can reasonably be expected to remain in that part of the country."* Meanwhile, Section 92 (3) of the Government Decree prescribes that when applying this provision, the asylum authority *"shall assess in particular the applicant's health, need for special treatment, age, gender, religious affiliation, nationality and cultural ties as individual circumstances."* The legislation does establish a clear link between the requirement of individualised assessment and country information. Sections 41 (1) (c) and 43 (3) of the Asylum Act envisage the mandatory use of COI, while Section 71 of the Government Decree specifies that when applying Section 41 (1) (c) of the Act, *(...) may be considered as relevant the information* *a) Which is related to the individual circumstances of the applicant,* *b) Which describes or analyses the actual situation in the country of origin of the applicant, the refugee, the beneficiary of subsidiary or temporary protection, or a third country relevant in respect of the recognition or withdrawal of these statuses, and* *c) Which helps to decide on the merits whether in case of the applicant, refugee, beneficiary of subsidiary or temporary protection there is a well-founded fear of being persecuted or a risk of serious harm, or whether in case of the applicant, refugee, beneficiary of subsidiary or temporary protection the given country is to be considered as safe country of origin (...) or safe third country (...)* While Paragraph (a) sets a general principle establishing a link between the requirement of individualisation and COI as evidence, Paragraph (c) provides further concrete guidance on how this standard should be interpreted.
Ireland	The first line of Article 4(3), which states "*an application for international protection is to be carried out on an individual basis*" has not been transposed into Irish Law, however, this notwithstanding, Article 4(3)(a) – (e) has been transposed verbatim into the Irish Legislation in Regulation 5(1)(a) of S.I. 518. This has the effect of requiring all claims to be examined on an individual basis. Article 4(3)(a) is replicated in Regulation 5(1)(a) and establishes a

	link between the individualised assessment and research or use of country of origin information.
Italy	Each asylum seeker has the right to a personal interview during which he must prove the risk of personal prosecution. The COI database is still quite poor and the reports used by the administrative body are kept secret.
Luxemburg	The requirement is mentioned especially in the law of the 5th of May 2006. The legislation also establishes a link between the requirement and the research/use of country of origin information.
Netherlands*	The individualised assessment is guaranteed by the obligation of the authorities to gather the necessary information and inform the applicant on the kind of information that he has to submit as well as point out the lack of sufficient information. It is clear that there usually is no time for this in the Dutch fast track procedure (48 working hours). There is a possibility of corrections and additions before the intention to reject the asylum request, but those will not lead to adjustment of the report of the interrogation. It is possible that the corrections and additions as well as the view on the given intention to reject the asylum request will be taken into account in the decision. In the Dutch procedure the applicant has the obligation to immediately (briefly) mention traumatising events. This could be in breach of article 4(3) QD, because it sets the burden of proof on the applicant only. Since it is also the duty of the Minister/State Secretary to gather information this can oblige him in cases of doubt to examine possible traumas. There is a duty on the Minister "to persuade himself of something" (vergewisplicht) but the case law of the Council of State on this matter is inconsistent. The "vergewisplicht" is of importance in case of general official reports and those are relevant in the research/use of information of country of origin information. The general official reports are made by the Ministry of Foreign Affairs and should be taken into account in what the Minister knows of the general situation in the country of origin. The burden of proof concerning the general situation in the country of origin lies upon the Minister.
Poland	The legislation does not establish any requirements related to COI. However, COI was mentioned in several administrative courts' judgments. *It has been agreed in the previous, persistent jurisprudence of the Supreme Administrative Court, which has a clear base in the UNHCR Handbook, that establishing the refugee status requires, above all, assessment of the applicant's statements, and not of situation in his/her country of origin (p. 15 of the UNHCR Handbook). This kind of approach is consistent with the requirements of the Geneva Convention connected to the individualisation of persecution, the need to assess well-foundedness of the applicant's fear and his/her credibility, and finally assessment of factual evidence*

	and likely steps which have been or might be taken against this person, taking into account their opinions and feelings. Only to this extent general socio-legal and politico-economical situation in applicant's country of origin might be of significance. (Supreme Administrative Court, 12.06.2001,V SA 3095/00)
Portugal*	The requirement of "individualised" assessment of asylum claims does not appear in national legislation as such. It is a result, an unquestionable consequence of the national asylum regime/procedure.
Romania	Article 16 of the Government Ordinance 1251/13 September 2006 provides: "The assessment of an asylum application shall be based on individual elements and taking into account the following: (a) all relevant facts as they relate to the country of origin at the time of taking a decision on the application, including the legislation in the country of origin and the manner in which this is applied; (b) relevant statements and documentation presented by the applicant, including information on whether the applicant has been or may be subject to persecution for the purpose of Article 23 (1) of the law, or to serious harm, or the possibility of existing of a serious risk, for the purpose of Article 26 (1) of the law;"
Slovakia	The Ministry assesses each application for asylum independently and takes into account the individual position and personal circumstances of the applicant, including his/her origin, gender and age.
Sweden*	There is no such requirement in the legislation but there is in the jurisprudence. There is no link in the legislation. COI are used in practice
Slovenia	Individualisation is mentioned only in connection with research and use of COI.
United Kingdom	At 339J of the Immigration Rules: "individual, objective and impartial basis. This will include taking into account in particular: (i) all relevant facts as they relate to the country of origin or country of return at the time of taking a decision on the grant; 339JA. Reliable and up-to-date information shall be obtained from various sources as to the general situation prevailing in the countries of origin of applicants for asylum and, where necessary, in countries through which they have transited. Such information shall be made available to the personnel responsible for examining applications and taking decisions and may be provided to them in the form of a consolidated country information report. These reports are produced and published by the Home Office and are referenced in decisions, as well as country guidance case law (CG). They are called Operational Guidance Notes (OGN's).

9c. Does the requirement in Article 4(3)(a) "the manner in which they are applied" appear in your country's national legislation? If yes, how is it formulated?

Austria		No	--
Belgium		No	--
Czech Republic		No	--
France		No	No it does not. It appears sometimes in the jurisprudence, e.g. in cases regarding homosexuality or forced weddings.
Germany		No	--
Greece	Yes		It has been formulated exactly as in the directive.
Hungary	Yes		Yes, it is almost literally transposed in the Asylum Act, in Section 41(1): *"... the following means of providing evidence may be used in particular: ... c) all relevant up-to-date information relating to the country of origin of the person seeking recognition, including the statutory or any other mandatory legal provisions of the country of origin and the method of application thereof*". Further concrete guidance is provided in Section 71 (b) of the Government Decree that stipulates t that the information *"describes or analyses the actual situation in the country of origin"* as a condition for COI to be considered as relevant
Ireland	Yes		Yes, in Regulation 5(1)(a) of the S.I 518. This regulation replicates the wording of Article 4(3)(a).
Italy	Yes		It has been literally transposed.
Luxemburg			Article 18, b) of the law disposes: The ministry makes sure that precise and actualised information is obtained from various sources, such as the HCR regarding the general situation of the country of origin and, if necessary, regarding the transit countries. The ministry makes also sure that the staff in charge of the examination of the requests has access to these information.
Netherlands*		No	--
Poland		No	As mentioned above Poland, did not transpose Art. 4(3) of the QD.
Portugal*		No	--
Romania		No	--
Slovakia	Yes		It is implemented literally.
Slovenia	Yes		Formulation: " which might include also manner of application of laws and regulations." Omitted is the first part: "including laws and regulations". So, it refers only to the manner of their application.
Sweden*		No	No, but this requirement appears in jurisprudence and practice. For instance it relates to cases of applicants

			from Iran that claim that they are being persecuted because they are homosexuals. According to Swedish practice if applicants would not reveal their sexual preferences the Iranian legislation would not be enforced.
United Kingdom	Yes		Word for word with the Directive.

9d. Are there any additional requirements for the assessment of the facts and circumstances surrounding an application for international protection?

Austria	*See above*
Belgium	No
Bulgaria	Article 4(3) QD not literally transposed. See Art 75(2) spelling out the *in dubio pro fugitivo* principle.
Czech Republic	No
France	No
Germany	No
Greece	No
Hungary	It is worth mentioning that the new Hungarian asylum legislation provides detailed guidance and sets standards in a rather unprecedented way concerning the research and assessment of country information (COI), in the framework of the evidentiary assessment process. These standards reflect relevant, internationally established professional norms and go far beyond the relevant provisions of the QD (Article 4 (3) (a)). Mandatory use of COI as evidence, Asylum Act, Section 41 (2) *(2) The refugee authority and – in case of need - the court shall obtain the report of the agency responsible for the provision of country information under the supervision of the Minister.* Legal relevance of COI, Government Decree, Section 71 *(...) may be considered as relevant the information* *d) Which is related to the individual circumstances of the applicant,* *e) Which describes or analyses the actual situation in the country of origin of the applicant, the refugee, the beneficiary of subsidiary or temporary protection, or a third country relevant in respect of the recognition or withdrawal of these statuses, and* *f) Which helps to decide on the merits whether in case of the applicant, refugee, beneficiary of subsidiary or temporary protection there is a well-founded fear of being persecuted or a risk of serious harm, or whether in case of the applicant, refugee, beneficiary of subsidiary or temporary protection the given country is to be considered as safe country of origin (...) or safe third country (...)* Reliability and balance of COI sources, objectivity of COI, Government Decree, Section 70 (8)

	(8) The Country Information Centre carries out the collection of information and the preparation of reports in an objective, impartial and precise manner. To this end, *a) it uses different sources of information,* *b) equally and to the maximum extent uses governmental, non-governmental and international sources of information.*
Ireland	Section 11B of the Refugee Act 1996 (as set out above) elaborates on the requirements as set out in Article 4(3)(a) of the Directive (as transposed in Regulation 5(1) of S.I. 518).
Italy	No
Luxemburg	No
Netherlands*	I do not know of any additional requirements for the assessment of the facts and circumstances.
Poland	No. See supra note.
Portugal*	No
Romania	Yes. Article 16 of the Gov. Ordinance 1251/2006 provides in paragraph 1 letter a that "all relevant facts as they relate to the country of origin at the time of taking a decision on the application, including the legislation in the country of origin and the manner in which this is applied" should be included.
Slovakia	No
Slovenia	No
Sweden*	No
United Kingdom	No

ARTICLE 4(4)

10a. Does your national legislation or practice perceive previous persecution as an indication of the applicant's well founded fear of persecution?

Austria	Yes		There is no such wording in the legislation, but it is perceived as an indication in jurisprudence.
Belgium	Yes		There is no precision on this topic in the legislation but in the examination of an application previous persecution is taken into account.
Bulgaria	--	--	Article 4(4) has not been transposed literally.
Czech Republic	Yes		In the majority of cases the previous persecution is almost a condition for establishing a well-founded fear of persecution.
France	Yes		It appears only in practice. It is mainly used to prove that the fear is individualised and so it still exists at the time of taking the decision. However, in case of very harsh previous persecutions, the fear does not need to currently exist in order for the applicant to be recognised as a refugee.
Germany	Yes		According to the standards developed over years of German jurisprudence, previous persecution leads to a lower standard of proof regarding the assessment of the future risk of

			persecution.
Greece	Yes		Article 4(4) has been transposed verbatim in the Greek law. It is, however, too soon to comment on how it will be applied in practice. Previously, the 1951 Geneva Convention was applied in national legislation.
Hungary	Yes		Article 4 (4) of the QD has not been transposed into Hungarian law. However, practice shows that previous persecution (mostly if "proven " by firm evidence – medical reports about torture, etc.) is usually perceived as a factor substantiating a well-founded fear of persecution (even if not per se sufficient).
Ireland	Yes		Regulation 5(2) directly transposes Article 4(4) in relation to previous persecution. It however in addition goes further and states that "Compelling reasons arising out of previous persecution or serious harm alone may nevertheless warrant a determination that the applicant is eligible for protection"
Italy	Yes		It was quite common before the implementation of the directive to find that more than an assessment of the risk of persecution is evaluated if the applicant escaped from actual persecution, as could be proved through medical evidence.
Luxemburg	Yes		No indication
Netherlands		No	In the Dutch procedure it has always been an obligation for the applicant to make credible that he still fears for persecution, also when he has been subject to persecution in the past. The fact that the applicant has been persecuted in the past is not a decisive factor in examining whether his fear of persecution is well founded. However, it should be a part of the assessment. It has been argued that the rejection, as a consequence of the 'special distinguishing features'-requirement, of members of high-risk groups, in case they have already been victims of persecution, is in breach of article 4 paragraph Qualification Directive, because there are no good reasons to assume that persecution will not happen again.
Poland	Yes		Art. 4(4) of the QD was implemented in Polish law by Art. 44 of the Act on granting protection. Before, the legislation did not mention this issue, but in practice previous persecution has already been perceived as an indication of the applicant's well founded fear of persecution The Refugee Board's article 1A interpretation elaborated that *"a person seeking refugee status in Poland must indicate that he has experienced an individual nature of persecution or fear of such persecution for the reasons discussed in art. 1 A of the Geneva Convention*." (Report on The Refugee Board's implementation of the Act on Providing Protection to Aliens on the Territory of the Republic of Poland in 2005, Warsaw, March 2006, p. 13, report available on:

			http://www.rada-ds-uchodzcow.gov.pl/images/stories/images/informacja2005ang.pdf)
Portugal*		No	However, in practice previous persecution might be considered as an indication of the applicant's well-founded fear of persecution.
Romania	Yes		The fact that an applicant has been subject to persecution or serious harm or a direct threat of 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 shall not be repeated. (Paragraph 2 of article 16 from Government Ordinance 1251/2006)
Slovakia	Yes		--
Slovenia	Yes		This is new in our legislation, so we do not know how it will be applied in practice. For some period of time, in practice only torture for a long period of time was perceived as persecution.
Sweden*	Yes		In practice. For instance where an applicant was subject to persecution due to political activity – and the political situation remains the same as when they left the country.
United Kingdom	Yes		339K. The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person'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.

10b. Has domestic legislation or jurisprudence specified the criteria to establish "good reasons" to consider that persecution or serious harm will not occur again?

Austria	No
Belgium	No, except the question of the actuality of the fear.
Bulgaria	No
Czech Republic	No, but applications are mostly refused because of low intensity of persecution.
France	For the jurisprudence, these good reasons can be the adoption of an amnesty, a peace agreement, a new government, an international administration such as in Kosovo
Germany	The relevant test developed by the jurisprudence for the cessation of the risk of being persecuted is whether there is "sufficient safety from repeated persecution". No such test was applicable for subsidiary protection prior to the Transposition Act so it is likely that this test will be applied to subsidiary protection cases as well.
Greece	No
Hungary	Not relevant.

Ireland	No
Italy	No
Luxemburg	No
Netherlands*	As the situation in the country of origin deteriorates the fear of the applicant will sooner be regarded as "well-founded" and vice versa. Official reports of the ministry of Foreign Affairs play a role in assessing the situation in the country of origin.
Poland	No. Under previous legislation no such criteria were established. It is too early to assess the impact of transposing art. 4(4) of the QD.
Portugal*	No
Romania	Yes, article 16 paragraph 2 of the Gov. ordinance no 1251/2006 provides *"The fact that an applicant has been subject to persecution or serious harm or a direct threat of persecution or such harm is a serious indication of the applicant's well-founded fear of persecution or real risk of suffering serious harm, for the purpose of Article 23 (1), respectively Article 26(1) of the law, if the case may be, unless there are good reasons to consider that such persecution or serious harm shall not be repeated*."
Slovakia	No
Slovenia	No
Sweden*	No
United Kingdom	The Home Office's Asylum Policy Instructions (API's) state that such reasons might include, for example, a significant and enduring improvement in country conditions (API Assessing the Claim 6.3). The Court of Appeal held in Karanakaran [(2000) ImmAR271 that the proper approach when assessing an applicant's account of past and present events is not to look at the matter in terms of standard of proof (unlike the test for a future fear of persecution, where decision-makers must consider if there is a 'reasonable degree of likelihood' of persecution). It is to assess whether a past or present event occurred, taking into account all available evidence, and come to a conclusion based on a balance of probabilities. The Court held that decision-makers should not exclude any past events from consideration when assessing future risk unless those events can safely be discarded – i.e. because the decision maker is satisfied that they did not happen. Hence, a past event cannot be completely excluded from the balancing process simply because decision makers believe or have a suspicion it did not occur - they must be in no real doubt.

ARTICLE 4(5)

11a. Does domestic legislation or jurisprudence require an asylum seeker who is not able to present adequate evidence to substantiate his/her claim to meet the conditions listed in article 4(5)?

11b. If yes, are the conditions required identical to those in article 4(5)? Please indicate any differences.

Austria	Yes		*Legislation:* The conditions listed in art. 4(5) are not mentioned in national legislation. *Jurisprudence:* Uses arguments similar to the listed conditions to substantiate a decision and to establish the credibility of the applicant.
Belgium	Yes		These conditions can be used in jurisprudence to accredit an application under the "benefit of the doubt", but not systematically. The most frequent are c) and d).
Bulgaria	--	--	Article 4(5) was transposed literally and benefit of the doubt is granted. There is only one case where the Court explicitly said that the evidence is not enough to support the claim, but the principle should be applied with regard to coherence of the applicant's statements and having in regard the general situation of the country of origin.
Czech Republic		No	Not relevant
France	Yes		All conditions are applied except d)
Germany		No	It is always a question of credibility and not contradictory facts that the applicant has to submit if he/she wants to get refugee status. The test applied in practice (with or without adequate evidence) is similar to the conditions listed in Article 4 (5) QD.
Greece	Yes		The conditions are identical.
Hungary		No	Not relevant.
Ireland	Yes		Yes, as per Regulation 5(3) S.I. 518.
Italy	Yes		After the transposition they will be identical. Until now, the administrative determination had very generic criteria and was based more on credibility than on any other thing. At the judicial stage the conditions were stricter as the applicant had the burden of proof, which had to be met through witnesses or documents.
Luxemburg	Yes		The conditions required are identical to those in article 4(5) of the directive.
Netherlands*		No	The rules in the Dutch policy are probably stricter than those required by article 4(5) QD. In practice mainly documents are asked, "other evidence" (as mentioned in article 4 QD) like medical statements or statements from third persons is not accepted. It appears from article 4(5)(a) QD that an applicant should get the opportunity to submit documents when the IND regards him as an undocumented asylum seeker. When he does not get this opportunity he cannot qualify for "the benefit of the doubt" as laid down in article 4(5) QD. Especially in cases in the fast track procedure and

			the pressure of time that comes with that procedure the applicant does not get the opportunity to submit complementary documents. The standard and burden of proof is more severe for so-called 'undocumented asylum seekers'. If any of the circumstances mentioned in section 31, paragraph 2, sub a to f, of the Aliens Act 2000 applies, this has far reaching consequences for the way the Minister is obliged to substantiate the view that the asylum account is not credible, and for the scope of judicial review. In these cases, the minister is only obliged to consider the asylum account to be credible if it contains no gaps, vagueness, inexplicable turns, or inconsistencies at the level of relevant details; the asylum account has to have what is called a 'positive persuasiveness'. There is thus a higher standard of proof for the applicant, whereas the Minister needs less arguments to deem the asylum account not credible than in the situation that none of the circumstances mentioned in section 31, paragraph 2, sub a to f, of the Aliens Act 2000 arises.
Poland	Yes		As mentioned above, Poland did not transpose Art. 4(5) of the QD. However, in practice refugee status is often denied because of the low credibility of the applicant, or if s/he did not support the claim with relevant evidence, or did not make a genuine effort to do so. Under the previous Act on Aliens of 1997 there was a requirement to lodge a claim for refugee status within 14 days after crossing the border illegally (art. 37 sec. 2). However the Supreme Administrative Court ruled (NSA, V SA 3685/00, 26.08.1999) that the fact of staying in Poland prior to submitting an application does not exclude an applicant from being considered as a refugee. According to the Court it can happen that a person applies for refugee status because of occurrences in his/her country of origin, which happened during his/her stay in Poland. The Court quoted par. 94 of the UNHCR Handbook "*The requirement that a person must be outside his country to be a refugee does not mean that he must necessarily have left that country illegally, or even that he must have left it on account of well-founded fear. He may have decided to ask for recognition of his refugee status after having already been abroad for some time*." Thus the first and second instance authorities shall check if the applicant could be regarded as refugee *sur place*. Hence the time of issuing a refugee claim is not relevant and in the current legislation there

			is no requirement to apply at the earliest possible time. At the same time, submitting the application "too late" can be assessed by the Office for Aliens or Refugee Board against the applicant's credibility. It was stated on several occasions that in such cases the only reason to lodge a claim for refugee status was to avoid deportation and stay legally in Poland, especially if the alien concerned spent many years in Poland or if s/he had a Polish visa and lodged an asylum application after it expired. (see for example WSA V SA/Wa 1147/07, 29 October 2007).
Portugal*		No	In practice the conditions listed in article 4(5) are analyzed regarding the individual case.
Romania	Yes		According to article 15 of the Asylum law, if part or all of the reasons submitted in the asylum application, which would justify granting a form of protection, are not proven with documents or other evidence, then the benefit of the doubt is granted, if all of the following conditions are fulfilled: a) The applicant has done all in his power to support the asylum application; b) All the relevant elements that are at the disposal of the applicant have been presented, and the lack of such elements has been reasonably justified; c) The declarations of the applicant are considered coherent and plausible and are not contradicted by the information, relevant to the applicant's case, from the country of origin; d) The applicant has submitted an asylum application as soon as possible and any delay is justified with sound reasons; e) The general credibility of the applicant has been established.
Slovakia	Yes		They are identical.
Slovenia	Yes		They are identical.
Sweden*	Yes		They are identical
United Kingdom	Yes		They are identical

11c. Is the principle of the "benefit of the doubt" mentioned in your country's asylum legislation in connection with refugee status determination? Is it used in practice?

Austria	"Benefit of the doubt" is not mentioned by the Asylum legislation. In the jurisprudence arguments concerning credibility in doubtful cases are mainly used, in which the benchmark for credibility can be rather difficult to reach.
Belgium	This principle is not included in the law but it's used in jurisprudence.
Bulgaria	Article 75(2) of the Asylum and Refugees Act spells out explicitly the benefit of the doubt (*in dubio pro fugitivo*) principle.

Czech Republic	No.
France	No, it is not. The asylum seekers have to be convincing / the judges have to be convinced that the claimant needs to be protected.
Germany	No. The relevant test is related to the assessment of the probability of persecution. In this context, the principle of the 'benefit of the doubt' does not fit into the categories developed by the jurisprudence.
Greece*	Yes, see answer to question 7b.
Hungary	It is not explicitly mentioned in the text. In practice, it may occasionally be used; however, there is hardly any traceable reference to this principle in asylum decisions.
Ireland	The principle of "benefit of the doubt" is not set out in Irish Legislation. The principle is however utilized by both legal practitioners and decision makers in practice pursuant to paras. 203 & 204 of the UNHCR Handbook.
Italy	No
Luxemburg	The principle is not mentioned in the legislation. It is regularly used as an argument before court, but hardly applied by the authority and/or the jurisdictions.
Netherlands*	Not really. The Dutch practice is very strict for "undocumented asylum seekers'. It is arguable whether this is in line with article 4(5) QD, especially when you take account of the term "satisfactory explanation."
Poland	The "benefit of the doubt principle" is not mentioned in the legislation and there is also no developed jurisprudence in this regard.
Portugal*	No, the principle of the "benefit" of the doubt" is not mentioned in national legislation, but it is used in practice according to UNHCR's "Handbook on Procedures and Criteria for Determining Refugee Status".
Romania	Yes in article 15 of Asylum Law (122/2006). There were few references in jurisprudence.
Slovakia	No
Slovenia	No, it is not defined in legislation, and it is used in very exceptional cases only (once the Constitutional Court applied this principle).
Sweden*	It's not mentioned in the legislation, but used in practice. Whenever the applicant meets the requirements in article 4(5).
United Kingdom	(API Assessing the Asylum Claim) 2.2 Checklist of Points to Consider When Assessing an Asylum Claim Are any of the applicant's claims about his/her past experiences not able to be corroborated by reference to country of origin information or other evidence? If so, can the benefit of the doubt be given to any of these claims? If not, why not? After due consideration of the principle of the benefit of the doubt: which of the applicant's material claims can be accepted, and which can be rejected? 6.2 Establishing the Facts Decision-makers should also consider if a claim is consistent with background objective evidence. Where objective country information supports the applicant's account of a past or present event, the

	claimed fact may be accepted. Where objective country information contradicts the evidence provided by the applicant it is likely to result in a negative credibility finding. However where there is no objective information available decision-makers will need to consider whether to give the benefit of the doubt to the applicant.

ARTICLE 6

12a. Has the definition of non-state actors of persecution or serious harm (Article 6(b) and (c)) been transposed literally in domestic legislation? If not, please explain the differences.

Austria		No	There is no such definition in domestic legislation. National law emanates from the Geneva Convention concerning this issue.
Belgium	Yes		It has been transposed literally by Article 48/5 of the Law
Bulgaria	--	--	Article 8(1) 3 of the ARA transposed Article 6(a) and (c) of the QD.
Czech Republic	Yes		The transposition was literal (§ 2 article 7 Asylum Act)
France	Yes		According to article L.713-2 of the CESEDA the persecution which is taken into account for the recognition of refugee status and the serious threat which may lead to the benefit of subsidiary protection may originate from the State authorities, parties or organizations controlling the State or a substantial part of the territory of the State, or from non-State actors if the authorities defined below refuse or are unable to provide protection.[67]
Germany	Yes		Yes, the definition of non-state actors of persecution or serious harm (Article 6 lit. b and c QD) has been transposed literally in Section 60(1) 4 Residence Act 2004 with a view to refugee status, but not regarding subsidiary protection. However, with the Transposition Act 2007, a provision has been adopted incorporating Article 6 QD into German law by way of reference to the Directive (new Section 60 (11) of the Residence Act 2004).
Greece	Yes		--
Hungary	Yes		Yes, these definitions are transposed into Section 62 of the Asylum Act. *There may be the following actors behind persecution or serious harm:* *a) The state from which the applicant was forced to flee;* *b) A party or organisation controlling the state referred to in paragraph a) or a substantial part*

[67] UNHCR's translation

			thereof; *c) A person or organisation who or which is independent of those referred to in paragraph a) or b), provided that the state referred to in paragraph a) and the party or organisation referred to in paragraph b) are unable or unwilling to provide protection against persecution or serious harm.* While this provision generally copies the parallel one from the QD, the term "non-state actor" of Article 6 (c) has been translated as "*a person or organisation who or which is independent of those referred to in paragraph a) or b)…".* This can be considered (reflecting the similar opinion of Professor Boldizsár Nagy, asylum and public international law expert) as a mistranslation of the original text, for two reasons. First, not all "non-state agents" relevant in this context can be considered either as a person or an organisation (e.g. a family or a clan). Second, being a "non-state" actor does not necessarily mean that the actor would be independent from the state, the second being a stricter condition. Thus, in both aspects, the Asylum Act uses a more restrictive definition than the QD. However, based on practical experience, it is rather unlikely that this stricter definition would lead to a stricter interpretation in concrete cases in the future.
Ireland	Yes		--
Italy	Yes		--
Luxemburg	Yes		The definition has been translated literally
Netherlands*		No	The definition has not been transposed in the legislation. The definition of non-state actors as set out in the Qualification Directive had however already been laid down in the policy. It is unclear whether article 6(c) can be used to provide protection in relation to women as a particular social group (e.g. in the cases of genital mutilation or domestic violence). In this case the Dutch policy is not in line with the directive.
Poland	Yes		Art. 16 sec. 1 of the Act on granting protection transposes art. 6 of the QD literally. So far there was no definition of parties or organizations controlling the state or non-state actors mentioned in art. 6(c).
Portugal*		No	Not relevant
Romania	Yes		Article 11 of the Government Ordinance 1251/2006 provides "*When establishing the actions and facts of persecution, the competent authority shall take into account whether these were exercised especially by the following agents of persecution:*

			a) the State; *b) parties or organizations controlling the State or a substantial part of the state territory; or* *c) non-governmental agents, if the agents mentioned at points (a) and (b), including international organizations, are not able or do not want to ensure protection against persecution or when they take responsibility for or tolerate the acts of non-governmental agents.*"
Slovakia	Yes		Yes, it has been transposed literally.
Slovenia			It has been transposed literally.
Sweden*		No	It is recognized, although not transposed literally. It is taken into consideration in practice. For examples – see question 12.c.
United Kingdom	Yes		It has been transposed literally into the Regulations.

12b. Are non-state actors of persecution or serious harm as defined in article 6(c) recognised in practice?

12c. If yes, please state what types of non-state actors have been accepted as such (both in relation to countries with and without functioning state authorities). If no, please give an example.

Austria	Yes		In Austria assessment is conducted according to the particular case. So far non-state actors accepted were parties and organisations, and private actors, where protection is not possible or not provided (e.g. violent family-members, corrupt persons, racist persecutors, etc.)
Belgium		No	No jurisprudence has been published regarding this issue.
Bulgaria	--	--	In practice the non-state agent is interpreted broadly in the sense provided by Article 6 QD.
Czech Republic	Yes		The transposition entered into force 1st September 2006 and there is still no consistent jurisprudence.
France	Yes		The following actors have been recognised: armed rebel groups such as Islamic groups in Algeria, warlords in Afghanistan, chimères and RAMICOS in Haiti, armed groups in Iraq, revolutionary armed forces in Colombia, rebels in Somalia, Kurd combatants, family members. Also, members of the local community for instance in cases regarding genital mutilation, forced wedding, clans, tribes, mafias and bandits
Germany	Yes		The Federal Office guidelines include as non-state actors of persecution or serious harm private persons such as family members. Among the positive Federal Office decisions, the following non-state agents of persecution were accepted: clans, criminals, mafia and

			bandits, family and extended family members, paramilitaries, religious extremists or "terrorists", et al. Some Courts had ruled that only those agents powerful enough and organised in a way somewhat similar to a state would qualify as non-state agents of persecution; however, the Federal Administrative Court decided that no particular requirements would apply in order to qualify a person to be a respective non-state actor. More particularly, the FAC clarified that a single individual may be an actor of persecution (FAC judgement of 18 July 2007, No. 1 C 15.05). No particularities apply in the case law in relation to countries of origin where there is no functioning state authority.
Greece	Yes		For example the persecution of Christian Iraqis by Muslim fanatic troops has been mentioned.
Hungary	Yes		In case of non-functioning state authorities: clans in Somalia (cases of minority groups, slavery/servitude-related cases, etc.), family members in Afghanistan (gender- and honour-related cases, etc.) In case of functioning state authorities: family members in Morocco (a gender- and honour-related case), extremist groups in Algeria (sexual orientation cases, etc.) and Pakistan (apostasy, inter-religious marriage, etc.), tribe/family in Sub-Saharan African countries (gender-based claims, female genital mutilation, forced male adult circumcision, etc.)
Ireland	Yes		Examples include family members, tribe, clan, religious group, cult, criminal organisation, and militias. This is from the writers' knowledge, however as only 22 refugee status determination decisions have been published. Since the case of *PAA v Refugee Appeals Tribunal* [2007] 4 IR 94 appellants' representatives are entitled to access a database of decisions to which researchers do not have access.
Italy	Yes		As an example, during civil wars militias in control of parts of the state have been considered as non-state actors of persecution.
Luxemburg	Yes		Private persons in the framework of blood revenge (vendetta) in Albania. Private militia in Somalia and Sierra Leone
Netherlands		No	See question 12(a): it depends on how article 6(c) had to be interpreted: in the Netherlands no refugee status is provided in cases of domestic violence or genital mutilation (in both cases subsidiary protection can be obtained). In these cases an applicant is only entitled to refugee status if protection is refused for a Convention ground other than gender.

			Recognised groups are for instance: different non-state armed groups.
Norway	Yes		--
Poland	Yes	No	The jurisprudence and practice are inconsistent. As a rule only state officers committing those acts or other actors with the state's approval or passivity were perceived as actors of persecution. Art. 1(A) of the Geneva Convention is interpreted strictly, thus only a state is perceived as an actor of persecution or a situation when a state is not able to protect the applicant Considering in overview the Administrative Court's judgments and assessing asylum cases, asylum seekers who claim that they were persecuted by non-state agents are not granted any kind of international protection. For example, persons fearing blood feud, domestic or gender violence, and persons in mixed marriages, in the opinion of the Office for Aliens do not qualify as refugees under the Geneva Convention. Moreover, the Supreme Administrative Court stated that "*inability to avail of the own state's protection against persecution defined in the Convention and the Protocol indicate that, in the light of these provisions, in general persecution is committed or instigated by the authority of the state for reasons of race, religion, nationality, membership of the particular social group or political opinion"*. (NSA V SA 248/99, 20 December 1999). As a consequence only state officials committing those acts or other actors with state's approval are perceived as actors of persecution. However there is one court judgment concerning the situation in Somalia. According to the RSD authorities' interpretation of par. 65 of the UNHCR's Handbook, an actor of persecution needs to be found in order to grant refugee status. The Court stated however that it is unacceptable to grant refugee status solely on the ground of the country of origin authorities' reprehensible actions and exclude applicants from international protection if the state has collapsed and thus no one could be blamed for the persecution. (Supreme Court of the Republic of Poland, III RN 110/2000, 7 June 2001). The Court stated that not only state-agents could persecute, but also non-state agents, where the state has collapsed or there are no central authorities that could prevent persecution. Regrettably authorities have not followed this judgment. Thus according to the Office for Aliens "*fear of persecution coming from non-state actors, including extremist*

			military organizations, is not a condition for being recognized as a refugee, because it does not meet the definition of a source of persecution mentioned in the Geneva Convention". (Office for Aliens DP-II-576/SU/2007, 9 August 2007) In a recent judgment the Supreme Administrative Court confirmed that persecution by non-state actors (the case involved a domestic violence victim) if the state is not able or not willing to protect the victims can be regarded as persecution within the meaning of the Geneva Convention (no written justification available yet).
Portugal	Yes		As an examples: FARC – Colombia, FIA – Algéria (in the 90s)
Romania	Yes		Majority tribes in Somalia, factions or armies in Iraq.
Slovakia	Yes		Local community of citizens who know the applicant
Slovenia	Yes		Majority ethnic group or special groups with certain rules, disobedience or application of which can constitute or amount to persecution.
Sweden*	Yes		Armed groups/military factions that control part of the territory.
United Kingdom	Yes		(API Assessing Asylum Claims) 7.3.4 Non-State actors Persecution is often related to action by the authorities or dominant organizations running a country. However, it may also emanate from sections of the population that do not respect the standards established by the laws of the country concerned. An example of non-state persecution may be religious intolerance that amounts to persecution in a country that is otherwise secular, but where sizeable sections of the population do not respect the religious beliefs of their neighbors. Decision makers must therefore assess the extent to which the State authorities can provide protection against their actions. It is generally accepted that no Government can offer a guarantee of absolute protection. No country is perfect and certain levels of ill treatment may still occur even if the Government has taken steps to prevent it. However where seriously discriminatory or other offensive acts are committed by the local populace they may constitute persecution if they are knowingly tolerated by the authorities, or if the authorities refuse, or prove unable, to offer effective protection. Some examples of recognized non-state actors/agents from the Home Office OGN's:

			Colombia – network of irregular armed groups; individual targets are unlikely to be able to access protection from the authorities. DRC – rival ethnic groups; Banyamulenge Tutsis particularly at risk; the hostile and suspicious view of Banyamulenge by the state authorities means that such individuals are unlikely to be able to receive adequate protection from the authorities. Ghana - societal discrimination, due to being a gay or bisexual man; Gay men encounter police harassment in Ghana and it has been reported that those who have sought the assistance of the police have been threatened with imprisonment. In the light of this and section 104 of the Ghanaian Criminal Code, it is unlikely that gay or bisexual men would be able to seek and receive adequate protection from the state authorities. Libya – family members involved in the persecution of women who are considered to transgress from accepted moral and social norms (social rehabilitation). Pakistan – family members involved in the persecution of women for honour crimes; case law recognises Pakistani women as a particular social group.

12d. Are there any types of non-state actors of persecution or serious harm that have not been accepted as such? For what reason?

Austria	No, assessment is conducted on an individual basis.
Belgium	No relevant jurisprudence so far
Bulgaria	No
Czech Republic	No relevant jurisprudence so far
France	No
Germany	No
Greece	Not known to person answering the questionnaire.
Hungary	No relevant information available.
Ireland	Not to the knowledge of persons answering the questionnaire (see above, very limited number of published cases).
Italy	No
Luxemburg	Yes. Lack of evidence that the state authorities were refusing or not able to grant an appropriate protection against the non-state actor's persecution. I.e. regarding northern Iraq and the threat of Islamic militia.
Netherlands*	See answers12(a) and 12(b)

Poland	Organizations like militias (however Kadyrov's militia and supporters could be recognized as actors of persecution), paramilitary groups (see note 12a) and tribes have not been accepted as actors of persecution. Moreover actors committing or taking blood-revenge ("Blood revenge does not constitute sufficient condition to grant refugee status under 1A of the Geneva Convention", RdU 591-5/s/05, 16 March 2007). In a recent case an asylum seeker, who applied for refugee status because she had faced domestic violence and had been raped by her husband's colleagues in front of him, was denied refugee status and granted a tolerated stay permit. According to the authorities and the Regional Administrative Court in Warsaw (Regional Administrative Court in Warsaw, WSA V SA/Wa 967/06, 18.10.2006) domestic violence is not a sufficient ground for being recognized as a refugee. Abuses, rapes or other intimidations committed by non-state actors have to be connected with one of the Geneva Convention's grounds i.e. race, religion, nationality, membership of the particular social group or political opinion. The person abused must exhaust all judicial procedures available in her/his country of origin before seeking 'help' in other countries. The applicant had not approached states' judicial or police authorities regarding those incidents. Thus the Court and RSD authorities stated that it is impossible to consider whether the state authorities would grant the adequate protection. Moreover, the applicant's fear of her husband and his 'friends' is not a sufficient ground for being recognized as a refugee. Rape and other forms of intimidation are not considered as persecution by state authorities. Those incidents are of a criminal nature and do not meet any of the grounds defined in the Geneva Convention. This judgment was overruled by the Supreme Administrative Court which stated that it is not relevant whether a woman exhausted the judicial remedies or asked for state protection, but if the state is able to protect her effectively (the judgment is not yet available in writing).
Portugal*	Not relevant
Romania	No
Slovakia	No
Slovenia	No
Sweden*	No
United Kingdom	There are many other types of non-state actors of persecution mentioned in the OGN's; but internal relocation or state protection is often cited as an alternative option for claimants: Azerbaijan – persecution of minority religious groups by majority religious groups; there is no evidence that this is sanctioned by the authorities. Afghanistan – as above; internal relocation available in Kabul.

	DRC – rebel forces/rival ethnic groups; able to seek protection in government -controlled areas, not unduly harsh to relocate internally. Ecuador – rebel and paramilitary groups; state protection available. Gambia - family/tribal members, forced FGM; not identified as non-state actors of persecution although it is acknowledged that claimants may not be able to seek redress from the authorities as the practice is legal (despite efforts to eradicate it through education). India – Sikhs, fear from terrorists; sufficiency of protection from authorities. Iraq – insurgent groups; UNHCR's position on internal relocation is not accepted. - former members of Ba'ath party; harassment not sufficient to be considered persecution. - honor killing/Christians – internal relocation. Occupied Territories – armed groups; localized threat. If considered to be collaborator with Israel can relocate to Israel Ivory Coast – societal discrimination by Christians; Peace Agreement 2007 - Non-Ivoirians and/or Muslims from the north; Peace Agreement 2007 - FGM perpetrators acknowledged as non-state agents; but as the practice is against the law, claimants can seek protection from authorities. Jamaica – criminal gangs – police can offer protection. Nigeria – cults – authorities can protect/internal relocation (BL [2002] UKIAT 01708 (CG)).

12e. Is domestic legislation on the actors of persecution as regards assessment of eligibility for refugee status different from legislation on actors of serious harm as regards assessment of eligibility for subsidiary protection status?

Austria	No
Belgium	No
Bulgaria	No
Czech Republic	Actors of persecution are defined only in relation to refugee status, not to subsidiary protection.
France	No, there is no difference
Germany	Before Article 6 QD had been incorporated into German Law many courts did not apply Article 6 QD to actors of serious harm, but only granted subsidiary protection if the danger emanated from a state or organisations similar to a state. The FAC stated in a judgement of 12

	June 2007 (No. 10 C 24.07) that this practice needs to be adjusted in line with the requirements of the QD.
Greece*	Unknown – no domestic legislation.
Hungary	No
Ireland	No
Italy	No
Luxemburg	No
Netherlands*	Yes: for instance women who fear(ed) domestic violence or genital mutilation are in most cases not recognized as refugees. However, they can receive subsidiary protection if it is clear that there will be a violation of article 3 ECHR upon return.
Poland	No
Portugal*	No, the national asylum procedure is established as a single procedure; therefore the assessment of eligibility is identical for refugee status and for subsidiary protection status.
Romania	No
Slovakia	No
Slovenia	No
Sweden*	Yes, in the sense that regarding the assessment of eligibility for refugee status, the actors of persecution can explicitly be private individuals (and the state can not provide protection) whereas the legislation on actors of serious harm as regards assessment of eligibility for subsidiary protection status does not explicitly accept individuals. However they are recognized in practice.
United Kingdom	No

ARTICLE 7

ARTICLE 7(1)

13a. Does your national legislation define actors of protection in accordance with article 7(1)?

13b. If the answer is no, please explain who can be an actor of protection according to your national legislation.

Austria		No	Actors of protection are not defined in the legislation.
Belgium	Yes		--
Bulgaria		No	Art 8(7) transposes only Art 7(1)-a) and b) of the QD
Czech Republic	Yes		--
France		No	According to Art. L.713-2 CESEDA, only the State and international or regional organisations can be actors of protection. This provision does not require that the international or regional organisation control the State or a substantial part of the territory.
Germany	Yes		§ 60(1)(5) refers explicitly to Article 7
Greece	Yes		No definition in legislation
Hungary		No	The Hungarian law-maker refused to recognise the

			validity of the concept of protection by non-state actors and adopted a definition limited to state protection in conformity with the Refugee Convention.[68]
Ireland	Yes		--
Italy	Yes		--
Luxemburg	Yes		--
Netherlands		No	A clear definition of actors of protection is lacking in the Dutch asylum rules. In two provisions of the Dutch Aliens Circular the state is mentioned as an actor of protection. Those provisions concern genital mutilation and discrimination as acts of persecution. Battjes stated that the requirement of asking protection from a non-state authority is possibly a violation of international refugee law, because international refugee law depends on protection by the national authorities.[69] The ACVZ[70] agreed with this opinion. However, the Minister and State Secretary claimed that offering protection by an international organization is not incompatible with the Geneva Convention. They state that the main purpose is that the alien is protected against persecution and that whether this protection is offered by the State or an international organisation is not relevant.
Norway		No	There is a slight difference in the proposed legislation with the phrasing that "*controls territory to an extent that the person may not be referred to seek protection in other parts of the country*"
Poland	Yes		--
Portugal*		No	National legislation does not define actors of protection. Traditionally, only States have been considered to be actors of protection.

[68] According to Section 63(1) of the Asylum Act *"Protection against persecution or serious harm may be regarded as duly granted if effective tools are available in the state from which the applicant is forced to flee to prevent persecution or acts of serious harm as well as to punish the persons committing acts constituting persecution or causing serious harm, and the applicant is able to avail himself/herself of such protection."*

Section 91 of the Government Decree explains what the above expression of "effective tools are available" shall mean in the given context:

The requirement for availability of efficient tools for the application of Section 63 (1) of the Act is fulfilled if the State from which the applicant is forced to flee:

a) Possesses efficient laws for the detection of acts qualifying as persecution or serious harm, and persecution and punishment of such acts through criminal proceedings, and institutions dedicated to their enforcement, and

b) Is making appropriate and efficient steps in particular with the help of the tools identified in paragraph a) to prevent persecution and suffering of serious harm

[69] H. Battjes, European Asylum Law and International Law, Leiden/Boston: Nijhoff 2006, pp. 247-249

[70] The Advisory Committee on Aliens Affairs is an independent Committee that advises (when asked or on their own initiative) the Dutch Government and Parliament on immigration law and policy. The minister put aside the advices of both institutions.

Romania		No	Actors of protection are not mentioned in the legislation
Slovakia		No	The term "international organisations" is missing. The law mentions as actors of protection the State, political parties or political movements, or organisations
Slovenia		No	In Article 7(1)(b) parties are defined as "political parties".
Sweden*		No	Only the state can be an actor of protection
United Kingdom	Yes		n/a

13c. Have there been cases concerning non-state actors of protection, either before or after the enactment of the directive?

13d. If yes, how is the term defined in jurisprudence? Does it reflect the directive?

Austria		No	Generally no, however there are cases concerning international administration (UNMIK, etc.).
Belgium		No	--
Bulgaria		No	Bulgarian law partially transposes the directive and refers to the situation described in article 8(7) AR Act when measures have been undertaken against the persecution.
Czech Republic		No	--
France	Yes		The Constitutional Council stated that the international organisation in order to be considered as an actor of protection should provide effective protection. The term is used as well by the CNDA that recognised that UN missions established under Chapter VII of the UN Charter are actors of protection (Kosovo, Bosnia) but not the ones established under Chapter VI (DRC, Haiti). In the first situation, the UN missions have administrative and coercive powers. Moreover, even when the mission is established under Chapter VII, it still has to be demonstrated that the mission can effectively protect the claimant (for instance for Serbs and Roma in Kosovo). The decisions do not often detail why an organisation is considered to be an actor of protection or not. Regarding the DRC, the CNDA stated that "*it stems from the assessment that neither the authorities nor the special UN missions put in place in Iturie were able to provide protection to the claimant in that area*" (CRR, 30 November 2006, Mlle Y., n°535001). Regarding the Palestinian Authority, the CNDA stated that according to the Oslo agreement, the Palestinian Authority is responsible for the internal safety and

			public order, thus it can be considered as an actor of protection (CRR, 30 August 2006, M.W., n°567575) In CRR, SR,[71] 16 February 2007, M.T., 573815, the Court stated that the government of Ivory Coast does not have any authority in the northern part of the country and therefore could not be seen as an actor of protection. The Court then considered whether the rebel groups could be an actor of protection. For the Court, "*the replacement of the former administrative, military and judiciary authorities in the Northern part of the country by the coalition of war leaders who make up this alliance and the very embryonic nature of the administrative and judiciary framework that it is trying to put in place, do not allow the Alliance of the new forces to be considered as a State authority or a regional organization able to provide the protection required*."[72]
Germany	Yes		In the Federal Office decisions there is no systematic specification of parties or organisations considered as being able to provide protection. Rather, for many countries such as Iraq and Central and Southern Somalia, the existence of agents of protection is denied. It has to be noted that because of the focus on state agents of persecution in German asylum practice in previous years, the jurisprudence in this field is not yet very developed. In general it depends on the political situation in the country.
Greece*	Yes		The jurisprudence reflects the directive.
Hungary		No	--
Ireland		No	--
Italy		No	--
Luxemburg	Yes		The jurisprudential definition is: "international organizations such as the United nations". It reflects exactly the directive.
Netherlands*		No	--
Norway	Yes		In practice the term has been fairly broad
Poland		No	--
Portugal*		No	--
Romania		No	--
Slovakia		No	--
Slovenia		No	--
Sweden*		No	--
United Kingdom	Yes		The term, as defined in jurisprudence both pre and post transposition of the directive, largely reflects the

[71] SR = *Sections reunites*. Special Chamber of the CNDA (9 judges chaired by the President of the Court instead of 3 judges for ordinary cases).
[72] UNHCR translation

			wording of the directive. Gomez (Non-state actors: Acero-Garces disapproved) (Colombia) [2000] UKIAT 00007 (24 November 2000) "IV. The Tribunal confirms established case law: that in order to show persecution on account of political opinion, it is not necessary to show political action or activity; that in the context of both state and non-state actor cases the ground cannot be interpreted so as to exclude fundamental rights of the person protected under international human rights law, the rights to freedom of thought, conscience, opinion, expression, association and assembly in particular; and that political opinion may be express or imputed. V. The political opinion ground requires a broad definition but not so broad as to cover any opinion which a non-state actor may impute." Kacaj (Article 3, Standard of Proof, Non-State Actors) Albania [2001] UKIAT 00018 (19 July 2001) "There is no doubt that the obligations of a state which is intending to deport an individual can extend to the need to protect him against relevant ill-treatment by non-state actors. This is consistent with duties to provide protection initially expounded in cases such as Osman v United Kingdom and A v United Kingdom." 30 27 28 (Risk, PDPA Member) Afghanistan CG [2002] UKIAT 06500 (13 February 2003) "We also observe that in the assessment of a well-founded fear of persecution by these Appellants, the risk of persecution is claimed to be, at this time, from non-state actors, hence, following the guidance given by the House of Lords in decisions such as Shah and Islam and Horvath, it is necessary for the Appellants to establish not only the reasonable likelihood of serious harm (prosecutorial treatment), but also that there would be a failure of state protection from that harm. Both elements must be present before the entitlement to refugee status arises." TB (PSG, women) Iran [2005] UKIAT 00065 (09 March 2005) "Further support for our analysis is given in the UNHCR Guidelines on International Protection 'Membership of a particular social group' (7 May 2002) referred to above in paragraphs 22 and 23 which state: '22. There may also arise situations where a claimant

			may be unable to show that the harm inflicted or threatened by the non-state actor is related to one of the five grounds. For example, in the situation of domestic abuse, a wife may not always be able to establish that her husband is abusing her based on her membership in a social group, political opinion or other Convention ground. Nonetheless, if the State is unwilling to extend protection based on one of the five grounds, then she may be able to establish a valid claim for refugee status: the harm visited upon her by her husband is based on the State's unwillingness to protect her for reasons of a Convention ground. 23. The reasoning may be summarized as follows. The causal link may be satisfied: (1) where either there is a real risk of being persecuted at the hands of a non-state actor for reasons which are related to one of the Convention grounds, whether or not the failure of the State to protect the claimant is Convention related; (2) where the risk of being persecuted at the hands of a non-state actor is unrelated to a Convention ground, but the inability or unwillingness of the State to offer protection is for a Convention reason.'"

13e. How is "a substantial part of the territory of the State" interpreted in your national legislation/jurisprudence?

Austria	*Legislation:* it is not interpreted. *Jurisprudence:* there are no clearly defined general criteria.
Belgium	n/a
Bulgaria	No relevant practice yet.
Czech Republic	It has been literally transposed
France	There is no reference to this term
Germany	The MOI Guidelines emphasise that "a substantial part of the territory of the State" does not contain a quantitative requirement in a sense that a majority of the state territory must be under the control of the parties or organisations in question. Rather, effective control over a certain region is considered sufficient according to the MOI. No considerations on this question were found in the screened Federal Office and Court decisions. In the jurisprudence of the lower courts, for example the western part of Turkey, especially the Istanbul region or the northern province of Iraq / Kurdish territory has been understood as "substantial parts of the territory " for Kurds or the province of Kosovo for Moslems in Serbia
Greece	Not interpreted as far as it is known to the person answering the questionnaire.
Hungary	Concerning the legislation, it can be concluded that the phrase "*a substantial part of the territory of the State*" in Article 7(1)(b) was literally translated in Hungarian law, according to Section 62(b) of the

	Asylum Act. No information is available about relevant practices
Ireland	It is transposed literally from the Directive in Regulation 2 of S.I. 518 with no further elaboration.
Italy	No interpretation so far
Luxemburg	The term has been literally transposed into national law. In certain cases, the jurisprudence fails however to apply this definition correctly according to law.
Netherlands*	No relevant case law on the term "substantial part of the territory of the State" with respect to art. 7 QD in the Netherlands*
Poland	No interpretation
Portugal*	Not relevant
Romania	No interpretation
Slovakia	There was no interpretation so far
Slovenia	In legislation include term "a substantial part of the territory of the State", but it has not been defined in the jurisprudence, yet.
Sweden*	Not interpreted, to the knowledge of the person answering the questionnaire. As an example in practice - Kabul is considered a safe part of Afghanistan.
United Kingdom	Word for word in legislation. DM (Majority Clan Entities Can Protect) Somalia [2005] UKAIT 00150 (27 July 2005) The Tribunal remains of the view that protection under the Refugee and Human Rights Conventions can be afforded by de facto or quasi-state entities. That view is now reinforced by Article 7 of the EU Refugee Qualifications Directive. Whether majority clans in Somalia are willing and able to protect is a factual question.

13f. Does national law concerning actors of protection in the assessment of refugee status differ from that concerning the assessment of qualification for subsidiary protection?

If yes, please explain how these differ.

Austria		No	--
Belgium		No	--
Bulgaria		No	--
Czech Republic		No	--
France		No	
Germany		No	--
Greece		No	--
Hungary		No	--
Ireland		No	--
Italy		No	--
Luxemburg		No	--
Netherlands*		No	--
Norway		No	--
Poland		No	--

Portugal*	--	--	Not relevant
Romania		No	There is no reference to article 7 from Qualification Directive in national legislation
Slovakia		No	--
Slovenia		No	--
Sweden*		No	--
United Kingdom		No	--

ARTICLE 7(2)

14a. Is the definition of protection applied in accordance with article 7(2)?

If the answer is no, please explain any differences.

Austria	Yes		--
Belgium	Yes		--
Bulgaria		No	Art. 8(7) AR Act partially transposes Art. 7(1).2 of the QD i.e. "when measures have been undertaken against the persecution". Art. 8(7) AR Act defines protection as measures undertaken by the state or non-state agency which controls a substantial part of the territory against the acts of persecution.
Czech Republic	Yes		--
France		No	There is no definition of protection in the national legislation. The jurisprudence does not usually take into account the legal system in a general manner but does assess if the claimant asked for protection and what was the response to this request. The security situation of a country is more often taken into account, such as in Iraq, Haiti or Somalia. For Somalia, the CNDA concluded that " the Somali government, so-called Transitional Federal Government, established in October 2004, is today unable to exercise effectively an organized power on the Somali territory and, under those circumstances, to provide protection to the applicant.[73]
Germany	Yes		--
Hungary		No	The definition of the aforementioned Governmental Decree can be considered as foreseeing a higher standard than the QD. While the Directive contents itself with expecting *"reasonable"* steps, Hungarian legislation requires the state to make *"appropriate and efficient"* steps in order to ensure protection. In addition, the existence of legal provisions enabling actions aiming at protection is a conjunctive condition (with the above-mentioned), while the QD solely refers to it as a mean to ensure protection *"inter alia"*.

[73] UNHCR's translation.

Ireland	Yes		--
Italy	Yes		--
Luxemburg	Yes		--
Netherlands*		No	According to article 7(2) of the Qualification Directive effective protection is provided when the measures providing the protection are reasonable, accessible and available. The current Dutch practice requiring a person to use an internal protection alternative in cases where the person did not ask the authorities for protection against violence by non-state agents or when he was not able to show that such a request would be dangerous or useless, does not seem to be in line with the standard of article 7(2) of the Qualification Directive.
Norway		No	In the new legislation it is connected to the definition of non-state actor
Poland		Yes	Art. 7(2) of the QD has been transposed by Art. 16 sec. 2 of the Act on granting protection with one difference: instead of "reasonable steps" the phrase "necessary steps" is used.
Portugal*	--	--	Directive not yet implemented
Romania		No	There is no transposition of article 7.
Slovakia	Yes		--
Slovenia		No	--
Sweden*		No	Sweden has in practice sometimes accepted clans to be actors of protection.
United Kingdom	Yes		--

14b. In assessing the availability of protection, must the 'reasonable steps' required by article 7(2) actually be effective?

Austria	Yes
Belgium	Yes (see CPRR n° 04-3461/F2209, 1er décembre 2005, Féd. Russie ; CPRR n° 05-1200, 6 mars 2007, RDE 2007, n° 142, p. 40) These cases refer to lack of effective reasonable measures to protect the victims or to prevent persecution
Bulgaria	The effectiveness criterion does not exist in the legislation.
Czech Republic	No
France	The French jurisprudence uses the term "effective protection". In CRR, 23 September 2004, Mlle Q., n°469809, the CNDA recognised that the KFOR did not protect the claimant of Albanian ethnic origin although she did ask for a protection in Kosovo. The CNDA stated that the KFOR was unable to provide her protection. In CRR, 25 November 2004, M.N., n°497043, the CNDA rejected the appeal because the complaints made in Russia by the asylum seekers were examined by the judiciary although they were sometimes rejected.

	In a case relating to Colombia, the CNDA stated that "*although the Colombian authorities intervened to punish the authors of the facts denounced by the applicant, they were not able to protect him effectively from their measures of retaliation*."[74] (CRR, 9 February 2007, M.C.)
Germany	Text of the provision (related to refugee status): Section 60 (1) 5 Residence Act: "Article 4(4) and Articles 7 to 10 of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise require international protection and the content of the protection granted (Official EU Journal no. L 304, p.12) shall additionally be applied in establishing whether a case of persecution pursuant to sentence 1 applies." Text of the provision (related to subsidiary protection): Section 60 (11) Residence Act: "Article 4 (4), Article 5 (1) and (2) and Articles 6 to 8 of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise require international protection and the content of the protection granted (Official EU Journal no. L 304, p.12) shall apply in establishing whether bans on deportation apply pursuant to sub-sections 2, 3 and 7, sentence 2."
Hungary	Yes. According to Section 63(1) of the Asylum Act *"Protection against persecution or serious harm may be regarded as duly granted if effective tools are available in the state from which the applicant is forced to flee to prevent persecution or acts of serious harm as well as to punish the persons committing acts constituting persecution or causing serious harm, and the applicant is able to avail himself/herself of such protection."* Section 91 of the Government Decree explains what the above expression of "effective tools are available" shall mean in the given context: *The requirement for availability of efficient tools for the application of Section 63 (1) of the Act is fulfilled if the State from which the applicant is forced to flee* *a) possesses efficient laws for the detection of acts qualifying as persecution or serious harm, and persecution and punishment of such acts through criminal proceedings, and institutions dedicated to their enforcement, and* *b) is making appropriate and efficient steps in particular with the help of the tools identified in paragraph a) to prevent persecution and suffering of serious harm.* While the Directive contents itself with expecting *"reasonable"* steps, Hungarian legislation requires the state to make *"appropriate and*

[74] UNHCR's translation.

	efficient" steps in order to ensure protection.
Ireland	Yes
Italy	Article 7(2) is transposed literally
Luxemburg	Yes
Netherlands*	The court shares the view of the Immigration and Naturalisation Board that the existence of an "effective legal system" does not guarantee that everyone gets the protection desired for any kind of persecution. However, by laying down the requirement for an effective legal system a general standard is formulated, to which the reasonable steps, that should be taken by countries of origin to prevent the persecution or suffering of serious harm, should live up to. The standard that has been applied so far did not contain such a "general" criterion. For a situation in which calling upon the protection provided by the authorities does not seem useless in advance, but in which also the effectiveness of the legal system can be seriously doubted, invoking article 7 Qualification Directive would lead to another result than that to which the old standard would lead. The judge therefore concluded that there exists an amendment of law. This was relevant in a case of a Nigerian woman that failed to make credible in a prior procedure that the Nigerian authorities cannot or will not protect her. She could make credible that the presence of an effective legal system as envisaged in article 7 Qualification Directive, can be doubted. The judge considered this to be an amendment of law.
Poland	It is too early to assess the impact of transposition of the QD in this regard.
Portugal*	Not applicable
Romania	Not relevant
Slovakia	There is not such requirement mentioned in the law
Slovenia	In practice the decision-makers take a position that if a democratic government and a fair legal system is in place and that country has ratified several important international conventions etc., the protection is available, not taking into account whether or how those instruments are actually applied in practice.
Sweden*	No
United Kingdom	Yes

ARTICLE 7(3)

15. Does national legislation state the obligation to refer to relevant Council acts for guidance on whether an organisation controls a state or a substantial part of its territory?

Austria		No	--
Belgium	Yes		Art. 48/5, §2, al. 3, Law transposes art. 7 (3).
Bulgaria		No	Art. 8(7) ARA does not transpose Art. 7(3) QD.
Czech Republic		No	There is no formal obligation to refer to relevant Council acts for this case.
France		No	--

Germany	Yes		The German legislation only in so far as it refers to article 7 as "complementary" in § 60(1)(5). How this may be interpreted is not very clear yet, as the provision was introduced in late August 2007 and no relevant court decisions are available so far
Greece	Yes		The provision was transposed exactly in Presidential Decree 96/2008.
Hungary	Yes		Government Decree, Section 93
Ireland	Yes		--
Italy	Yes		It adds also the evaluation of other competent international organisations and in particular UNHCR
Luxemburg	Yes		The directive has been transposed literally.
Netherlands*		No	I do not know of any national legislation referring to guidance provided in relevant Council acts
Poland		No	Polish law neither mentions it nor refers to article 7(3) of the QD.
Portugal*		No	--
Romania		No	--
Slovakia		No	--
Slovenia		No	--
Sweden*		No	--
United Kingdom		No	The actual wording at regulation 4(3) of the 2006 Regulations: "In deciding whether a person is a refugee or a person eligible for humanitarian protection the Secretary of State may assess whether an international organisation controls a State or a substantial part of its territory and provides protection as described in paragraph (2)."

ARTICLE 8

ARTICLE 8(1)

16a. Does your national legislation/jurisprudence allow the use of 'internal protection' in accordance with article 8(1) of the Directive?

Austria	Yes	
Belgium	Yes	
Bulgaria	n/a	n/a
Czech Republic	Yes	
France	Yes	
Germany	Yes	
Greece	Yes	
Hungary	Yes	
Ireland	Yes	
Italy		No
Luxemburg	Yes	
Netherlands*	Yes	

Norway		No
Poland	Yes	
Portugal*		No
Romania	Yes	
Slovakia	Yes	
Slovenia	Yes	
Sweden*	Yes	
United Kingdom	Yes	

16b. If article 8(1) was not applied previously, has its transposition led to fewer people being granted protection status?

	Fewer	More	No Change	Unknown
Austria			X	
Belgium			X	
Bulgaria			(X)	
Czech Republic			X	
France				X
Germany				X
Greece				X
Hungary				X
Ireland	--	--	--	X
Italy			X	
Luxemburg			X	
Netherlands*			X	
Norway				X
Poland				X
Portugal*	--	--	--	--
Romania				X
Slovakia				X
Slovenia	--	--	--	--
Sweden*	--	--	--	--
United Kingdom				X

16c. Is the requirement of "reasonableness" included in the definition, or does it otherwise appear in your national legislation when discussing the internal protection alternative? If yes, please explain what criteria apply for the applicant to "reasonably" be expected to stay in a part of the country.

Austria	Yes, the requirement of reasonableness is included in legislation concerning internal protection. The internal protection alternative has to be reasonable regarding individual and general circumstances in the moment of the decision.
Belgium	The requirement of reasonableness appears in the legislation when discussing the internal protection alternative. For its appreciation the law and the jurisprudence refer to general circumstances in the country and personal circumstances for the applicant.
Bulgaria	Article 8(1) has not been literally transposed.

Czech Republic	Requirement of reasonableness is not included in the definition.
France	The requirement of "reasonableness" is included in the definition. The Constitutional Council specified that *"the OFPRA, under the supervision of the CRR, can only reject an application…after having ascertained that the applicant can, in safe conditions, have access to a substantial part of his/her country of origin, settle there and lead a normal life"*[75] (*Décision n° 2003-485 DC du 4 décembre 2003 relative à la loi modifiant la loi n° 52-893 du 25 juillet 1952 relative au droit d'asile*) In CRR, SR, 25 June 2004, M.B. 446177, the CNDA stated that "*the claimant lived in Algiers from July 1997 to early 1999, then during the 16 months before he left Algeria without fearing persecution or serious harm. However, given the living conditions he had to bear, in particular the impossibility to find a job and the constant threat of being submitted to police harassment which could lead to his forced removal to his region of origin, it would not be reasonable to consider that M.B. could stay in this part of the country*."[76] In CRR, 25 January 2005, M.IH., 487151, the CNDA states that the claimant of Albanian origin who lived in Mitrovica-north could not be expected to live in Mitrovica-south because he would not find a job, housing and because of the insecurity there. On the contrary, in CRR, 20 July 2004, M.T., the Court used the internal protection alternative because the claimant of Tamil origin could live in Colombo at his daughter in law's that could provide him with assistance and housing.
Germany	Before the transposition of the QD, the concept of internal protection alternative was used without a requirement of reasonableness. According to the jurisprudence of higher administrative courts, refugee status was always denied with respect to the availability of an internal protection alternative, if the applicant was only safe from persecution in the alternative region and there was no risk of other dangers or disadvantages, which would amount to serious human rights violations equivalent to persecution. Otherwise, it was not necessary that the respective applicant was able to survive physically in the alternative region (in these cases normally subsidiary protection was granted on humanitarian grounds pursuant to Section 60 (7) Residence Act). This has now slightly changed with the implementation of the QD. However, the review is normally limited to whether the subsistence minimum is obtainable in the alternative region and whether there is no extreme danger to life or limb; civil and political rights are normally only be taken into account when assessing the risk of persecution in the alternative region. Beyond this minimum standard, no review of the situation of civil, political, social, economic and cultural rights is carried out.

[75] UNHCR's translation.
[76] UNHCR's translation.

Greece	The requirement of reasonableness is not included in the definition. Before the directive was transposed, internal protection was not applied.
Hungary	The Asylum Act foresees the use of the "internal protection alternative" concept in Section 63 (2): *(2) Protection defined in subsection (1) may also be regarded as duly granted if in the state from which the applicant is forced to flee, the requirement of well-founded fear or the effective risk of serious harm does not prevail in a part of the country, and the applicant can reasonably be expected to remain in that part of the country.* Section 92 of the Government Decree provides concrete guidance on the application of the above provision: *(1) When Article 63 (2) of the Act is being applied the refugee authority* *a) Shall examine whether protection is available for the applicant in the case of return to the State from which he was forced to flee;* *b) Shall specifically name the part of the country where in its view that protection is available.* *(2) The applicant can be reasonably required to return to the part of the country concerned – with regard also to his/her personal circumstances – if* *a) The applicant can have access to that part of the country lawfully, safely and in practice,* *b) The applicant has family members or relatives in the given part of the country, or his/her basic livelihood and residence can be otherwise ensured, and* *c) There is no threat that the applicant will suffer persecution or serious harm or other serious infringement of human rights in that part of the country, irrespective of whether these are connected with the reasons for fleeing presented in his/her application.* *(3) When the provisions of Paragraph 2 are applied the refugee authority shall assess in particular the applicant's health, need for special treatment, age, gender, religious affiliation, nationality and cultural ties as individual circumstances.* *(4) The protection identified in Section 63 (2) of the Act is not guaranteed if the State or the party or organisation controlling the State from which the applicant was forced to flee is behind the persecution or serious harm.* Section 92 (2) of the Government Decree provides guidance on how to carry out the "reasonableness analysis" in practice, and (read in conjunction with Paragraph (3)) sets higher and more protection-oriented standards in this respect than the QD.
Ireland	It is included in the definition. Applicable criteria per Regulation 7(2): "*The applicant can reasonably be expected to stay in a part of his or her country of origin where there was no well-founded fear of being persecuted or real risk of suffering serious harm*."
Italy	Not applicable

Luxemburg	Yes, but neither the law, nor the jurisprudence has defined the criteria. It's always an ad hoc decision.
Netherlands*	The term "reasonableness" has not been used, but there are some relevant factors for assessing whether it can be expected from the alien to use the possibility of internal protection. There is supposed to be an area in which there is no danger for the alien. The safety in this area is supposed to be sustainable. The area should be accessible and approachable. The person should be able to live his life under circumstances which are not unreasonable to local standards. A deterioration of his economical or social situation compared to the situation in his country of origin is not taken into account. There should be a possibility of internal protection at the time of the assessment of the application.
Norway	Unfortunately the provision refers to the rather uncertain term "effective protection" in other parts of the country
Poland	The phrase "well-founded expectation" instead of the word "reasonably expected" is used.
Portugal*	National law does not include a definition of "internal protection", but this concept is applied in practice, following UNHCR guidelines.
Romania	There is no requirement of "reasonableness" included in the definition. According to article 76 of the Asylum law IPA exists when it has been recognised by the UNHCR.
Slovakia	There are no specific provisions in the law. However, the jurisprudence requires the "reasonableness" i.e. if it is really possible, if this can be reasonably expected from the applicant, if the applicant has any ties in the other part of the country, speaks the language etc.
Slovenia	No, it is not included
Sweden*	Yes. For example it is not necessary to get a job or lodging but possible to apply for it.
United Kingdom	Yes, "reasonableness" is included in the definition and appears in national legislation and Home Office Policy in the context of whether it would be "unduly harsh" to expect the claimant to relocate. The language used is Internal Relocation (rather than internal protection). (API Internal Relocation – the test) Relocation would be unreasonable if life for the individual applicant in the place of relocation would result in economic annihilation, utter destitution or existence below an adequate level of subsistence. So, for example, an applicant should not be compelled to hide out in an isolated region of their country, like a cave in the mountains, or in a desert or the jungle, if those are the only areas of internal safety available. On the other end of the spectrum a simple lowering of living standards or worsening of economic status would not be unreasonable. What must be shown to be lacking is the real possibility to survive economically, given the particular circumstances of the individual concerned (language, knowledge, education, skills, previous stay or employment there, local ties, sex, civil status, age and life experience, family responsibilities, health, available and realisable assets and so

	on). In assessing economic viability, the possibility of avoidance of destitution by means of financial assistance from abroad, whether from relatives, friends or from governmental or non-governmental sources, should not be excluded.

16d. Are any other criteria required in order to assess the possibility of internal protection? Especially, does your national legislation/jurisprudence reflect the UNHCR's guidelines?

Austria	The criteria for internal protection in national legislation are equivalent to the ones set out in the directive. Unlike 8(3) of the directive it is necessary that the applicant actually can return technically to the country of origin.
Belgium	The jurisprudence refers to the Michigan guidelines CPRR n° 03-2282/F1654, 23 novembre 2004, Congo CPRR n° 04-0511/F1652, 20 octobre 2004, Serbie-et-Monténégro (Kosovo) and UNHCR's guidelines VBV nr. 04- 0237/W10.668 , 7 september 2005, Bosnië-Herzegovina, VBV nr. 04- 0993/W10.179, 16 maart 2005, Fed. Rep. Joegoslavië , raad voor vreemdelingenbetwistingen arrest nr. 793 van 17 juli 2007 in de zaak X/ IIde kamer Irak, and to information from several NGOs like Human Rights Watch, Memorial, etc.
Bulgaria	The law does not provide for other or additional criteria
Czech Republic	No other criteria provided in order to use internal protection.
France	The French jurisprudence requires that the asylum seeker has safe access to the other part of the country, as well as the right to settle there and lead a normal life, i.e. he can have the possibility to work, to find a house without being "bothered" (the requirements seem to be lower than the ones in the directive that refers to persecution and serious harm).
Germany	Some courts refer to UNHCR guidelines. Generally, however, the more restrictive approach developed in German jurisprudence is applied (cf. above).
Greece	In the legislation there are no other criteria mentioned. However, the possibility of "internal protection" in the Greek legal system has been introduced very recently with the transposition of the Directive. Therefore it is too soon to assess the practice.
Hungary	Yes, Section 92 of the Government Decree reflects to a considerable extent the UNHCR's relevant guidelines, which were considered in the drafting process (see also question 16c). Administrative decisions and court judgments have, however, applied the internal protection alternative in a more problematic way so far, and the respect toward UNHCR's relevant guidelines is less apparent.
Ireland	Not in legislation but jurisprudence does reflect UNHCR guidelines.
Italy	Not relevant
Luxemburg	The UNHCR's guidelines are reflected in the national law. Under the former legislation, the jurisprudence had always denied any binding character to these guidelines. Their transposition into national law is therefore a substantial progress.

Netherlands*	See question 16c.
Poland	Art. 18 of the act on granting protection provides that IPA is possible if in a part of the territory 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 live/settle down there. According to the Art. 18 sec. 2 when assessing whether there is an IPA possibility, circumstances prevailing in that part of the country and the personal circumstances of the applicant have to be taken into account. The national law does not refer to UNHCR guidelines. In the cases that we have assessed the UNHCR's guidelines were not considered.
Portugal*	Not relevant
Romania	Yes, see above.
Slovakia	There are no other criteria
Slovenia	There are no other criteria
Sweden*	In most cases the UNHCR guidelines are considered. However, this does not apply to Afghan and Iraqi cases.
United Kingdom	No other criteria. Policy and Jurisprudence often make reference to UNHCR positions and guidelines, but they are by no means binding.

16e. Does the internal protection alternative apply to determination procedures of both refugee status and subsidiary protection?

	Both	Neither	Only refugee status	Only subsidiary protection
Austria	X			
Belgium	X			
Bulgaria	X			
Czech Republic	X			
France	X			
Germany	X			
Greece	X			
Hungary	X			
Ireland	X			
Italy		X		
Luxemburg	X			
Netherlands*	X			
Norway	X			
Poland	X			
Portugal*	X			
Romania	X			
Slovakia	X			
Slovenia	X			
Sweden*	X			
United Kingdom	X			

16f. During the determination procedure, is the internal protection alternative considered before or after the assessment of well founded fear?

	Before	After	Practice varies	Comments
Austria		X		--
Belgium		X		--
Bulgaria		X		Internal protection alternative is considered as part of the circumstances assessed to define whether the individual can or may avail him/herself of effective protection.
Czech Republic			X	The possibility of internal protection is the reason for rejection of the application in the simplified procedure, because the application is seen as evidently not well founded (§ 16 art. 1. lt. i) Asylum Act).
France		X		
Germany			X	Usually the well-founded fear is assessed before the existence of an internal protection alternative is considered. In some cases decision-makers do not go into a detailed assessment of the well-founded fear. If, in the opinion of the Court, there is clearly an internal protection alternative the IPA might as well be assessed first. Some decision makers and courts use the issue of IPA to solve cases where credibility issues arise. Normally, protection is then denied for the reason of the existence of an internal protection alternative using the notion "even if assuming that the account of the applicant is true…."
Greece	--	--	--	No information available yet.
Hungary			X	No exact information considering this practice exists. It can be stated, however, that the internal protection alternative concept is not used as a preliminary assessment criterion.

Ireland			X	--
Italy	--	--	--	Not relevant
Luxemburg		X		In general, the internal protection alternative is considered to determine whether a fear is well founded.
Netherlands*		X		--
Poland			X	As far as asylum seekers from Chechnya are concerned, it is often assessed whether an applicant is registered as residing in another part of the Russian Federation. Thus at first the place of official residence is examined, and only afterwards is it assessed whether there is a risk of persecution.
Portugal*		X		--
Romania		X		Article 76(4) stipulates that the reasons listed above (about manifestly unfounded applications) could not be considered before assessing the well-founded fear. But in practice IPA is considered even in cases assessed in the ordinary procedure.
Slovakia			X	--
Slovenia			X	It is not defined in law.
Sweden*		X		--
United Kingdom		X		(API Internal Relocation) Primarily an assessment of well-founded fear is made. If the claimant is found to have a well founded fear then internal relocation/protection is the next assessment - Is there a part of the country in which the applicant would not have a well-founded fear of persecution or face a real risk of suffering serious harm? Is it *reasonable* to expect the applicant to stay in that part of the country?

16g. Is the internal protection alternative evaluated based on individual circumstances, or as a blanket measure applied to certain categories of applicants?

Austria	Yes		According to legislation IPA has to be evaluated also based on individual circumstances, although especially decisions of lower instances tend to forget that occasionally.
Belgium	Yes		It's based on individual circumstances.
Bulgaria		No	Individual circumstances are not taken into account.
Czech Republic	Yes		It is based on the applicant's individual circumstances.
France	Yes		The internal protection alternative is evaluated based on individual circumstances. Most of the times, it is used for claimants who actually lived in another part of the country.
Germany	Yes		In a considerable number of cases assessed by the Federal Office as well as in court decisions, personal circumstances were taken into consideration, e.g. presence or non-presence of family in the proposed internal destination; age; sex; health; disability; social or other vulnerabilities; ethnic, cultural or religious considerations and ties; political and social links; language skills; educational, professional and work background and opportunities; ability to access accommodation and earn a living. Past persecution and its psychological long-term effects only played a minor role in the applicants' reports and the examination of the cases. Nonetheless, there still are decisions confirming the general availability of an IPA without looking at the individual cases.
Greece	--	--	No information available yet.
Hungary	Yes		Internal protection alternative is rather seldom used in Hungarian jurisprudence. Contrary to former practices, there has been an intention to individualise the relevant argumentation by authorities in recent years, even if in some cases, the level of considering individual factors is still insufficient (e.g. the special vulnerability of a single woman without family support in a Sub-Saharan African society was not taken into account).
Ireland	--	--	Practice varies In certain instances it is evaluated based on individual circumstances, but in others a broader categorisation is used.
Italy	--	--	Not relevant
Luxemburg	Yes		The directive has been literally transposed on this point.
Netherlands*	Yes		There is an individual assessment.
Poland		No	Generally speaking the IPA is evaluated as a blanket

			measure applied to certain categories of applicants.
Portugal*	--	--	It is evaluated based on individual circumstances.
Romania	Yes		It is evaluated based on individual circumstances but also based on country of origin information regarding different groups (for example it was argued that Christians may seek protection in northern parts of Iraq like Mosul)
Slovakia	Yes		--
Slovenia			Law defines that also personal circumstances are considered, but the provision is being applied as a blanket measure to certain categories of applicants. It relates usually to countries where mixed ethnic groups are living in different parts of the country
Sweden*			Yes, it is evaluated based on individual circumstances.
United Kingdom	Yes		In legislation it is evaluated on country information and also on the personal circumstances of the applicant. In the OGN's however, each category of claimant is listed and within each category the internal relocation is addressed. Nigeria is often a country in which internal relocation is mentioned as a reasonable alternative to claiming asylum, due to its sheer size.

16h. Does article 8 apply in cases where protection is granted by non-state actors?

Austria	--	--	Not relevant
Belgium	Yes		I know only one case where, after considering that the UNO couldn't protect the applicant, the CCE examined the internal protection alternative, CCE, 26 septembre 2007, n° 1968, RDE 2007, n° 144, p. 341, subsidiary protection, RDC.
Bulgaria	Yes		--
Czech Republic	Yes		--
France	Yes		Article 8 can be applied when protection is granted by an international or regional organisation. The CNDA applies the same definition of actors of protection mentioned above. For instance, the UNIMK in Kosovo can grant protection. In CRR, SR, 16 February 2007, M.T., 573815, the CNDA questioned the application of the principle of internal protection alternative in Ivory Coast. It concluded that the rebel groups do not sufficiently organise the North part of the country to be considered as actors of protection. Therefore, the internal protection alternative principle was not applied.
Germany	Yes		No criteria are applied for the consideration of how far non-state actors can provide protection. None of the

			reviewed court decisions yielded any criteria with regard to protection provided by non-State actors. The decisions rather focus on the absence of persecution. For example, with regard to Chechens, most parts of the Russian Federation are accepted as possible relocation alternatives. No examination is carried out in how far the Russian authorities could be considered as potential actors of protection, even though they are at the same time considered as persecutors. For Iraq, the Kurdish autonomous region is seen as a possible flight alternative for certain groups of applicants. However, the Federal Office does not explicitly state that the Kurdish parties or authorities are regarded to be able to provide protection. This approach coincides with the general focus on the "absence of persecution" rather than the "availability of protection".
Greece	--	--	No information available yet.
Hungary		No	The Hungarian legislation does not recognise protection granted by non-state actors (see Question 13b).
Ireland	--	--	Not aware of any such cases.
Italy	--	--	Not relevant
Luxemburg	Yes		For example, in Kosovo, non-state persecution in a certain part of the territory is considered as insufficient for either refugee status orsubsidiary protection.
Netherlands*	Yes		--
Norway	Yes		--
Poland		No	It is too early to assess the impact of transposition of the QD in this regard.
Portugal*	--	--	
Romania	--	No	There is no reference to protection granted by non-state actors.
Slovakia	--	--	It is hard to say since there is no jurisprudence on this issue.
Slovenia	Yes		--
Sweden*	Yes		Sweden has in practice sometimes accepted clans, for instance, to be actors of protection.
United Kingdom	Yes		(API Internal Relocation): Decision-makers should note that internal relocation can be relevant in both cases of State and non-State actors of persecution, but generally it is likely to be most relevant in the context of acts of persecution by localised non-State actors.

16i. If the state is the actor of persecution, or tolerates the persecution, is the internal protection alternative considered?

16j. If yes, is there a strong presumption against finding an internal protection alternative? Please describe. If no, please cite relevant national legislation or examples from case law.

Austria	Yes		Yes, a strong presumption against IPA.
Belgium	Yes		--
Bulgaria	Yes		Such presumption does not exist either in legislation or in practice.
Czech Republic		No	--
France		No	Usually, it is not. However, the Court did it in the case regarding Ivory Coast mentioned above.
Germany	Yes		The concept of 'internal protection alternative' is also applied where the agent of persecution is the State or where the State instigates, supports, condones or tolerates the actions of the agent of persecution. No specific rules apply regarding a presumption against finding an internal protection alternative in such situations. There is the presumption of a risk of persecution in cases in which the applicant already suffered persecution in his country of origin. In those cases, protection will only be denied if the persecution in the region of the protection alternative can be excluded with "sufficient certainty". However, these principles apply regardless of whether the persecution suffered was committed by state or non-state actors. For example: The small group of Christians from southeastern Turkey may face non-state persecution, which is tolerated by the state. German jurisdiction generally holds the opinion that these people may find an internal protection alternative in the Istanbul region. If they can proof that this is impossible for them individually, because they will not be able to earn their living there, they may get protection in Germany. If they can't proof this, they will not get protected in Germany because an internal protection alternative is presumed.
Hungary		No	Section 92(4) of the Governmental Decree clearly stipulates that *"The protection identified in Section 63 (2) of the Act is not guaranteed if the State or the party or organisation controlling the State from which the applicant was forced to flee is behind the persecution or serious harm."*
Ireland	Yes		No such presumption set out in legislation.
Italy	--	--	--
Luxemburg		No	--

Netherlands*	Yes		Only in the case where the authorities of the state are in control of a small part of the territory of the state.
Poland	Yes		It depends on the case. More than 90% of the asylum claims are lodged by Chechens. In general when a Chechen national is registered in another part of the Russian Federation, according to the RSD authorities a possibility of internal relocation exists, because s/he was able to move to another part of the Federation where, it is presumed, s/he would not be persecuted.
Portugal*		No	--
Romania	Yes		There is no link between the agent of persecution and the internal protection alternative provided in the legislation.
Slovakia	Yes		The criterion of reasonableness is applied especially by the courts i.e. if it is reasonable to expect from the applicant to move to another part of the country as well as whether the protection there will be effective.
Slovenia	Yes		The burden of proof lies on the authorities
Sweden*		No	--
United Kingdom	Yes		Yes, as mentioned above, the internal protection alternative is likely to be most relevant in the context of acts of persecution by localised non-state actors. The API also addresses the issue of internal protection: The concept of 'sufficiency of protection' does not apply where the state or an organisation controlling the state is the actor of persecution. In these circumstances, the applicant cannot be expected to go to the state authorities for protection.

ARTICLE 8(2)

17. What kinds of "personal circumstances" and "general circumstances" are considered when assessing whether internal protection applies as established in article 8(1)?

Austria	According to jurisprudence the person has to be free from persecution within the relevant territory, free from other unreasonable risks (including the consideration of personal circumstances) and the territory has to be reasonably accessible (a "theoretical" IPA is not sufficient).
Belgium	The jurisprudence took into consideration several elements. For instance: - The lack of family or ethnic networks in the zone CPRR n° 04-2344/F2189, 26 octobre 2005, Féd. Russie - The system of maintenance de facto of the propiska and the abuses against Tchetchens in Russia CPRR n° 04-1514/F181, 8 avril 2005, Féd. Russie (Tchétchène) - The impossibility to reunify the family and the dissolution of the family CPRR n° 03-2282/F1654, 23 novembre 2004, Congo

	- The great precarity and deprivation of elementary social rights due to the impossibility to be registered as "*personnes déplacées*," and the fact that the applicant is a single woman with three children CPRR n° 04-0511/F1652, 20 octobre 2004, Serbie Monténégro (Kosovo) - The impossibility to benefit from the protection of the authority even in the part of the country they control CPRR n° 02-0101/F1616, 26 février 2004, Congo - The absence of real connections in the region CCE, 26 septembre 2007, n° 1968, RDE 2007, n° 144, p. 341, subsidiary protection, RDC
Bulgaria	None, see above
Czech Republic	Not mentioned in legal regulations.
France	For the personal circumstances, see questions 16c, 16d and 16g. The fact that the asylum seeker has family members on the other side of the country is a strong indication that he can have a normal life there. General circumstances: the situation in the other part of the country shall be safe for the claimant; there must be an administrative and judicial organisation strong enough to protect the claimant. In CRR, SR, 16 February 2007, M.T., 573815, the CNDA assessed the proposed internal protection in the north of the Ivory Coast "*in the light of the general living conditions of the population in this area*."[77] In CRR, 30 March 2006, Mlle N., the Court stated that the applicant who lived in Transdnistria could have been protected in Chisinau because her parents lived there, she lived there several times without encountering any problem and the Moldova authorities delivered her a passport. In CRR, 7 April 2005, M.M., the Court stated that the applicant could live in Quito or any other part of the Equator territory far from the Colombian border because he was suspected by the Equator authority to be part of the Colombian militias.
Germany	This depends on the individual case – no generalisation possible. For example the presence or non-presence of family in the proposed internal destination; age; sex; health; disability; social or other vulnerabilities; ethnic, cultural or religious considerations and ties; political and social links; language skills; educational, professional and work background and opportunities; ability to access accommodation and earn a living.
Hungary	Section 92 of the Government Decree puts the emphasis on personal, individual circumstances and is silent about general ones: *(1) When Article 63 (2) of the Act is being applied the refugee authority* *a) shall examine whether protection is available for the applicant in the case of return to the State from which he was forced to flee;* *b) shall specifically name the part of the country where its view is that protection is available.* *(2) The applicant can be reasonably required to return to the part of*

[77] UNHCR's translation.

	the country concerned – with regard also to his/her personal circumstances – if *a) the applicant can have access to that part of the country lawfully, safely and in practice,* *b) the applicant has family members or relatives in the given part of the country, or his/her basic livelihood and residence can be otherwise ensured, and* *c) there is no threat that the applicant will suffer persecution or serious harm or other serious infringement of human rights in that part of the country, irrespective of whether these are connected with the reasons for fleeing presented in his/her application.* *(3) When the provisions of Paragraph 2 are applied the refugee authority shall assess in particular the applicant's health, need for special treatment, age, gender, religious affiliation, nationality and cultural ties as individual circumstances.* While Paragraph (3) explicitly enumerates individual circumstances to be considered, Paragraphs (1) and (2) refer to further criteria with a strong tie to personal factors
Ireland	Personal circumstances that are taken into account include: existence of family members in safe part of the country, network of contacts, poverty, social class, gender. General circumstances that have been considered include: political stability in region/state, large presence of applicant's own tribe, unchallenged presence of applicant's own religious group.
Italy	Not relevant
Luxemburg	- the security environment - the protection of minorities - the general respect of fundamental rights
Netherlands*	In general, the area should be accessible and approachable. During the journey to the internal protection alternative the personal safety and dignity should be safeguarded. A person should be able to live his life under circumstances which are not unreasonable to local standards. A deterioration of his economical or social situation compared to the situation in his country of origin is not taken into account.
Poland	It is too early to assess the impact of transposition of the QD in this regard.
Portugal*	Not relevant
Romania	General and personal circumstances are taken into consideration in the assessment of the application for asylum and this includes internal protection. For example in cases of asylum-seekers from Somalia we found rejections based on the argument that the asylum-seeker may be protected in the areas where his tribe constitutes a majority.
Slovakia	See question 16c
Slovenia	For establishing "general circumstances" it is of huge relevance whether armed conflict is taking place in that part of the country of origin, what is the population consistency in the area (different nationalities, social, religious groups, etc.), etc. Personal

	circumstances: whether the person has already lived there and if yes, did the person encounter any problems there, whether he was employed there, whether he was able to educate himself, etc.
Sweden*	For instance, there is no internal protection alternative available to single women in Afghanistan (personal circumstance). Other circumstances: age, family ties, education.
United Kingdom	"personal circumstances" Particular circumstances of the individual concerned lacking possibility to survive economically; factors: language, knowledge, education, skills, previous stay or employment there, local ties, sex, civil status, age and life experience, family responsibilities, health, available and realisable assets and so on. "general circumstances" General circumstances prevailing in the safe area and in comparison with the country of return as a whole. Where decision makers seek to rely on internal relocation they should identify a particular area or areas of the country suitable for relocation and provide the applicant with an adequate opportunity to respond to that assertion at their asylum interview. Protection in that area must be effective and of a durable nature. Where the applicant raises issues in support of a claim that internal relocation would be unduly harsh, decision makers should address those issues in any reasons for refusal letter (where we still consider internal relocation to be reasonable). Decision makers should refer to the relevant Operational Guidance Note (OGN) when making an assessment of the country situation. In assessing reasonableness, conditions in the area of safety must be considered in the context of the country concerned. Comparisons should be made between conditions prevailing in the area of habitual residence and those in the area of safe haven rather than between conditions in the safe haven and the country in which asylum is sought. For example, in a country where respect for human rights is scant and where the applicant could live elsewhere in the country with no fear of persecution the situation should be considered in context; internal relocation should not be dismissed just because the applicant would experience the drawbacks of living in the country from which he originally came.

ARTICLE 8(3)

18a. Does your national legislation or jurisprudence allow the application of 'internal protection' in accordance with article 8(3)?

Austria		No
Belgium		No
Bulgaria		No
Czech Republic	Yes	

France		No
Germany	Yes	
Greece		No
Hungary		No[78]
Ireland		No
Italy	--	--
Luxemburg	Yes	
Netherlands*		No[79]
Poland		No
Portugal*		No
Romania		No
Slovakia	Yes	
Slovenia		No
Sweden*		No
United Kingdom	Yes	

18b. If yes, has national legislation elaborated on the requirements to be met in order to return an applicant to the country of origin despite "technical obstacles"?

Austria		No	
Bulgaria		No	
Czech Republic	Yes		The administrative agency does not consider the technical obstacles of return. This problem could be solved through the visa of tolerance, which is granted by Foreign police (§33 Act no. 326/1999, Alien Act).
France		No	The national legislation does not mention article 8(3). The Constitutional Council required that the asylum seeker should have a safe access to the other part of the country. This requirement has never been interpreted regarding technical obstacles to return to the country of origin. There was never a need for CNDA to ask if the asylum seekers to whom the protection is refused would have technical obstacles to return because the internal protection was only applied to areas where the main cities were (Moldova, Equator, Sri Lanka…).
Germany		No	The a/m Guidelines by the MOI state that an IPA might be applied if the there are "practical barriers" for the return or repatriation of the respective applicant. This might apply in the case of "a lack of transport links". The notion "practical barriers" is in line with the German wording of the QD but seems to be wider than "technical obstacles".
Hungary			The Section 92(2)(a) of the Government Decree

[78] The Section 92 (2) a) of the Government Decree requires that the applicant be able to carry out the return to the part of the country of origin in a practical manner where the risk of persecution/serious harm does not prevail.
[79] See Council of State, 2 June 2004, JV 2004/279, Spijkerboer&Vermeulen, Vluchtelingenrecht, p. 46.

			requires that the applicant be able to carry out the return to the part of the country of origin in a practical manner where the risk of persecution/serious harm does not prevail.
Italy		No	Not relevant
Luxemburg		No	--
Romania		No	Not relevant
Slovakia		No	Not relevant
Slovenia		No	Not relevant
Sweden*		No	Not relevant
United Kingdom	Yes		339O Immigration Rules: (iii) (i) applies notwithstanding technical obstacles to return to the country of origin or country of return.

18c. Has such a provision been applied in practice? If yes, please describe.

Austria		No	--
Belgium		No	--
Bulgaria		No	--
Czech Republic	Yes		--
France		No	
Germany	--	--	Unknown.
Greece		No	--
Hungary		No	
Ireland		No	--
Italy	--	--	--
Luxemburg	Yes	No	The technical obstacles are only taken into consideration once the request has been denied in order to grant an eventual status of tolerance
Netherlands*	--	--	--
Poland		No	In some decisions where internal relocation was considered to be possible, the practical possibility to relocate was not analysed and taken into account
Portugal*	--	--	--
Romania		No	--
Slovakia	--	--	--
Slovenia	--	--	--
Sweden*		No	--
United Kingdom	Yes		API Internal Relocation Where it is apparent that there are technical obstacles which would prevent return of an applicant to the country of origin the argument of internal relocation may still be relied upon. Technical obstacles should be taken to mean, for example, problems with documentation which would facilitate return to the country in question, practical problems which at the present time prevent return to that country, or temporary problems affecting the

			possibility of return such as a natural disaster. Where a safe area exists in the country of origin but there are technical obstacles to accessing this area (or the country as a whole) at the present time, it is not appropriate to grant asylum or humanitarian protection. A person for whom such an area exists is not a refugee or person in need of protection because there is a place to which they will safely be able to go, a fact not altered by the current practical difficulty in getting there.

18d. If article 8(3) is applied, is an alternative status granted to those refused protection on this basis but unable to return to the proposed destination of internal protection?

If the answer is yes, please briefly explain the status conferred.

Bulgaria	n/a	n/a	n/a
Czech Republic	Yes		Visa of tolerance according the Alien Act.
Germany	Yes		The local Aliens' Authority may grant a residence permit based on Section 25(5) Residence Act 2004. Condition is that the non-return of the applicant is not due to a fault of his or her own. However, the decision is with the Aliens' Authorities, which frequently do not include a criterion of unreasonableness of return to the country of origin as an argument for granting a residence permit, so that persons that cannot reasonably be expected to return might nevertheless not be granted a residence permit. Moreover, most Aliens' Authorities systematically exclude any considerations on the situation in the country of origin while reviewing applications for a permit under Section 25(5) Residence Act 2004. Even if such a permit may exceptionally be granted, it only provides for a very weak status that does not contain social rights equivalent to those granted to refugees or persons protected under subsidiary protection. Access to integration in Germany is not provided for under this status. In case that no residence permit is granted, persons are legally obliged to depart. However, as long as this obligation cannot be enforced due to practical obstacles to return, they are "tolerated". "Toleration permits" are usually issued for a period of three months but can be extended; foreigners with such a toleration permit have no access to integration.
Luxemburg	Yes		The authority can decide to tolerate the presence of a refused applicant on Luxemburg territory in case of material circumstances making a return to the country

			of origin impossible. The tolerance is granted for a maximum period of one year, but liable for renewal if the circumstances still persist. I.e.: Iranian citizens receive almost automatically the status of tolerance due to a lack of cooperation from Iranian authorities to enable a return.
Poland	Yes		If there are technical obstacles to return to the county of origin, a tolerated stay permit could be granted. According to art. 97 of the act on granting protection "*an alien shall be granted the permit for tolerated stay on the territory of the Republic of Poland if his / her expulsion: 1) may be effected only to a country where his/her right to life, to freedom and personal safety could be under threat, where he/she could be subjected to torture or inhumane or degrading treatment or punishment, or could be forced to work or deprived the right to fair trial, or could be punished without any legal grounds – within the meaning of the Convention on Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 (J.L. of 1993 No. 61, it. 284 and 285, of 1995 No. 36, it. 175, 176 and 177 and of 1998 No. 147, it. 962 and of 2002 No. 127, it. 1084); 2) "is unenforceable due to reasons beyond the authority executing the decision on expulsion or beyond the alien*". Even though in theory this provision can be applied to persons who are unable to return to a safe part of their country of origin, we are not aware of any cases where art. 97 was applied to this category of asylum seekers.
Romania	Yes		Finally rejected asylum-seekers who are unable to return to their countries are granted a tolerated status by Romanian Immigration Office, Migration Direction
Sweden*		No	Eventually – after the authorities have tried to send a person to his or her country of origin, but not succeeded, impediments to enforce the rejection decision might be considered to exist, as the person is not able to return for practical reasons. In some cases, if this impediment is believed to be of a non-permanent nature the person can be granted a temporary permit. The rejection decision expires after 4 years (after it has gained legal force), which means that the person in question can apply again. In such cases, he or she would most likely be granted a permanent residence permit.
United Kingdom		No	--

CHAPTER III: QUALIFICATION FOR BEING A REFUGEE

ARTICLE 9(1)

19a. Has the definition of acts of persecution been transposed literally into national law?

19b. If the answer is no, how have these acts been defined?

Austria		No	It has been transposed in the way, that there is a reference at the beginning of the Act to Art 9 of the directive ("according to the Qualification Directive") concerning the understanding of the term persecution. Within the articles on status determination reference is made to the Geneva Convention.
Belgium	Yes		--
Bulgaria		No	The following part of Art. 9(1) has not been transposed: "*in particular the rights from which derogation cannot be made under Article 15(2) of the ECHR or, be an accumulation of various measures …"*
Czech Republic		No	It has been defined as: - Acts of severe violation of basic human rights - Acts of mental violence or other similar acts According to the jurisprudence these acts have to have an individual aspect and also an aspect of severity.
France		No	Art. L.711-1 CESEDA directly refers to Article 1 of the Geneva Convention. The CNDA is in charge of interpreting the Geneva Convention.
Germany		No	No - again by referring "complementarily" to the text of Art 9 in § 60 sec. 1 S.5; the jurisdiction to this is very unclear at the moment, especially as far as subsidiary protection is concerned.
Greece	Yes		--
Hungary		No	Section 60 (1) of the Asylum Act defines persecution as follows: "*Upon the examination of the criteria of recognition, all acts which are sufficiently serious by their nature, repetition or accumulation, to constitute a severe violation of basic human rights, in particular, the right to life, the prohibition of torture, the prohibition of slavery or servitude and the principle of no punishment without law shall be regarded as acts of persecution.*" This definition, while apparently based on the

			definition provided by the QD, can be considered – to some extent – as a misinterpretation. The law-maker somehow overlooked the second part of the definition of the QD (Article 9 (1) (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 (a)"*), which results in a standard in practice lower than that set by the Directive. The insertion of the word "accumulation" in the Asylum Act's definition cannot be considered as a satisfactory reference to the missing provision. It is unlikely, however, that this stricter definition would per se result in a more restrictive interpretation in practice.
Ireland	Yes		--
Italy	Yes		--
Luxemburg	Yes		--
Netherlands*		No	No, but according to the Secretary of State article 9(c) already is in the legislation/policy.
Norway		No	The acts of persecution listed in the new law seems to be wider than the directive
Poland	Yes		Art. 9(1) was transposed literally
Portugal*	--	--	At the present there is not a definition of "acts of persecution" in national legislation. In practice authorities follow UNHCR's definitions.
Romania	Yes		--
Slovakia	Yes		--
Slovenia	Yes		
Sweden*		No	They are not defined in national law but in practice.
United Kingdom	Yes		--

ARTICLE 9(2)

20a. Have the examples of persecution defined in article 9(2) been transposed literally into national law?

20b. If the answer is no or partially, please state which provisions of article 9(2) were transposed literally, which were not, and whether additional examples of persecution are given.

	Yes	No	Partially	Comment
Austria	--	--	--	Not relevant, see above
Belgium			X	The transposition of article 9.2.e) adds the precision "en particulier" before "in a conflict…" This means that it does not exclude other

				situations where persecution for refusal to perform military service could be taken into account.
Bulgaria	--	--	--	Acts of persecution other than those listed in 9(2) are not included in legislation or practice. National practice automatically excludes those fleeing war or internal armed conflict from refugee status
Czech Republic			X	See above
France		X		Art. L.711-1 CESEDA directly refers to Article 1 of the Geneva Convention. The CNDA is in charge of interpreting the Geneva Convention. There is no example of application of article 9(2)(d). The French court seems to have a broader understanding than article 9(2)(e) because acts of persecution can take the form of prosecution or punishment for refusal to perform military service in a conflict for political, religious or ethnic reasons.
Germany	X			See question 19(b).
Greece	X			Previously, the provisions of the Geneva Convention of 1951 were used.
Hungary	X			Section 60(2)(b) of the Asylum Act transposed all forms of persecution as defined in Article 9 (2) of the QD: *(2) Persecution may, in particular, take the form of the following acts:* *a) acts of mental or physical violence, including acts of sexual violence;* *b) acts committed on account of the gender of the person concerned;* *c) acts committed in connection with the childhood of the person concerned;* *d) legal provisions or administrative measures which are in themselves discriminatory or which are implemented in a discriminatory manner;* *e) disproportionate or discriminatory measures implemented in criminal proceedings, including disproportionate or discriminatory punishment;* *f) denial of judicial redress resulting in a disproportionate or discriminatory punishment;* *g) punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling under the exclusion clauses related to recognition as a refugee or as a beneficiary of subsidiary protection.*
Ireland	X			Not applicable

Italy	X			--
Luxemburg	X			
Netherlands*			X	It depends how article 9(2)(b) has to be interpreted: does it also include discriminatory measures against women, just because they are women? If this article is read in combination with article 10(1)(d) it can be said that this is not included but it is not clear. Only if it is included it can be said that the Dutch policy is not in accordance with article 9(2). This also depends on the interpretation of article 9(3). Besides, no attention is paid in the Dutch policy for acts of child-specific nature in the meaning of article 9(2)(f).
Poland			X	As said above Poland transposed art. 9(2) literally except point d and e. These mistranslations change slightly the meaning of those provisions. Right now we are not able to assess the transposition's impact on the future practice. Until now the Office, when defining who is a refugee, has often relied on JHA joint Position of 4 March 1996 defined by the Council on the basis of Article K.3 of the Treaty on European Union on the harmonized application of the definition of the term 'refugee' in Article 1 of the Geneva Convention of 28 July 1951 relating to the status of refugees (96/196/JHA). Military service: In general the Office for Aliens does not consider desertion or evasion of military service as grounds for being granted refugee status. According to the Supreme Administrative Court ruling: "*Conscription into the army is tied to – also existing in democratic regimes – common citizens' obligation to serve in the military forces to protect their own country. (...) all Armenian citizens are called-up for the army and this cannot be qualified as persecution mentioned in the Geneva Convention. Fear of criminal proceedings in the case of desertion or evasion of military service (...) does not itself meet the grounds of the Convention. However if measures undertaken by the authorities in regard to desertion differ depending on race, religion, or nationality, it could lead to persecution"* (NSA

				V SA 4363/03 z 27 May 2004). According to the Supreme Administrative Court judgment, persecution could take various forms because "*human rights are universal rights. Also the Geneva Convention states it clearly. This is a point where deliberation on asylum seekers starts. If the assessment of whether human rights were violated is based on what is perceived as a violation in the country of origin, these rights would be undermined (...). Asylum seekers flee from countries where regimes abuse basic rights and freedoms. Usually these regimes are based on tradition, custom, ideology or religion.*' (NSA V SA 1781/99, 24 August 2000).
Portugal*	--	--	--	Not relevant
Romania	X			Article 9 was transposed literally (article 9 of the Government Ordinance 1251/2006)
Slovakia	X			--
Slovenia	X			The only difference is that legislation introduces a closed definition of persecution: "*acts of persecution in the sense of paragraph 1A of the Geneva Convention shall be considered*: …." and not as an open definition as in the Article 9(2) of the QD: "can*, inter alia, take the form of:..".*
Sweden*		X		Not at all defined in law but in practice.
United Kingdom			X	Word for word with the exception of Article 9(2) (f) acts of a gender-specific or child-specific nature. API Assessing the Claim: This is not an exhaustive list and other forms of mistreatment, which on their own or in accumulation with lesser prejudicial actions, severely violate the basic human rights listed above will also constitute persecution. E.g. discriminatory restrictions.

ARTICLE 9(3)

21. How does your national law interpret the necessary "connection" between persecution and the five Convention grounds? Is a nexus between the five grounds and the *lack of protection* sufficient, or is a connection *with the acts of persecution* required?

Austria	A nexus between the five grounds and the lack of protection is sufficient.

Belgium	A connection with the acts of persecution is required.
Bulgaria	A nexus is required to suffice the "well-founded" requirement of the refugee definition.
Czech Republic	In the Czech legal regulation there is a requirement of connection of the Convention reasons and acts of persecution (§ 12 Asylum Act).
France	The lack of protection does not have to be connected with one of the five grounds to qualify for refugee status (CE,[80] 24 February 1999, M.A.). On the other hand, the French case law recognised that the lack of protection can be connected with one of the five grounds of the Geneva Convention, although the persecution is not linked with one of the grounds. In this case, the applicant can qualify for refugee status (CRR, SR, 17 October 2003, Mlle M.).
Germany	A connection with the acts of persecution (article 10) is required. A connection with the acts of persecution is usually required, particularly in cases concerning religious persecution or persecution on the basis of affiliation with a particular social group. This is related to the fact that a lot of decision makers and judges still make very much use of the old concepts of German jurisprudence, where the focus was merely placed on the question whether there is a risk of persecution for the applicant or not.
Greece	Article 9(3) of the directive has not been transposed in Presidential Decree 96/2008.
Hungary	Section 65 of the Asylum Act transposes this provision: "*the criteria of the recognition of an applicant as a refugee are met if there is a connection between the reasons of persecution under Section 6, subsection (1) and the acts qualifying as persecution under Section 60.*" Section 94 of the Government Decree then explains that *The connection mentioned in Article 65 of the Act exists when* *a) there is a causal relation between the reasons for persecution described in Article 6 (1) of the Act and the acts qualifying as persecution as described in Article 60 of the Act, or* *b) the State from which the applicant was forced to flee fails to guarantee for the applicant the protection described in Article 63 (1) of the Act due to his/her race, religion, nationality, membership of a particular social group or political opinion,* The nexus with Convention grounds can therefore be established with the lack of protection as well.
Ireland	Transposed literally from Article 9 to Regulation 9(3) of S.I. 518. Connection with the five Convention grounds and acts of persecution is required.
Italy	The law states "*the acts of persecution must be connected to the following grounds:…*"

[80] CE=Conseil d'Etat. The Council of State is the French supreme administrative court. A asylum seeker whose application was rejected by the CNDA has the possibility to lodge an appeal before the Conseil d'Etat by only on the merits.

Luxemburg	Article 9.3 of the directive has not been transposed. The interpretation of the connection between persecution and the five Convention grounds therefore was and remains purely jurisprudential.
Netherlands*	In the Netherlands a connection with the acts of persecution is required in general. However, if the authorities refuse protection on Convention grounds, this connection is not required. However, it is not considered that women constitute a particular social group.
Poland	Art. 9(3) of the QD was not transposed.
Portugal*	A connection with the acts of persecution is required.
Romania	According to article 9 of Government Ordinance 1251/2006 "*the actions and deeds set out in paragraph (1) may be considered to represent persecution if based on reasons such as: race, nationality, religion, affiliation to a certain social group or political opinion, irrespective of whether the reasons are real of attributed to the person by the agent of persecution*".
Slovakia	The law states that the Ministry shall grant asylum to an applicant who has a well-founded fear of being persecuted in his/her country of origin for reasons of race, ethnic origin or religion, particular political opinion or membership of a particular social group, and is unable or, owing to such fear, is unwilling to return to such country, or is persecuted in his/her country of origin for exercising political rights and freedoms.
Slovenia	"Connection" is interpreted as a causal link and a connection with the acts of persecution is required.
Sweden*	Connection with the acts of persecution is generally required. However, under some circumstances, lack of protection due to one of the five grounds is considered enough (ex gender).
United Kingdom	Regulation 5(3) stipulates that: An act of persecution must be committed for at least one of the reasons in Article 1(A) of the Geneva Convention. API Assessing the Claim: If an applicant demonstrates there is a reasonable likelihood of persecution, this does not necessarily mean that the asylum applicant will qualify for a grant of asylum under the 1951 Refugee Convention. The applicant would still need to show persecution would be committed for one of the Convention reasons of race, religion, nationality, membership of a particular social group or political opinion, and that their own State authorities or the organisation controlling the State would be unable or unwilling to provide effective protection. If no Convention reason can be identified but there is a reasonable likelihood of persecution, decision-makers should consider granting Humanitarian Protection.

ARTICLE 10

22. Are reasons for persecution assessed in accordance with article 10?

If the answer is no, please state where national law/practice differs.

Austria	Yes		--
Belgium	Yes		Belgium hasn't transposed the precisions of article 10, 1, d), 2 concerning sexual orientation and gender related aspects. These criteria are used in jurisprudence.
Bulgaria	Yes		Explicit transposition of article 10 was not made, however, § 1a of the Additional Provisions of the AR Act states that by virtue of this act the provisions of 2001/55/EC on temporary protection, 2003/9/EC on reception conditions, 2004/83/EC on qualification, 2005/85/EC on procedure shall be considered.
Czech Republic	Yes		--
France		No	Article L.711-1 CESEDA directly refers to Article 1 of the Geneva Convention. The CNDA is in charge of interpreting the Geneva Convention. The jurisprudence does not usually differentiate between race and nationality grounds. It uses the term "ethnic group". For the social group, see below.
Germany		No	In general no. National law has transposed Art. 10 QD by way of reference into the German system. Problems occur in relation to persecution for reasons of religion and social group. <u>Religion:</u> Before the direct application of the provisions of the QD, German doctrine used to differentiate between a core of the right to freedom of religion (a so called "religious existential minimum") which was protected under refugee law, and freedom of religion beyond this core which was not covered by refugee law. The core of the right to freedom of religion was equated with the holding of a belief and those activities which could be carried out in private. As long as the holding of a belief and the private exercise of religion ("forum internum") were not interfered with, applications for protection used to be rejected. Whereas the highest courts had maintained this differentiation only with regard to situations in which the danger of persecution depended on the future behaviour of the applicant, the authorities and lower courts sometimes did not restrict the concept in this way but refused protection in all cases related to the public exercise of religion ("forum externum").

			Since the QD has become directly applicable, the authorities and courts have been struggling in getting to grips with the changed situation under the QD which explicitly covers the public exercise of religion in Art. 10 (1) b QD. Whereas some courts seek to maintain the previous approach, other courts have fully adopted the approach of the QD. Those courts applying the traditional approach accept only a severe violation of the freedom of religion as relevant. In doing so, they often refer to the Art. 9 QD without appropriately differentiating between the act of persecution (Art. 9 QD) and the reason for persecution (Art. 10 QD). Those courts adapting to the approach of the QD mainly emphasise that the exercise of religion, which is protected under the directive, is not limited to an existential core of religious freedom but rather comprehensively covers all sorts of religious activities. It is argued by those courts that if there is a danger of a severe violation of fundamental human rights (act of persecution), for instance, in the form of detention, which is linked to the exercise of religion as it is defined in Art. 10 (1) b QD there is no option to uphold the former approach of differentiation between "forum internum" and "forum externum." This approach recently has been accepted in full by some higher administrative courts (HAC Bavaria, 14 B 06.30315 of 23 October 2007) or in a slightly modified manner (HAC Baden-Wuerttemberg, A 10 S 70/06 of 20 November 2006, which – while explicitly rejecting the traditional doctrine – still requires that the respective religious behaviour needs to be prompted by a fundamental religious conviction). There has not as yet been any jurisprudence of the Federal Administrative Court on the interpretation of this aspect of the QD. <u>Social Group:</u> According to the interpretation of Art. 10 (1) d QD provided by the Federal Ministry of Interior, that both criteria mentioned in the provision are required for a "social group" under refugee law (Guidelines issued by the Federal MOI on 13 October 2006). No German case law explicitly countering this interpretation is known to UNHCR in Germany. On the other hand, German law contains a provision more favourable than the QD: Section 60 (1) 3 Residence Act defines a persecution suffered solely for reasons of gender to constitute persecution for membership in a particular social group. Thanks to the

			adoption of this provision, cases of female genital mutilation now lead to refugee status if the other criteria are fulfilled as well (see for instance, HAC Hesse, 3 UE 3457/04.A of 23 March 2005). More recently, cases of forced marriage and honour crimes have been discussed under this concept. Homosexuality is recognised as membership in a particular social group by some courts (e.g. AC Munich, M 21 K 04.5194 of 30 January 2007) but rejected by other courts, which refer to a discrete behaviour in order to avoid persecution (e.g. AC Duesseldorf, 11 K 81/06.A of 14 September 2006).
Hungary	Yes		However, the Hungarian legislation defined a higher standard concerning the concept of membership in a particular social group. According to Section 64(1) the Asylum Act: *d) a group shall be considered to form a particular social group where in particular:* *da) 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, or* *db) that group has a distinct identity in the relevant country because it is perceived as being different by the surrounding society."* The Asylum Act uses "or" rather than applying the term from the QD ("and"). This means that the conditions defining the particular social group are disjunctive and it is sufficient that either of the two conditions be fulfilled to assess the reasons for persecution.
Ireland	Yes		Not applicable
Italy	Yes		--
Luxemburg	Yes		Even if the answer is generally positive, it has to be noticed that in certain cases, the term "a particular social group" is interpreted too restrictively. I.e., persecutions of homosexuals in certain Islamic countries.
Netherlands*	Yes		--
Norway	Yes		The proposed legislation's definition is somewhat wider than the directive's, except that "particular social group" is limited to "innate characteristics"
Poland		No	The act transposing the QD came into force on May 29th. We are not able to assess how the present, more detailed, legal provisions/policy towards interpretation of reasons of persecution will be assessed. So far, the

			reasons of persecution have been interpreted as in the UNHCR Handbook. Regarding Particular social group: In various decisions both the Office for Aliens and the Refugee Board were not consistent in the interpretation of the particular social group concept. For example the Refugee Board stated (see Administrative Court in Warsaw, WSA V SA/Wa 2625/05, 25 April 2006) that even being a member of a Chechen rebel's family does not qualify an applicant as a member of a particular social group. However, in another case, it was underlined that a common practice used against rebels' families by the federal forces are repressions and joint responsibility. Thus, a person taking part in the activities directed against federal authorities could be perceived as a member of a particular social group. Moreover, taking this into account, a particular political opinion could be imputed to such a person as well (see Administrative Court in Warsaw, WSA V SA/Wa 2625/05, 25 April 2006). There was also a case of a woman who provided Chechen military forces with food, clothing and shelter. This military group according to the Office for Aliens was guilty of committing war crimes and attacking non-military objects. The first and second instance RSD authorities stated that doing so she committed a war crime in the meaning of the art. 1F of the Geneva Convention and on this basis was refused refugee status, but she was granted the tolerated stay permit. The Regional Administrative Court in Warsaw overruled this decision, saying that participation in support roles cannot directly be perceived as active participation in war crimes. The Court added that even though she was aware that she supported a military group, it does not imply that she was aware that by helping them she facilitated the commitment of war crimes. The Court did not refer directly to the political nature of her involvement (Regional Administrative Court, V SA/Wa 918/06, 27.10.2006). In addition, the Office for Aliens stated that an applicant who refused military service because of political opinion like pacifism could not be considered as a member of a particular social group. Pacifists' ties are too weak, thus they cannot be considered a particular social group.

			Regarding Nationality: NGOs highlighted that Chechens could be regarded as a group persecuted on national grounds in accordance with article 1A(2) of the Geneva Convention. However, the Refugee Board stated that the Convention's catalogue of the reasons for granting the refugee status is closed thus a victim of war or natural disaster does not meet those grounds. (Refugee Board's Report..., op. cit., p. 13) Moreover it is necessary to demonstrate that a conflict in the country of origin is related to race, religion, nationality, membership in a particular social group or political opinions of that person, thus his/her stay in this country could possess a threat to life or safety (RdU-7-1/s/07). In general the Office or Refugee Board relies on this interpretation when issuing a negative decisions. Moreover "*a person seeking refugee status in Poland must indicate that s/he has individually experienced persecution or fear of such persecution for the reasons discussed in art. 1 A of the Geneva Convention*." (Refugee Board's Report..., op. cit., p. 14). Thus "the citizens of countries in which domestic conflicts are in progress cannot be regarded as refuges simply because they come from such countries". Besides, the Refugee Board stated that *"if one were to accept, as persons appealing against their decisions often claim, that refugee status ought to be granted by sole virtue of possessing a specific nationality, the consideration of applications and the implementation of lengthy procedures vis-à-vis a whole groups of persons would be superfluous. It would be enough to establish the applicant's identity and nationality. In such a case, the only logical conclusion would be to automatically grant refugee status to anyone who claims a specific nationality, without any further investigation into the conditions set forth in the Convention or in the legislation"* (Refugee Board's Report..., op. cit., p. 14) Regarding Religion: The Supreme Administrative Court stated that as far as there is no interference by the state authorities in the opportunity to participate in worship, there is no persecution on the grounds of religion. Moreover, lack of acceptance of a part of the society cannot be perceived as persecution. (NSA V SA 441/02, 13 November 2002)

			In various decisions the Office and Refugee Board stated that lack of or limited knowledge about basic religious (mainly in regard to the conversion from Islam to Christianity) canon (dogmas) shows that an applicant is not reliable and in fact has not converted to another religion. Moreover in the case of an Algerian refugee (who converted to Christianity) the Office stated that an applicant had a limited knowledge about the Bible because he had not remembered the books' titles (DP-II-576/SU/2007, 9 August 2007). Besides in the case of Egyptian refugee the Office elaborated that the knowledge on the religion (again Christianity) is not "deep enough", because he could not say the words of any prayer and did not know the name of the Pope (Dp-II-27890/SU/2004, 13 November 2007). Regarding Acts of gender-specific nature: According to the Office for Aliens being raped or sexually abused does not suffice to qualify an applicant for refugee status. Moreover, domestic violence is in practice not considered a sufficient reason to qualify for protection either, referring to the lack of relevant grounds under the Geneva Convention and to the possibility of the victim to seek the protection of her country of origin against this criminal offense. Therefore, according to the Office for Aliens, these occurrences are not sufficient to grant refugee status. Cases concerning domestic violence, forced marriages or rapes are rare, thus it is hard to assess the authorities' policy and the Geneva Convention's interpretation in this regard. The Helsinki Foundation managed to monitor, beside the case mentioned in supra note 12d, the following Regional Administrative Court's decisions: 1. An asylum seeker claimed that she had been abused and had been threatened by her husband and that was a reason for applying for international protection in Poland. According to the authorities and the Court those grounds do not meet provisions laid down in the Geneva Convention. In addition women facing domestic violence cannot be perceived as members of a particular social group – group of abused women. A group constitutes a particular social group if its members are being persecuted by state actors. The applicant did not face such persecution and she did not prove that she will face persecution by state authorities upon her return to the country of origin. (Regional Administrative court in Warsaw, WSA V SA/Wa

			923/07, 12.10.2007). 2. An applicant from Chechnya claimed that she was beaten, raped and intimidated by the Federal Forces. She was denied refugee status and was granted a tolerated stay permit. According to the Court there is no connection between being raped in 1999 and fleeing from the country of origin 5 years later. Moreover an applicant has to present evidence supporting her/his claim, but in this particular case an asylum seeker did not provide RSD authorities with relevant documents regarding those incidents. Humanitarian reasons or traumatic experiences in applicant's country of origin are not sufficient for being recognized as a refugee. (Regional Administrative Court in Warsaw, WSA V SA/Wa 793/06, 19.09.2006.) 3. An applicant was detained because of her participation in a political group. Later she was raped and beaten in the arrest. After short time her mother had put up a bail for her and she was released. According to the RSD authorities it is not possible to verify whether she was arrested and raped. Moreover she did not provide any documents supporting her statement such as forensic examination after she was released or a payment slip confirming that the sum she mentioned was paid. Concerning her statement the Court said that it was 'weird' that she had not mentioned being raped, especially taking into account the fact that the incident happened just before her arrival to Poland. This experience is so traumatic that it is hard to forget. Nevertheless according to the Court rape is not a sufficient ground to be granted refugee status. (Regional Administrative Court in Warsaw, WSA V SA/Wa 898/04, 14.03.2006.)
Portugal*	Yes		--
Romania	Yes		Reasons of persecution (of the Government Ordinance 1251/2006) Article 10 When assessing the reasons for persecution, the following elements shall be taken into account: (a) the concept of race shall in particular include considerations of color, 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, participation in or abstention from the participation in formal worship in public or private contexts, either alone, or in community with others, other religious acts or forms of expressing worship, forms of personal or communal conduct based on or

			mandated by any religious belief; (c) the concept of nationality shall not be confined to the notion of citizenship or statelessness, it shall include membership of a group determined by its cultural, ethnic or linguistic identity, through common geographical origin or political beliefs or through the relation with the population of another State; (d) a group shall be considered to form a certain social group where in particular: i) members of the respective group share innate characteristics or a common background, which cannot be changed, or share characteristics or beliefs which are so fundamental to the identity or conscience of the respective person, that the person should not be forced to renounce it; i) the group has a distinct identity in the relevant country, because it is perceived as being different from the surrounding society; ii) depending on the circumstances in the country of origin, a particular social group may include a group based on the common characteristics of sexual orientation. Sexual orientation shall not be understood to include acts considered to be criminal in accordance with the national legislation of the Member State. Aspects referring to gender may be included in the notion of sexual orientation, under the condition that this is the sole reason for the application of this article; (e) the concept of political opinion shall in particular include the holding of an opinion regarding a certain issue, related to possible agents of persecution, mentioned under Article 11 and to their policies and methods, whether or not that opinion has been acted upon by the applicant
Slovakia	Yes		--
Slovenia		No	The following sentence from Article 10(1)(d) was not transposed.: "*Gender related aspects might be considered, without however creating by themselves a presumption for the applicability of this Article.*" Other reasons are transposed and assessed as in the A. 10.
Sweden*	Yes		--
United Kingdom	Yes		--

ARTICLE 10(1)

23a. Does national law require that a "particular social group" share an "innate characteristic" or "common background," *and* be perceived as a distinct group by the surrounding society, or will satisfaction of either of these criteria establish a particular social group?

23b. Has the implementation of the directive changed this interpretation?

	One	Both	
Austria	--	--	*Legislation:* does not explicitly define the criteria of a social group, jurisdiction has done so, satisfied with one of the criteria above. *Jurisdiction:* Whether it will be changed through the directive is still unclear. There has been a High Court judgement citing the directive and both grounds as constituting a particular social group, but in the respective case both criteria have not been established.
Belgium		X	According to the jurisprudence, this interpretation conforms to the usual practise and will not change the interpretation (CPRR, 14 décembre 2006, n° 06-0817/F2548). It must be mentioned that this interpretation is, in practise, flexible.
Bulgaria	--	--	No definitions of "particular social group" were provided in practice before the transposition.
Czech Republic		X	The social group is not defined by the Asylum Act, and the jurisprudence has respected the UNHCR guidelines in this case. For example, the Supreme Administrative Court accepts homosexuals as a social group.
France		X	No, it has not. The French case law is more restrictive than the directive. It requires that the social group be subject to persecution per se. The fear of persecution is one of the features of a social group.
Germany		X[81]	There are no real "results" to that up to now, as the implementation of the provision took place just four months ago and the jurisdiction in Germany did not really consider it before. On more favourable German approaches concerning gender-related persecution, see above.
Greece	X		It is too soon to draw any conclusions.
Hungary	X		No.
Ireland	X		Satisfaction of either will suffice; see Regulation 10(1)(d) S.I. No. 518/2006.

[81] According to the interpretation by the MOI.

Italy	--	--	The provision isn't very clear on this point.
Luxemburg	X		No
Netherlands*	X		No
Norway	X		--
Poland	--	X	According to art. 14 sec. 1(5) of the act on granting protection, a particular social group is defined as a group sharing an innate characteristic or a common background and is perceived as being different by the surrounding society. The directive's implementation introduced this requirement in law for the first time, so it is too early to assess its implications.
Portugal*	--	--	National law does not provide a definition of "particular social group". In practice authorities follow UNHCR's definitions. The satisfaction of either of the referred criteria establishes a particular social group and the applicant need not actually possess the characteristic that attracts the persecution.
Romania	X		Yes
Slovakia		X	No
Slovenia		X	Before, this aspect was not included in the assessment of "particular social group".
Sweden*	X		--
United Kingdom		X	--

ARTICLE 10(2)

24a. Has article 10(2) been transposed literally into national legislation?

24b. If not, does national legislation provide that the applicant need not actually possess the characteristic that attracts the persecution?

Austria	Yes		Through a reference to the directive
Belgium	Yes		--
Bulgaria	Yes		In Article 8(2) in fine of the ARA
Czech Republic		No	Practice varies.
France		No	No. Jurisprudence has recognised that the characteristic can be attributed by the actor of persecution.
Germany	Yes		See answer 19b.
Greece	Yes		--
Hungary	Yes		--
Ireland	Yes		Transposed in Reg. 10(2) of SI 518.
Italy	Yes		--
Luxemburg	Yes		--
Netherlands*		No	It had not been transposed literally, but was already the practice.

Norway		No	In the proposed new legislation it only relates to political opinion
Poland	Yes		--
Portugal*	--	--	Please refer to question 23.
Romania	Yes		No, there is no reference in the national legislation that the applicant has to actually possess the characteristic that attracts the persecution
Slovakia	Yes		--
Slovenia		No	No, it is just not necessary that the applicant acted according to those characteristics.
Sweden*		No	No, but it is applied in jurisprudence.
United Kingdom	Yes		--

ARTICLE 12

25a. Are the criteria to exclude an asylum seeker from refugee status applied in accordance with article 12?

If the answer is no, please state where national law and/or practice differs.

Austria	Yes		Additionally, legislation introduces endangerment for the security of the republic and the society through serious crimes as a reason for exclusion.
Belgium		No	The law and practice refer only to the articles of the GC
Bulgaria	Yes	--	Article 12 was transposed literally.
Czech Republic	Yes		--
France	Yes		The French law directly refers to the Geneva Convention.
Germany		No	The German provisions in the context of exclusion from refugee status contained in Section 3 Asylum Procedure Act and Section 60 (8) Residence Act implement the provisions laid down in Article 12 (2) QD and Article 14 (4). Beyond the exclusion grounds laid down in Article 12 (2) QD, a person can be excluded from refugee status if he or she constitutes a risk for public security because he or she has been finally sentenced to a prison term of at least three years for a crime or a particularly serious offence. Thus, the German provision also commingles exclusion from refugee status with exceptions to the principle of non-refoulement contained in Article 33 (2) of the 1951 Convention. Especially Article 12(2)(c) is used in the context of alleged terrorist activities. Its application is as a rule also considered if no concrete proof for a substantial or qualified support of terrorist organisations is at hand. Furthermore, the required degree of involvement into

			terrorist activities which are considered sufficient to warrant an exclusion from refugee status seems to be lower than the involvement required by the respective UNHCR Guidelines.
Greece*	Yes		--
Hungary		No	The Asylum Act does not refer to the QD but directly to articles 1 D, E, and F of the 1951 Refugee Convention. As for the exclusion clause of Article 1 F (b) of the Convention, Section 8 (2) of the Asylum Act adds a remarkably restrictive provision: "*in the course of implementing article 1, paragraph F, sub-paragraph b) of the Geneva Convention, an act qualifies as a serious, non-political, criminal act upon the commission of which, with regard to the totality of the circumstances, including the objective intended to be attained through the crime, the motivation of the crime, the method of commission and the means used or intended to be used, the ordinary legal aspect of the crime dominates over the political aspect and it is punishable by a five-year or longer term imprisonment according to Hungarian law.*" According to this interpretation, the evaluation of the crime committed by the asylum-seeker in consideration depends only on the measure of the imprisonment foreseen by Hungarian law and not on a complex evaluation of all related factors. In consequence, the asylum authority does not have any possibility to assess such a case on an individual basis. As a result: - The exclusion clause becomes automatically applied in case of every crime where the maximum imprisonment foreseen by the Hungarian Criminal Code exceeds 5 years. This also includes crimes such as armed and non-armed robbery, various cases of drug abuse, forgery of public documents committed by a public official, etc. In a number of these cases, the applicability of the exclusion clause is highly questionable based on UNHCR's relevant guidelines and leading jurisprudence. - The asylum authority does not have the liberty to consider mitigating circumstances (such as age, lack of any previous criminal activity, repentance, etc.), which are otherwise taken into consideration in criminal procedures. This provision is therefore in contradiction with the both the QD and the 1951 Refugee Convention.
Ireland		No	Article 12 has not been directly transposed. Section 2 of the Refugee Act 1996 contains exclusion provisions

			that predate the operation of the Directive. Section 2 (c) of the Refugee Act 1996 provides that a refugee does not include a person who 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. Regulation 12 of S.I. No. 518/2006 provides that "*an applicant is excluded from being a refugee if he or she has instigated or otherwise participated in the commission of the acts or crimes mentioned in section 2(c) of the 1996 Act*."
Italy		No	Italy has not transposed article 12(1)(b) Article 12(2)(b) has been extended excluding "*who has committed in or outside the State a serious crime. The seriousness of the crime is assessed also considering the sentence provided by the Italian law for that sort of crime of not less than 4 years at the minimum and 10 years at the maximum*" it is not clear when one person should be considered as having committed such a crime (who will tell if the accusation is founded and it does not constitute a persecution in itself). Cases of article 14(4) are also excluded.
Luxemburg	Yes		--
Netherlands*	Yes		--
Norway	Yes		The proposed new legislation does not, however, contain reference to obtaining a residence permit as in article 12 (2)b. Neither does it include reference to "*particularly cruel actions*"
Poland	Yes		--
Portugal*		No	According to article 3 of Act 15/98 (exclusion from and refusal of asylum) *1.Shall not benefit from asylum:* *a) Those who have performed any acts that are contrary to Portugal's fundamental interests or sovereignty;* *b) Those who have committed crimes against peace, war crimes or crimes against humankind, as defined in the international instruments aimed at preventing them;* *c) Those who have committed common law crimes punishable with more than 3 years of imprisonment;* *d) Those who have performed any acts contrary to the purposes and principles of the United Nations.* *2. Asylum can be refused in case its granting causes demonstrated danger or well founded threat to the internal or external safety, or to public order.*
Romania		No	According to article 23 of the Asylum provisions regarding granting the refugee status "*do not apply to aliens who are beneficiaries of protection or assistance*

			from an organism or institution of the United Nations, a different one than the United Nations High Commissioner for Refugees. When this protection or assistance has ceased for a certain reason or other, without the situation of these people being regulated definitively, according to the relevant resolutions adopted by the General Assembly of the United Nations, these people will benefit from the stipulations of the present law". According to article 25 *"refugee status is not recognized for aliens and stateless persons of whom there are serious reasons to believe that:* *a) They have committed a crime against peace and humanity, a war crime or another offence defined according to the relevant international treaties to which Romania is a party or another international document which Romania is obliged to abide by;* *b) Have committed a serious common law offence outside Romania, before being admitted to Romanian soil;* *c) Have committed acts contrary to the goals and principles, as they are mentioned in the Preamble and article 1 and article 2 of the United Nations Organization Charter;* *d) Have instigated or were accomplices to committing the acts stipulated at letters a) – c).* *Refugee status is also not recognized for aliens or stateless persons who planned, facilitated or took part in the commission of terrorist acts, as they are defined in the international instruments to which Romania is a party.*
Slovakia	Yes		--
Slovenia	Yes		--
Sweden*	Yes		Provisions already covered by existing legislation although not transposed literally.
United Kingdom	Yes		Although reference is made to Articles 1 D, 1E or 1F of the Geneva Convention rather than the Directive.

25b. Are you aware of cases where applicants were refused refugee status on the grounds set out in article 12?[82]

25c. If the answer is yes, were they protected from *refoulement* under article 3 ECHR or under other international human rights instruments? Please explain on which ground they were excluded and what is their legal status.

Austria		No	--
Belgium	Yes		People excluded from the protection under the GC are in a very delicate situation. On the one hand, they can't be expelled under article 3 on the other hand Belgium refuses to regularize them. The situation is sometimes solved after legal procedures.
Bulgaria		No	--
Czech Republic		No	--
France	Yes		All the exclusion grounds were applied by the OFPRA and the CNDA, although it does not occur often. The asylum instances do not protect the excluded applicants from refoulement. However, in order to exclude the applicants, they first have to include them within the scope of the Geneva Convention, i.e. to recognise that they have a fear of persecution. Thus, it is up to the administrative courts to cancel a deportation order if necessary. However, the excluded applicants that cannot be deported do not receive any legal status or residence permit.
Germany	Yes		There is a significant number of decisions excluding persons from refugee status in the practice of the Federal Office. In the view of the German authorities the overwhelming majority of these persons do not meet the inclusion criteria in the sense of Article 1 A (2) of the 1951 Convention, which is demonstrated by the fact that the respective persons should not have been granted subsidiary protection. The concept of subsidiary protection in Germany is broader than the concept of the QD, since it contains as well protection under Article 3 ECHR and some other humanitarian grounds. According to German law the 'inclusion criteria' are not applicable ('shall not apply') when the exclusion clause applies. The background of this practice is that asylum application may be rejected as 'manifestly unfounded' in cases 'where the requirements of Section 60(8) Residence Act or of Section 3(2) Asylum Procedure Act apply' (Section 30(4) Asylum Procedure Act). As

[82] Articles 1 and 2 of the United Nations Charter relate to international peace and security and peaceful relations between States. Hence UNHCR has argued that only people who have been in power could violate these provisions. (UNHCR, 2005, p. 28).

			a consequence, the possibility of legal remedies against such a rejection is significantly limited. An appeal does not have suspensive effect (Section 29 Asylum Procedure Act). To prevent deportation, a court injunction has to be applied for (Section 80 (5) Administrative Court Procedure Act in conjunction with Section 36 (3) 8 Asylum Procedure Act). There have as well been persons excluded from refugee status, which were granted protection on the basis of Article 3 CAT and/or Article 3 ECHR.
Greece		No	--
Hungary		No	There have been very few exclusion cases in Hungary in recent years. In such cases, reference is made directly to the 1951 Refugee Convention, and not to the QD. In principle, applicants excluded from refugee status can be granted a tolerated status ("befogadott"), based on Section 45 (1) of the Asylum Act: *(1) The prohibition of refoulement (non-refoulement) prevails if the person seeking recognition were exposed to the risk of persecution for reasons of race, religion, ethnicity, membership of a particular social group or political opinion or to the risk of facing the death penalty, torture, cruel, inhuman or degrading treatment or punishment in his/her country of origin, and there is no safe third country which would receive him/her.* and Section 51 (1) of the Act II of 2007 on the admission and right of residence of third-country nationals: *(1) Third-country nationals may not be turned back or expelled to the territory of a country that fails to satisfy the criteria of safe country of origin or safe third country regarding the person in question, in particular where the third-country national is likely to be subjected to persecution on the grounds of his/her race, religion, nationality, social affiliation or political conviction, nor to the territory or the frontier of a country where there is substantial reason to believe that the expelled third-country national is likely to be subjected to the death penalty, torture or any other form of cruel, inhuman or degrading treatment or punishment (non-refoulement).* This status ("befogadott") also qualified as subsidiary protection before 1 January 2008 and includes basic protection rights (right to work with work permit, access to education, prohibition of expulsion, etc.) but in practice a much worse social status than that of refugees. As of 1 January 2008, following the entry

			into force of the Asylum Act, a separate subsidiary protection status, the "oltalmazott" is created (based on the QD's relevant provisions, with wider social rights), while the "befogadott" status is maintained, with the explicit aim – among others – of granting protection to persons excluded from refugee/subsidiary protection, but in danger of facing the death penalty or torture, inhuman or degrading treatment or punishment upon expulsion.
Ireland		No	Not aware of any such cases.
Italy		No	--
Luxemburg	Yes		I. a former child soldier from Liberia confessed having committed war crimes in his country of origin and was denied the status on this ground. However, the case occurred before the transposition into national law of the directive and was treated under article 1., F. of the Geneva Convention. The actual legal status is unknown. II. a Kurdish journalist from Turkey was excluded from the asylum procedure because her name appeared in an international arrest warrant issued by Turkey for presumed acts of terrorism. After several months spent in detention, the civil jurisdictions refused to accept the Turkish request for an extradition and she was finally reaccepted as an asylum seeker and granted political asylum.
Netherlands*	Yes		If the exclusion is based on article 1F but the person cannot be expelled because of article 3 ECHR the person will not be expelled but at the same time he is considered an unwanted alien and is not entitled to any legal status. So he still has the duty to leave from the Netherlands to a third country. Besides there are Palestinians who are excluded on the basis of article 1D: In some cases they are however granted a residence permit on regular grounds. Palestinians are not granted refugee status if they had the protection of the UNRWA and if they can return to that UNRWA-area.
Norway	Yes		Yes, on the most part it would relate to war crimes or crimes against humanity, but two high-profile cases involved hijacking an airplane. They tend to be given very limited residence permits
Poland	Yes		We are not able to provide information on which grounds applicants were excluded. We are aware only of one case, presented in supra note 22, concerning a woman who provided Chechen military forces with food and shelter. Eventually she was denied refugee status on the ground of art. 1F of the Geneva Convention, but was granted a tolerated stay permit.

			The court overruled this decision, but after all she was again granted a tolerated stay permit. We are not aware of cases of asylum seeker's *refoulement* which could violate art. 3 of the ECHR.
Portugal*		No	--
Romania		No	--
Slovakia		No	--
Slovenia		No	--
Sweden*	Yes		Yes they are granted subsidiary protection as defined in article 15.
United Kingdom	Yes		In the United Kingdom, the Secretary of State can certify for a specific case the application of Art. 1 F or Art. 33 (2) of the Convention and declare an asylum applicant's removal "conducive to public good" under Section 33 of the Anti-Terrorism, Crime and Security Act 2001 (ATCS). Section 34 of the Act explicitly forbids the application of a balancing test for Art. 1F. The gravity of the fear or threat of persecution therefore does not prevent an exclusion from refugee status. An appeal against a rejection can only be successful if the Special Immigration Appeals Commission does not accept the Secretary of State's application of the exclusion clauses. Although the practical implications of these amendments are not yet seen, there is a danger that membership in specific "terrorist" organizations may lead to exclusion and expulsion without consideration of the asylum request.

25d. In your opinion (or if you have statistics/figures), has the transposition of the directive led to an increase in excluded applicants?

25e. If the answer is yes, please explain the (new) arguments developed by national authorities. Otherwise, please comment if you expect this to happen in the future.

Austria		No	--
Belgium		No	--
Bulgaria		No	--
Czech Republic		No	--
France		No	There has not been an increase in excluded applicants although this is not based on any statistics. In a general manner, the exclusion clauses are rarely applied in France.
Germany		No	There is an increased use of the exclusion clauses in the past years. This practice is not related to the QD but to the new national legislation in the context of combating terrorism developed since 2001. The

			provisions of the QD at the moment serve the Federal Office and some administrative courts as a proof that this (disputed) practice is in line with the European Asylum System.
Greece	--	--	There is no information available on the matter yet.
Hungary	--	--	No information available.
Ireland		No	Not known.
Italy	Yes		With the transposition decree new cases of exclusion have been introduced.
Luxemburg		No	--
Netherlands*		No	--
Poland	--	--	Unknown. It is impossible to assess at this stage whether implementation of the QD is going to lead to increased use of exclusion clauses. According to the statistics provided by the Office for Aliens in 2006, 13 persons were denied refugee status on the ground of article 1F of the Geneva Convention, in 2005 – 10 persons.
Portugal*	--	--	Directive not yet implemented
Romania		No	--
Slovakia		No	--
Slovenia		No	--
Sweden*			See question 25 a.
United Kingdom	--	--	Unable to comment. The exclusion clauses of the Refugee Convention have always been considered in any asylum claim. The transposition of the Directive has not changed this practice significantly. Also, the introduction of the UK anti terrorism act has allowed for a further "not conducive to public good" clause.

ARTICLE 12(2)

26a. Has article 12(2)(b)'s concept of "particularly cruel actions" been defined more specifically? Has it been used in practice?

If the answer is yes, please explain.

Austria		No	--
Belgium		No	This article wasn't transposed in the law.
Bulgaria		No	--
Czech Republic		No	--
France	(Yes)	(No)	The French law directly refers to the Geneva Convention. Thus it does not define more specifically the concept of "particularly cruel actions". The CNDA does sometimes exclude applicants that commit a crime with a political objective without being very detailed.

			The *Conseil d'Etat* stated "*in order to apply Article 1F b), account should be taken not only the seriousness of the acts, but also of the objectives pursued by their authors and of the degree of legitimacy of the violence they used*".[83] (CE, 28 February 2001, S.) For the CNDA, terrorism acts and narcotics crime are always classified as serious non-political crimes no matter the motives.
Germany		No	The concept has been transposed literally into German law (Section 3 (2) No. 2 Asylum Procedure Act) but the provision has not yet been used. Article 12 (2) QD: exclusion of (a) a person who 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 (Article 1 F (a) of the 1951 Convention; (b) a person who 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 on the granting of refugee status; particularly cruel actions, even if committed with an allegedly political objective, may be classified as non-political crimes. (Article 1 F (b) 1951 Convention); (c) a person who has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the preamble and Articles 1 / 2 of the UN-Charter (Article 1 F (c) 1951 Convention). This provision is reflected in Section 3 (2) Asylum Procedures Act, which stipulates that a person is excluded from being a refugee "*if, for serious reasons, there are justifiable grounds to assume* *1) that the foreigner has committed a crime against peace, a war crime or a crime against humanity within the meaning of the international instruments which have been drawn up for the purpose of establishing provisions regarding such crimes, or* *2) that he or she committed action outside the territory of the Federal Republic of Germany prior to being admitted as a refugee a serious non-political crime, in particular a cruel action, even if committed with an allegedly political objective or* *3) that he or she has committed acts in contravention of the objectives and principles of the United*

[83] UNHCR's translation.

			Nations." Thus, the ascertainment that the applicant was not engaged in any of the activities mentioned before is an unconditional prerequisite for the granting of refugee status. Consequently, if a prior involvement of the asylum applicant in such activities comes to light only after the grant of refugee status or if the refugee in question engages in conduct falling within the scope of Section 3 (2) No. 1 or 3 of the German Asylum Procedures Act, at least one of the prerequisites for the granting of refugee status has ceased and thus, Section 73 (1) Asylum Procedures Act demanding for a revocation of refugee status without any delay would apply. Thus, in combination with Section 73 (1) Asylum Procedures Act, Section 3 (3) Asylum Procedures Act allows revocation in cases which fall under the application of Articles 14 (3) (a), 12 (2) QD (see also below, Q 28a sub.).
Greece		No	--
Hungary		No	
Ireland		No	Not applicable.
Italy	Yes		The seriousness of the crime is assessed relative to the penalty that these crimes would incur in Italy. More specifically, crimes for which the sentence provided by the Italian law is not less than 4 years at the minimum and 10 years at the maximum
Luxemburg		No	--
Netherlands*		No	--
Poland		No	The following fragment of Art. 12(2)(b) has not been transposed: "*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".*
Portugal*	--	--	--
Romania		No	--
Slovakia		No	--
Slovenia	Yes		Criminal acts for which the prescribed sentence in the Republic of Slovenia is longer than 3 years.
Sweden*		No	--
United Kingdom		No	--

26b. Are "acts contrary to the purposes and principles of the United Nations" defined in accordance with recital 22 of the Qualification Directive?

Austria		No	Legislation contains only a reference to Art. 1 F of the Geneva Convention.
Belgium		No	The law only refers to article 1. F GC.
Bulgaria	--	--	There is no practice yet
Czech Republic	--	--	There is no any definition of these acts in Asylum Law. §15 of the Asylum Act only prescribes: "*An asylum seeker is excluded from refugee status if he or she has been guilty of acts contrary to the purposes and principles of the United Nations*".
France		No	The French law directly refers to the Geneva Convention. Terrorist acts are rather classified as serious non-political crimes (see above) by the CNDA. However, on 27 June 2008, CNDA considered that LTTE proponents who participate directly or indirectly to the decision, preparation and execution of terrorist acts fall under the scope of article 1F(c) of the Geneva Convention.
Germany		No	The term "*Acts contrary to the purposes and principles of the United Nations*" is literally transposed, but not defined any further. In practice the use of Article 12 (2) c) is nearly exclusively related to terrorist activities. Therefore, especially the UNSC resolutions play a predominant role in the application of this provision. Already before the implementation of the QD, the Federal Office applied Section 60(8) 2 3rd alternative (Article 12 (2) lit. c) QD) to all possible acts of support of terrorism; sometimes even psychological support is deemed to be sufficient for the application of the exclusion clause. This includes the potential for an extremely wide scope of application for Article 12 (2) lit. c) QD as it would allow for the application of the exclusion even if the standards of proof of Article 14 (4) lit. b) QD are not met (e.g. if there is no sufficient proof for a criminal conviction but the alleged support for e.g. the PKK is seen as constituting "serious reasons" in the sense of Article 12 (2) QD).
Greece		No	The text of recital 22 of the directive has not been transposed. There is explicit mention only of the Preamble and of Articles 1 and 2 of the Charter of the United Nations.
Hungary		No	The Asylum Act directly refers to Article 1 F of the 1951 Convention, and does not transpose Recital 22 of the QD. However, the ministerial preamble of the Asylum Act directly evokes Recital 22 in this respect.
Ireland	--	--	Phrase used in Section 2(c) of Refugee Act 1996 but not defined in any greater detail.

Italy	Yes		--
Luxemburg	Yes		The directive was transposed literally on this point.
Netherlands*	Yes		--
Norway		No	--
Poland		No	Art. 19 sec. 3 (b) transposes literally Art. 12(2)(b) of the QD. No further definition/interpretation guidelines can be found in the current legislation.
Portugal*	--	--	Not relevant
Romania	Yes		Article 25 of the Asylum Law provides "Have committed deeds which are contrary to the goals and principles, as they are mentioned in the Preamble and article 1 and article 2 of the United Nations Organization Charter;
Slovakia		No	No special definition in law
Slovenia		No	They are not defined.
Sweden*		No	Not relevant
United Kingdom	Yes		Not within the 2006 Regulations but with reference to exclusion or revocation of Humanitarian Protection at paragraphs 339D and 339G of the Immigration Rules.

ARTICLE 12(3)

27a. Has article 12(3) been used to exclude an applicant from refugee status by using evidence of a confidential nature?

If the answer is yes, please give some more details on the case.

Austria		No	--
Belgium		No	--
Bulgaria		No	--
Czech Republic		No	--
France			Uncertain. As a principle, the CNDA shall give the reasons why an applicant is excluded.
Germany		No	Art 12 (3) is transposed into German law. It stipulates, that exclusion also applies to instigators or participants in crimes mentioned in the first sentence of Section 3 (2) Asylum Procedure Act. Moreover, if an act of instigation or participation comes to light only after the granting of refugee status, this may, in combination with Section 73 (1) Asylum Procedures Act, lead to the revocation of refugee status. Evidence of a confidential nature is used for RSD purposes if it is deemed necessary by the authorities but allegedly not in a large number of cases.
Hungary		No	--
Ireland		No	Article 12 (3) not transposed.
Italy		No	--

Luxemburg		No	--
Netherlands*		No	--
Poland	--	--	Unknown. It is difficult to estimate. In some cases when the Office for Aliens denies the refugee status on the grounds mentioned in art. 12 of the directive, it is explained that the information on which the decision is issued is confidential, thus no reasons for exclusion are mentioned therein.
Portugal*		No	--
Romania		No	Article 12(3) is transposed in national legislation, but no case was reported in practice
Slovakia		No	No jurisprudence so far
Slovenia		No	--
Sweden*	--	--	We have no information about that.
United Kingdom		No	--

27b. Are family members of a person excluded under article 12 also automatically excluded from protection?

Austria		No	--
Belgium		No	--
Bulgaria		No	Art. 19 of AR Act explicitly preclude the automatic exclusion of family members.
Czech Republic		No	Every application should be reviewed individually.
France		No	--
Germany		No	--
Greece*	--	--	No relevant provisions.
Hungary		No	--
Ireland		No	Not applicable
Italy		No	--
Luxemburg		No	We have no knowledge of such a case in Luxemburg.
Netherlands*		No	They can be entitled to refugee or subsidiary protection based on individual grounds.
Norway		No	--
Poland	--	No	Art. 46 and art. 47 of the act on granting protection provide exceptions from the general rule that the family members of the main applicant, if their case is assessed in one asylum procedure, are granted the same form of protection as the main applicant. If family members of the main applicant fulfill the criteria established by Art. 1 D, E or F of the Geneva Convention (art. 19 sec. 1 p. 2-4 of the act on granting protection), but the main applicant does not, the main applicant should be granted refugee status, while they can be refused this form of international protection. Also if the main applicant should be excluded from being granted refugee status under art. 19 sec. 1 p. 2-4, the family members shall be granted refugee status if

			these criteria apply solely to the main applicant.
Portugal*		No	Portugal has no experience in the described situation. There is no specific regulation concerning this matter, however in case one member of a family is excluded that wouldn't prevent the individual analysis of the asylum requests of other members of the family.
Romania		No	The only exception in asylum law is provided by article 24 paragraph (1) "Refugee status is also granted, on request, to family members stipulated in article 2 letter j) who are on Romanian soil, except for the cases in which the respective people are found in one of the situations mentioned in article 25."and 27(1) "Subsidiary protection is also granted, on request, to family members stipulated in article 2 letter j) who are on Romanian soil, except for the cases in which the respective people are found in one of the situations mentioned in article 28."
Slovakia		No	--
Slovenia		No	--
Sweden*		No	--
United Kingdom		No	API Exclusion 2.13 Exclusion and Family Members/Dependants If there are family members seeking to remain in the UK as dependants of an applicant whose claim for asylum is refused partly or wholly in reliance on Article 1F or Article 33(2), the applications from those family members fall to be refused. However, some dependants may also apply for asylum in their own right and such claims should be considered on their merits. They cannot be excluded from the protection of the Refugee Convention simply because of the actions of the principal applicant. If the dependant's own asylum claim meets the requirements for inclusion under Article 1A and they are not excluded from protection, they should be granted asylum. However, where a dependant has previously been excluded from the protection of the Refugee Convention as a result of their own actions, they should not be given leave in line with a principal applicant.

27c. How are 'instigation' and 'participation' defined in national legislation or case law?

Austria	There is no such provision; no known case law.
Belgium	There is no definition in the law and no jurisprudence published.
Bulgaria	No definitions.
Czech Republic	No definitions.

France	As an example it can be mentioned that the CNDA considered that even though the applicant was not on any list of people accused of genocide in Rwanda, the fact that he remained in the government during the time the government tolerated or encouraged the genocide shows clearly his political opinions. The applicant did not dissociate himself from the system and thus contributed to the genocide (CRR, 13 April 2005, S.) Therefore, someone with a high position can be excluded for acts committed by someone who is under his/her order. When it comes to Art. 1F(c) of the Geneva Convention, the CNDA and the CE stated that this provision applies to acts committed directly or indirectly by persons that held state powers or part of it (CRR, 18 July1986, Duvalier; CE, 31 July 1992, Duvalier).
Germany	There is no specific definition in refugee law. However, both terms are defined in German penal law. Federal Office and court decisions differ on the question whether these definitions must also be applied in the refugee law context, i.e., whether an instigation or participation that may lead to a criminal conviction is necessary or if a lower level of participation, even psychological support, may be sufficient.
Greece	They are not specifically defined in the legislation and there is no case law on the matter yet.
Hungary	The Asylum Act related to the exclusion clause concretely defines neither instigation nor participation but the ministerial preamble of the law refers to the provisions of the QD, specifically to Article 12 (3). No information on practice is yet available.
Ireland	Not defined because Article 12 (3) has not been transposed.
Italy	The definition of instigation and participation is quite broad in Italian criminal law in general.
Luxemburg	Article 12.3 of the directive has been transposed literally.
Netherlands*	More or less the same as applied in cases like Tadic and the Rome Statute
Poland	According to the Refugee Board's interpretation "*the above clause is applied mainly in situations where there are serious grounds to assume that an alien seeking refugee status has committed a war crime. The Convention does not define this term, but refers to other acts of universal international law, especially the Rome Statute of the International Criminal Court*." *On the basis of the Statute, in international law adjudications and doctrine, it is accepted that Art. 1 also covers preparatory stages of the deeds mentioned therein, including being an accessory to a crime or inciting someone to commit a crime. In this context, the Refugee Board considers whether exclusion applies to persons who did not directly take part in deeds that provide the basis for applying Art. 1 F, but who actively assisted persons in the commitment of such deeds (supplied weapons, drugs etc.). So far, this issue has not been unequivocally decided upon by the administrative authorities and courts.* (Refugee Board's Report..., op. cit., p. 14)

	The Penal Code (Journal of Laws of 1997, No 88, item 553, with latest amendments) in art. 18 defines that: *§ 1. Not only the person who has committed a prohibited act himself or together and under arrangement with another person, but also a person who has directed the commission of a prohibited act by another person, or taking advantage of the subordination of another person to him, orders such a person to commit such a prohibited act, shall be liable for the perpetration of the crime. § 2. Whoever, intending that another person should commit a prohibited act, induces the person to do so, shall be liable for instigating.* *§ 3. Whoever, with an intent that another person should commit a prohibited act, facilitates by his behaviour the commission of the act, particularly by providing the instrument, means of transport, or giving counsel or information, shall be liable for aiding and abetting. Furthermore, whoever, acting against a particular legal duty of preventing the prohibited act, facilitates its commission by another person through his omission, shall also be liable for aiding and abetting.*
Portugal*	No definition
Romania	There is no special definition of these two concepts. They are defined only in criminal law. No practice in this regard.
Slovakia	No definition.
Slovenia	They are defined only in criminal law.
Sweden*	Not defined.
United Kingdom	Section 54 of the Immigration, Asylum and Nationality Act 2006 provides that acts contrary to the purposes and principles of the United Nations shall be taken as including: Acts of committing, preparing or instigating terrorism (whether or not the acts amount to an actual or inchoate offence) and, Acts of encouraging or inducing others to commit, prepare or instigate terrorism (whether or not the acts amount to an actual or inchoate offence). Case owners should refer to this interpretation of the meaning of Article 1F(c) when considering whether to apply the exclusion clause. A definition of what constitutes terrorism has been set out in UK law in the Terrorism Act 2000 (as amended by the Terrorism Act 2006). Annex 2A – Definition of 'Terrorism' (the Terrorism Act 2000): 1. - (1) In this Act "terrorism" means the use or threat of action where- (a) the action falls within subsection (2), (b) the use or threat is designed to influence the government or an international governmental organisation or to intimidate the public or a section of the public, and (c) the use or threat is made for the purpose of advancing a political, religious or ideological cause.

	(2) Action falls within this subsection if it- (a) involves serious violence against a person, (b) involves serious damage to property, (c) endangers a person's life, other than that of the person committing the action, (d) creates a serious risk to the health or safety of the public or a section of the public, or (e) is designed seriously to interfere with or seriously to disrupt an electronic system. (3) The use or threat of action falling within subsection (2) which involves the use of firearms or explosives is terrorism whether or not subsection (1)(b) is satisfied. (4) In this section- (a) "action" includes action outside the United Kingdom, (b) a reference to any person or to property is a reference to any person, or to property, wherever situated, (c) a reference to the public includes a reference to the public of a country other than the United Kingdom, and (d) "the government" means the government of the United Kingdom, of a Part of the United Kingdom or of a country other than the United Kingdom. (5) In this Act a reference to action taken for the purposes of terrorism includes a reference to action taken for the benefit of a proscribed organisation. 2. - (1) The following shall cease to have effect- (a) the Prevention of Terrorism (Temporary Provisions) Act 1989, and (b) the Northern Ireland (Emergency Provisions) Act 1996. (2) Schedule 1 (which preserves certain provisions of the 1996 Act, in some cases with amendment, for a transitional period) shall have effect.

CHAPTER IV: REFUGEE STATUS

ARTICLE 14

ARTICLE 14(3)

28a. Does your national legislation allow revoking, ending or refusing to renew the right to refugee status in accordance with article 14(3)?

Austria		No	National legislation is in accordance with Art 14(3a). However, the content of section 3(b) is not included in the Asylum Act 2005. According to administrative law any procedure can be revised on such grounds.
Belgium	Yes		--
Bulgaria	Yes		Article 17(2) in conjunction with Article 13(6) and (7) of the law
Czech Republic	Yes		The Czech legal regulations (§ 17 of the Asylum Act) include more reasons allowing to revoke refugee

			status: - the refugee has voluntarily accepted the nationality of his country of origin or that of another country which can protect him/her - he/she has been sentenced for a serious crime - he/she can avail himself of the protection of the country of origin because the reason for granting international protection has passed
France		No	The French legislation does not foresee the revocation of the refugee status for exclusion grounds.
Germany	Yes		I. General Remarks Germany has not systematically transposed the provisions of the Qualification Directive on the revocation, ending of or refusal to extend refugee status, including Article 14 (3) QD, into national law. 1. Section 72 For a better understanding of the German national provisions on the termination of refugee status, it should be noted that the termination of refugee status (including cessation of refugee status in accordance with Article 11 QD) is exclusively dealt with in Sections 72 and 73 of the German Asylum Procedures Act.[84] Section 72 of the Asylum Procedures Act exclusively addresses the cessation of refugee status as provided for in Article 11 QD with the exception of the "ceased-circumstance" cessation clauses of Article 11 (1) (e) and (f) QD, which under German national law are covered by Section 73 (1) Asylum Procedures Act. 2. Section 73 Section 73 (1) of the Asylum Procedures Act provides that the recognition as a person entitled to asylum or the granting of refugee status has to be revoked without delay "*if the conditions on which they are based have ceased to exist*". In practice, this means that under Section 73 (1) of the Asylum Procedures Law, the re-examination of the refugee recognition is not limited to any factor, which may have an impact to the risk of persecution on which the initial status

[84] As to persons recognized as refugees by the authorities of another state, Section 73a Asylum Procedures Act clarifies that termination or revocation of refugee status applies under the same circumstances as laid down in Sections 72, 73 Asylum Procedures Act.

			decision was based. In fact, the provision requires a full review of all conditions for the granting of refugee status, including possible exclusion grounds, at the time of the revocation decision (prevailing jurisprudence, e.g. Federal Administrative Court, decision of 24 November 1992 – 9 C 3.92; decision of 19 September 2000 – 9 C 12.00; more recently also Higher Administrative Court Düsseldorf, decision of 4 December 2003 – 8 A 3766/03.A; Higher Administrative Court Mannheim, Decision of 1 December 2006 – 10 A 10887/06.OVG). The conditions for granting refugee status are partly provided for in Section 3 Asylum Procedures Act, and partly in Section 60 Residence Act: According to Section 3 (1) Asylum Procedures Act, "*a foreign national who meets the conditions set out in Section 60 (1) Residence Act with respect to his country of nationality, or in the case of a stateless person, the country of former residence, is a refugee in the meaning of the 1951 Convention*".[85] The subsequent paragraphs of the provision, i.e., Sections 3 (2) and 3 (3) Asylum Procedures Act, basically incorporate the exclusion grounds as set out in Article 12 (2) and (1) (a) QD (reflecting Articles 1 F and 1 D of the 1951 Convention). According to Section 3 (4) of the Asylum Procedures Act, a person who appears to be a refugee in the meaning of Section 3 (1) Asylum Procedures Act (i.e., a person whose life or liberty is under threat on account of his or her race, religion, nationality, membership of a certain social group or political conviction and who does not fall under the category of persons excluded in accordance with Sections 3 (2) and 3 (3) Asylum Procedures Act) must be granted refugee status unless he or she fulfills the preconditions set out in Section 60 (8) 1 Residence Act. at the same time.[86] According to Section 60 (8), "Section 60 (1) does not apply if there are serious reasons to believe that the applicant must be regarded as a threat for the security

[85] Section 60 (1) Residence Act stipulates that a foreigner must not be deported to a state in which his or her life or liberty is under threat on account of his or her race, religion, nationality, membership of a certain social group or political convictions (see above, Chapter III).
[86] For more information on Section 60 a Residence Act see below, Questions 29a sub.

			of the Federal Republic of Germany or a threat to the general public, because he has been sentenced to a minimum of three years of prison for committing a crime or a particularly offence". If such an act is committed after the recognition, it is possible to revoke the status on this provision. 3. "Extension of refugee status", Section 73 (2a) Asylum Procedures Act Under German national law, the granting of refugee status is not *per se* limited to a certain period of time and thus, refugee status does not need to be "extended". However, according to Section 73 (2a) of the Asylum Procedures Act, the Federal Office for Migration and Refugees is obliged to review the preconditions for a revocation (or withdrawal) of a refugee status as stipulated in Section 73 (1) Asylum Procedures Act within a period of three years after the initial decision on the granting of refugee status has entered into legal force. Thus, in practice the Federal Office for Migration and Refugees has to decide three years after the granting of asylum or refugee status, whether this status shall be maintained for the future. The non-compliance of the Federal Office with the obligation to review the initial status decision does not automatically culminate in a loss of asylum or refugee status. After the expiration of the three -year period, the Federal Office may decide on the revocation of status on a discretionary basis. The criteria for such a discretionary decision are not yet entirely clear and are explicitly left open by recent court decisions including a number of decisions of the Federal Administrative Court. 4. Withdrawal of refugee status According to Section 73 (2), the decision to grant asylum or refugee status has to be withdrawn if it was based on false statements or on the omission of essential facts, provided there are no other reasons demanding the recognition of the person in question. II. Implementation of Article 14 (3) QD into German national law In combination with the a/m individual provisions, German law in principle allows for a termination of refugee status in such situations as those described in

			Article 14 (3) QD, with the exception of a termination of refugee status under the circumstances provided for in Article 12 (1) (b) QD, as follows: 1. Revocation of, ending of or refusal to extend refugee status in accordance with Article 14 (3) (a) QD – Revocation of, ending of or refusal to extend refugee status on the grounds stipulated in Article 12 QD; i.e.: Article 12 (1) QD: exclusion of (a) a person who enjoys the protection and/or assistance of organs or agencies other than the UNHCR (see Article 1 D of the 1951 Convention); (b) a person who is recognized by the authorities of the country where s/he has taken residence as having the rights and obligations attached to the possession of nationality (see Article 1 E of the 1951 Convention) In Germany, exclusion of foreign nationals enjoying the protection and assistance of organs or agencies other than the UNHCR is stipulated for in Section 3 (3) Asylum Procedures Act as one of the prerequisites for being granted refugee status. If this prerequisite ceases to exist (e.g., in the rather unlikely case that a person is able to re-avail him- or herself of the protection of UNRWA after he or she had lost this protection), refugee status can be revoked in accordance with Section 73 (1) Asylum Procedures Act, in combination with Sections 3 (4) and 3 (3) Asylum Procedures Act. There is no provision in German national law equivalent to Article 12 (1) (b) QD or Article 1 E of the 1951. Article 12 (2) QD (cf. above Q 26a) Article 12 (3) QD: exclusion of persons who instigate or otherwise participate in the commission of crimes in the meaning of Article 12 (2) QD 2. revocation/ending/refusal to extend refugee status in accordance with Article 14 (3) b QD According to Section 73 (2), the decision to grant asylum or refugee status has to be withdrawn if it was based on false statements or on the omission of essential facts, provided there are no other reasons demanding the recognition of the person in question.
Greece	Yes		Article 14(3) has been transposed verbatim.

Hungary		No	The relevant part of the Asylum Act (Section 11) reads as follows: *(1) The refugee status shall cease if* *a) the refugee acquires Hungarian nationality;* *b) recognition as a refugee is revoked by the refugee authority.* *(2) Recognition as a refugee shall be revoked if the refugee* *a) has voluntarily re-availed himself/herself of the protection of the country of his/her nationality;* *b) having lost his/her nationality, s/he has voluntarily re-acquired it;* *c) has acquired a new nationality and enjoys the protection of the country of his/her new nationality;* *d) has voluntarily re-established him/herself in the country which s/he left or outside which s/he had remained owing to fear of persecution;* *e) the circumstances in connection with which s/he has been recognised as a refugee have ceased to exist;* *f) relinquishes the legal status of refugee in writing;* *g) was recognised in spite of the existence of the reasons for exclusion referred to in Section 8, subsection (1) or such a reason for exclusion prevails in respect of his/her person;* *h) the conditions of his/her recognition did not exist at the time of the adoption of the decision on his/her recognition;* *i) concealed a material fact or facts in the course of the refugee procedure or issued an untrue declaration in respect of such a fact or facts or used false or forged documents, provided that this was decisive for his/her recognition as a refugee.* *(3) The asylum authority shall revoke the recognition as a refugee if a court with a final and absolute decision sentences the refugee for having committed a crime punishable by a five year or longer imprisonment.* *(4) Subsection (2), paragraph e) is not applicable to a refugee who is able to cite a well-founded reason arising from his/her former persecution for refusing the protection of his/her country of origin.* Hungarian regulation differs from the relevant provisions of the QD in some important aspects. 1) The Asylum Act uses the terms “revoke” and “cease” in a different way, neither transposing the logic of the 1951 Refugee Convention, nor that of the QD. Revocation is treated as a sub-category of

			cessation (Section 11 (1) (b)), while the conventional grounds for cessation (Article 1 C of the 1951 Refugee Convention, QD Article 11 (1) (a)-(e)) are included in the list of grounds for revocation (Asylum Act 11 (2), see above). While this difference does not appear to cause changes in practice (the practical consequences are the same – loss of status), it is unfortunate, as it disregards the internationally established terminology. *Nota bene* that the "refusal to renew refugee status" is not relevant in the Hungarian context, as refugee status is not granted for a limited time-period under Hungarian law. 2) The most essential contradiction between the provisions of the QD and the Asylum Act is that the latter prescribes in Section 11 (3) that "*The asylum authority shall revoke the recognition as a refugee if a court with a final and absolute decision sentences the refugee for having committed a crime which is punishable by a five-year or longer term imprisonment."*, while the QD allows for a certain degree of discretion in this respect, using the term "may". Thus, the current Hungarian legislation goes under the standard set by the QD in this particular respect. 3) In addition, the introduction of the five-year term of maximum imprisonment as benchmark is also worrisome, similarly to the parallel case of exclusion (see Question 25a), when comparing it to the wording of the QD ("particularly serious crime"). According to this interpretation, the evaluation of the crime committed by the asylum-seeker in consideration depends only on the measure of the imprisonment foreseen by Hungarian law and not on a complex evaluation of all related factors. In consequence, the asylum authority does not have any possibility to assess such a case on an individual basis. As a result: ▪ Refugee status shall automatically be revoked in case of every crime where the maximum imprisonment foreseen by the Hungarian Criminal Code exceeds 5 years. This also includes crimes such as armed and non-armed robbery, various cases of drug abuse, forgery of public documents committed by a public official, etc. In a number of these cases, the applicability of revocation is questionable. ▪ The asylum authority does not have the liberty to

			consider mitigating circumstances (such as age, lack of any previous criminal activity, repentance, etc.), which are otherwise taken into consideration in criminal procedures. 4) The Asylum Act did not transpose the provision concerning the threat to state security as in Article 14 (4) a) "*There are reasonable grounds for regarding him/her as a danger to the security of the Member State in which he or she is present."*
Ireland	Yes		This issue is dealt with in Refugee Act, 1996.
Italy	Yes		But instead of the word 'decisive' as in article 14(3)(b) the law uses the word 'exclusive'.
Luxemburg	Yes		The directive has been transposed literally. The crucial point in such cases of revocation is always whether the alteration (wrong identity, false documents, etc…) was decisive for the granting of refugee status.
Netherlands*		No	There is a difference between the Dutch ground for revocation and the ground for revocation in the QD. According to the Dutch Aliens Act the misrepresentation or omission of facts should have led to the rejection of the application and according to the QD the misrepresentation or omission of facts should have been decisive for the granting of refugee status. The policy with respect to this ground for revocation is laid down in article C5/2 of the Aliens Circular. It follows from this article that the misrepresentation of facts includes the submission of fake documents, as far as those documents (also) have been decisive for the positive decision. "*(Also) have been decisive for rejection*" is a weaker criterion than "*decisive for the granting of the status*". On this issue the Dutch policy could be in breach of the QD.
Poland	Yes		According to art. 21 of the act on granting protection refugee status is revoked if an alien: 1) has voluntarily re-availed himself or herself of the protection of the country of nationality; 2) having lost his or her nationality, has voluntarily re-acquired it; 3) has acquired a new nationality, and enjoys the protection of the country of his or her new nationality; 4) has voluntary re-established himself or herself in the country which he or she left or outside which he or she remains owning to fear of persecution; 5) can no longer, because the circumstances in connection with which he or she has been recognized as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of nationality, 6) being a stateless person with no nationality, s/he is able, because the circumstances in connection with

			which s/he has been recognized as a refugee have ceased to exist, to return to the country of former habitual residence, 7) has committed a crime against peace, a war crime or a crime against humanity in the meaning of international law; 8) he or she has been guilty of acts contrary to the purposes and principles of the UN as set out in the Preamble and Articles 1 and 2 of the Charter; 9) s/he has misrepresented or omitted facts which were of significant importance for the granting of refugee status.
Portugal*		No	However, according to article 36 of Law 15/98, 26th of March (causes of loss of the right of asylum) *Shall cause the loss of the right of asylum:* *a) the express waiver;* *b) the practice of forbidden acts or activities, in accordance with the provisions of article 7;* *c) the demonstration of falsity of the alleged grounds for the grant of asylum or the existence of facts which, had they been known at the time of granting, would have implied a negative decision;* *d) the request and the obtaining by the refugee of the protection of the country of his or her nationality;* *e) The voluntary re-acquisition of the nationality he/she had lost;* *f) The voluntary acquisition of a new nationality by the refugee, as long as he/she enjoys the protection of the respective country;* *g) The voluntary resettlement in the country he/she left or out of which he/she stayed for fear of persecution;* *h) The termination of the reasons which justified the grant of asylum;* *i) The decision to expel the [refugee], rendered by the competent court of law;* *j) The abandon of national territory by the [refugee], thus settling in another country.* Article 7 of the above referred law *(forbidden acts)* states: *The [refugee] shall be prevented from:* *a) interfering, in a way forbidden by law, in the Portuguese political life;* *b) performing activities which might turn to be harmful to the internal or external safety, to public order or that might endanger Portugal*'s affairs with other States;* *c) performing activities contrary to the purposes*

			and principles of the United Nations or of Treaties or Conventions of which Portugal is a party or adheres to.*
Romania	Yes		Article 100 of the Asylum Law provides: Refugee status is cancelled in the following situations: a) the person whose refugee status has been recognized has made false statements, omitted to present certain data or used false documents, which were decisive in the acknowledgment of the form of protection and there are no other reasons to lead to maintaining refugee status; b) after granting the form of protection it was discovered that the alien is in one of the situations stipulated in article 25.
Slovakia	Yes		Revocation is allowed according to article 14(3) b
Slovenia	Yes		--
Sweden*	Yes		As an example cases of citizens of Afghanistan could be mentioned. When it became known (after recognition) that they had been involved in activities described in art 12(2) of the QD authorities revoked their status and refused to renew their travel documents.
United Kingdom	Yes		Para 339A of Immigration Rules with reference to the 2006 Regulations.

28b. Have there been cases concerning the "misrepresentation or omission of facts, including the use of false documents"?

28c. If the answer is yes, please expand below and assess the extent to which these criteria are sufficient for revoking, ending or refusing to renew refugee status.

Austria		No	--
Belgium	Yes		This practise dates from before the transposition and will probably continue in the future. Actually I saw no definitive decision based on the new law. The interpretation of the causes of exclusion was restrictive CPRR 05-0504/F2158, 13 septembre 2005, Féd. Russie (Tchétchène). The fraud must concern constitutive elements of the fear of persecution (in this case: identity and main elements) without which the status wouldn't have been given CPRR n° 02-2770/R12889, 20 septembre 2005, Rwanda.
Bulgaria		No	--
Czech Republic		No	--
France	Yes		Refugee status recognised by OFPRA can be revoked in case of fraud (false identity documents or declarations, voluntary omissions) In CRR, 12 September 2005, F., the CNDA stated that

			the allegations on which the refugee status was based were false. Therefore, this person shall be considered to have voluntarily deceived the Office about his real situation. It is as well possible to make an appeal for review (*recours en revision*) before the CNDA in case of fraud within 2 months after the fraud is known (Art. R.733-6 and R.733-9 CESEDA). According to the Court, the fraud has to be decisive for the granting of the refugee status. The deception has to be voluntary.
Germany	Yes		There are no figures on decisions to withdraw refugee status on the basis of misrepresentation or omission of facts available, since the statistics on the decision practice of the Federal Office for Migration and Refugees do not distinct "revocation" and "withdrawal" of status. However, the numbers of withdrawals under Section 73 (2) Asylum Procedures Act are generally rather moderate and the majority of withdrawals pertain to false statements, particularly with regard to the country of origin and – increasingly – with regard to the engagement in activities in the meaning of Section 3 (2) Asylum Procedures Act (Article 12 (2) QD), i.e. activities, which would have led to exclusion.
Greece	--	--	There is no information available on the matter yet.
Hungary	Yes		No relevant information available
Ireland		--	No available information.
Italy		No	Not relevant
Luxemburg	Yes		In cases of real misrepresentation, the criteria are sufficient to analyze whether the misrepresentation was decisive for the granting of the status. I.e., an Iranian refugee claimed to have converted to Christianity and to have been persecuted on this basis. It appeared later on that he converted only once he had arrived in Europe and not in his country of origin. In cases of false documents and more precisely false identity documents, the criteria are not precise enough and especially do not take into consideration the constraints of the departure of applicants from their country of origin. In practice, the use of false identity is too often regarded in itself as sufficient enough to revoke the status, without regards to the accuracy of the fear of persecution.
Netherlands*	Yes		In the Dutch rules there is no separate ground for revoking the status of people who are discovered, after having been granted a permit, to fall under article 1F of the Geneva Convention. The permit is only revoked on

			the basis of the articles on the misrepresentation or omission of facts. Therefore, there is a lot of case law concerning this ground of revocation.
Poland	Yes		We are aware of two instances of reopening the case, which might result in the revocation of refugee status. One concerns Simon Mol, a recognised refugee from Cameroon who was arrested on suspicion of having committed sexual crimes and, of having infected several women with HIV, being aware that he is HIV positive. The case was broadly commented in the media and according to the media reports the Office for Aliens decided to reconsider his case and might revoke his status due to the fact that the circumstances presented during his RSD procedure, relating to political persecution in Cameroon, are likely to be false. The second case also concerns a refugee from Cameroon and was connected to public discussion on Simon Mol's case: On March 6th 2007 Rzeczpospolita newspaper published an article indicating that the evidence which E.M. had relied on during RSD proceedings was falsified. According to art. 145 sec 1(1) of the Administrative Procedure Code, a case could be reopened if the evidence on which it was determined was falsified. *According to sec. 2 of this article, proceedings could be reopened before the court's ruling in regard to evidence 's falsification, if the falsification of evidence is obvious and the reopening of the proceedings is necessary to avoid threat to life or health or serious danger to the community's interest.* (DP-II-3907/07, 14 May 2007). To sum up, under the Act on granting protection, refugee status can be revoked only on the grounds established by article 21 of the act on granting protection (for more see above). However, revocation of the refugee status is possible under art. 145 of the Administrative Proceedings Code if the RSD authority decides to reopen the proceedings on grounds laid down therein. Those grounds are: false documents, testimonies etc. on which the final decision was made. A case can be reopened at any time.
Portugal*		No	--
Romania	Yes		In the case of one person from Iraq it was said that his subsidiary protection was cancelled due the fact that

			"*one institution competent on security issues informed the National Refugee Office that he was not in Iraq in the period during which he invoked persecution*"
Slovakia		No	--
Slovenia		No	--
Sweden*	Yes		See question 28 a.
United Kingdom	Yes		API/ October 2006 Cessation, cancellation and revocation Where cancellation is being considered because there is evidence to suggest that refugee status was obtained by a misrepresentation or omission of material facts (i.e. deception), the individual must be given the opportunity to respond to the evidence relating to the deception and provide any evidence to support their continued status as a refugee. The senior caseworker will then consider all of the evidence and take a final view. There will need to be clear and justifiable evidence of deception e.g. evidence that the refugee is not the nationality they claimed to be, or evidence that the documentation supplied in support of the claim is not genuine. They will consider: • whether the deception is material to the grant of refugee status i.e. were it not for the deception that status would not have been granted • whether, even where deception is admitted or proved, the person still qualifies for refugee status or for leave to remain on another basis Even if the deception is admitted or proved, the person may still qualify for refugee status or for leave to remain on another basis. Where cancellation is considered to be the appropriate course of action it will be necessary to consult UNHCR in writing and invite their opinion. This should be done at the same time as representations are invited from the individual concerned. However, although we take account of UNHCR's views, they are not binding on IND.

28d. In your Member State, can a refugee have his/her status revoked after recognition, for crimes outside the scope of Convention Article 1F(a) or 1F(c)?

If the answer is yes, please describe the case(s).

Austria	Yes		In cases of exclusion, meaning the situations described in art. 14(4).
Belgium		No	--
Bulgaria		No	--
Czech Republic	Yes		Theoretically when he/she is sentenced for serious crimes, meaning minimum 8 years imprisonment.

France		No	--
Germany	Yes		Generally, the above mentioned provisions in the German Asylum Procedures Act on the expiration, revocation or withdrawal of refugee status are exhaustive, that is, there are no additional reasons for the termination of refugee status other than those prescribed for in Sections 72 and 73 of the Asylum Procedures Act. However, Section 3 (4) of the Asylum Procedures Act in conjunction with Section 60 (8) of the Residence Act, provides for the revocation of refugee status if the criteria of Article 33 (2) of the 1951 Convention apply. As mentioned above (see General remarks, 2.3), the Federal Office may in these cases initiate a revocation procedure on a discretionary basis. In this respect, criminal offences (even if they do not reach the level of gravity required by Art. 14 (4) QD, see below) often trigger the initiation of a revocation procedure. Though they would not themselves justify the termination of refugee status, in combination with a rather wide interpretation of the prerequisites for the revocation of status (in particular, the "ceased circumstance" cessation clause), one must assume that a criminal record may accelerate the loss of refugee status in practice.
Greece*		No	No relevant provisions
Hungary	Yes		See question 28a.
Ireland	Yes		Regulation 11 (1)(b) states: "*where he or she, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of the State*." See also case *G.S. v Minister for Justice, Equality and Law Reform* [2004] 2 IR 417.
Italy	Yes		This possibility has been introduced by the new law implementing the directive. Previously at least in one case the refugee status was revoked to a refugee sentenced for common crimes outside the scope of the Convention.
Luxemburg		No	--
Netherlands*	Yes		According to the policy (article C5/3.3 Aliens Circular) the Immigration and Naturalisation Service applies article 33 paragraph 2 of the Geneva Convention. Besides revoking a status because of a 1F situation, a permit can be revoked in case an alien is sentenced for a criminal offence for which a jail sentence of 3 years or more is imposed or for which a jail sentence, community service or TBS (detention in a `hospital`)

			can be imposed and the unconditional part of the sentence meets the requirements of the ´sliding scale´ in article 3.83(2) of the Aliens Order.
Norway	Yes		--
Poland		No	According to the law, refugee status cannot be revoked for any other reason outside those of art. 21 of the act on granting protection.
Portugal*		No	Not relevant
Romania	Yes		According to article 100 of Asylum law refugee status is cancelled in the following situations: *a) the person whose refugee status has been recognized has made false statements, omitted to present certain data or used false documents, which were decisive in the acknowledgment of the form of protection and there are no other reasons to lead to maintaining refugee status;* *b) after granting the form of protection it was discovered that the alien is in one of the situations stipulated in article 25.* According to article 25 the reasons for exclusion from refugee status are: (*1) Refugee status is not recognized for aliens and stateless persons of who there are serious reasons to believe that:* *a. They have committed a crime against peace and humanity, a war crime or another offence defined according to the relevant international treaties to which Romania is a party or another international document which Romania is obliged to abide by;* *b. Have committed a serious common law offence outside Romania, before being admitted to Romanian soil;* *c. Have committed acts contrary to the goals and principles of the UN, as they are mentioned in the Preamble and articles 1 and 2 of the United Nations Charter;* *d. Have instigated or were accomplices to committing the acts stipulated in letters a) – c).* *(2) Also, refugee status is not recognized for aliens or stateless persons who planned, facilitated or took part in committing terrorist acts, as they are defined in the international instruments to which Romania is a party*
Slovakia	Yes		The Ministry shall also withdraw asylum granted when a) the person granted asylum can be reasonably considered to constitute a danger to the security of the Slovak Republic, or b) the person granted asylum has been convicted of a particularly serious crime and constitutes a danger to

			the society
Slovenia	Yes		The Law defines two examples: - there are substantiated grounds to consider the person a danger to the Republic of Slovenia, which especially shows in endangerment of the security of territorial integrity, sovereignty, execution of international obligations and endangerment of constitutional order; - after final conviction for a crime against humanity and international law the applicant presents a danger to the Republic of Slovenia.
Sweden*	Yes		It is possible according to the legislation but there are no known cases
United Kingdom	Yes		API Cessation 8. REVOCATION OF REFUGEE STATUS Revocation of refugee status may be appropriate where a refugee's conduct is so serious that it warrants withdrawal of their status. Where there are serious reasons for considering that a person has committed a crime or act that falls within the scope of Article 1F(a) or(c), subsequent to the grant of asylum, it will be appropriate to revoke a person's refugee status. The possibility of revocation does not arise in respect of 1F(b) but where a person is convicted of a crime after they have been granted refugee leave (which would normally be a crime in the UK but could be a crime outside the UK) Article 33(2) of the Refugee Convention may be relevant, in which case revocation would apply.

ARTICLE 14(4)

29a. Does national legislation permit the revocation of, or refusal to grant, refugee status on the grounds set out in article 14(4)?

Austria	Yes		--
Belgium		No	Access to the territory can be refused if there are grounds for regarding an applicant as a danger to public order or national security (Article 52bis of the law). In this case, the Ministry of Interior must take the advice of the CGRA concerning the conformity of the expulsion with the GC and the status of subsidiary protection.
Bulgaria			Refusal is possible (Article 12 (2) and (3) of the law) but not cessation or revocation.
Czech Republic	Yes		Nearly literal transposition of article 14(4) in the Czech legislation
France		No	The French law refers to Article 33-2 of the Geneva Convention. Traditionally, the CNDA considered that

			this provision meant that refugees lose the rights resulting from the refugee status, more particularly the protection granted by the asylum country (CCR, SR, 16 April 1993, P.). The Council of State invalidated this interpretation of article 33-2. It stated that article 33-2, that allows the delivery of a foreigner to the authorities of the country of origin, does not mean that the refugee status can be revoked on this ground (CE, 21 May 1997, P.).
Germany	Yes		According to Section 3 (4) of the Asylum Procedure Act, the elements for the granting of refugee status which are reviewed in the course of a revocation procedure include that the respective refugee does not fulfill the preconditions of Section 60 (8) of the German Residence Act. This provision actually stipulates that the non-*refoulement* principle provided for in Section 60 (1) Residence Act does not apply if - for serious reasons the respective foreigner is to be regarded as a risk to the security of the Federal Republic of Germany; - or constitutes a risk to the general public because he or she has been finally sentenced to a prison term of at least three years for a crime or a particularly serious offence. Thus, Section 60 (8) of the Residence Act reflects basically the exceptions from the non-*refoulement* principle as stipulated in Article 33 (2) of the 1951 Convention. However, the definition of the offenses in Section 60 (8) Residence Act ("*a crime or a particularly serious offence*") goes beyond the regulation in Article 14 (4) (b) QD, which requires a "*particularly serious crime*" (cf. Q 29c). Combined with Sections 73 (1) and 3 (4) Asylum Procedures Act, the grounds stipulated under Section 60 (8) Residence Act may also justify the revocation of refugee status. Though this is in line with Article 14 (4) (a) and (b) QD, exclusion – regardless of whether in the initial asylum procedure or in a revocation procedure at a later point in time – of persons falling under Section 60 (8) Residence Act is not justified under Art. 33 (2) of the 1951 Convention, since this provision, with a view to the same prerequisites, provides only for an exception from the *non-refoulement* principle.

			In one case, an applicant was first granted asylum, but later provoked other people to murder one of his political/religious enemies, and was sentenced and jailed for 4 ½ years in Germany – after which his refugee status was revoked.
Greece	Yes		Article 14(4) has been transposed literally.
Hungary		No	As for Article 14 (4) (a) of the QD, Section 11 (3) of the Asylum Act reads: *(3) The asylum authority shall revoke the recognition as a refugee if a court with a final and absolute decision sentences the refugee for having committed a crime, which is punishable by a five-year or longer imprisonment.* The introduction of the *"crime punishable by a five-year or longer imprisonment*" benchmark is highly problematic, as it also includes a set of crimes that are not necessarily to be considered as "particularly serious crimes" in the spirit of the 1951 Convention and the QD. See more explanation in 25a and 28a. Article 14 (4) (b) of the QD has not been transposed, however, these cases may also fall under the above-mentioned provision.
Ireland	Yes		Regulation 11(1) of SI 518 of 2006.
Italy	Yes		--
Luxemburg	Yes		On this point, the directive has been transposed literally into national law. We have no knowledge about such a case.
Netherlands*	Yes		The grounds for revocation or refusal are mentioned in article 32 Aliens Act. There is also a ground for revocation that is not mentioned in the directive. This ground is applied when the person who is granted a refugee status, has moved his main residence outside of the Netherlands. It is possible that this ground cannot be used any more in the future because it is not mentioned in the directive.
Poland		No	Provisions on revocation of and exclusion from refugee status do not mention grounds established by Art. 14(4) of the QD. Nevertheless according to the art. 89g sec. 2 of the act on granting protection both recognized refugees and subsidiary form of protection recipients may be deported from Poland if conditions laid down in articles 32(1) or 33(2) of the Geneva Convention are met (exceptions from non refoulement).
Portugal*	Yes		--
Romania		No	Article 6 of the Asylum law provides: "Article 6 Non - refoulement (1)The asylum-seeker cannot be expelled, extradited or

			forcibly returned from the border or from Romanian territory, except for the cases mentioned in article 44 of Law no. 535/2004 regarding the prevention and fight against terrorism. (2) The person who has been recognized as a refugee or who has been granted subsidiary protection is protected against expulsion, extradition or return to the country of origin or any state in which one's life or liberty has been placed in danger or where they would be subjected to torture, inhuman or degrading treatment. (3)Without breaching the provisions of paragraph (2) and without affecting, automatically, the form of protection that one is the beneficiary of, the person who has been recognized as a refugee or who has been granted subsidiary protection can be removed from Romanian territory if: a. There are sound reasons for the person in question to be considered a danger to the security of the Romanian state; or b. The person in question, being convicted of a serious criminal offence by a final decision, is a danger to public order in Romania. (4) In the sense of the present law, a *serious criminal offence* is considered any crime for which the law requires the punishment to deprivation of liberty with a special maximum sentence of over 5 years.
Slovakia	Yes		--
Slovenia	Yes		--
Sweden*	Yes		--
United Kingdom	Yes		334. An asylum applicant will be granted asylum in the United Kingdom if the Secretary of State is satisfied that: (i) he is in the United Kingdom or has arrived at a port of entry in the United Kingdom; (ii) he is a refugee, as defined in regulation 2 of The Refugee or Person in Need of International Protection (Qualification) Regulations 2006; (iii) there are no reasonable grounds for regarding him as a danger to the security of the United Kingdom; (iv) he does not, having been convicted by a final judgment of a particularly serious crime, he does not constitute a danger to the community of the United Kingdom; and (v) refusing his application would result in him being required to go (whether immediately or after the time limited by any existing leave to enter or remain) in breach of the Geneva Convention, to a country in which his life or freedom would be threatened on

			account of his race, religion, nationality, political opinion or membership of a particular social group. Also at 339A: A person's grant of asylum under paragraph 334 will be revoked or not renewed if the Secretary of State is satisfied that: (ix) there are reasonable grounds for regarding him as a danger to the security of the United Kingdom; or (x) having been convicted by a final judgment of a particularly serious crime he constitutes danger to the community of the United Kingdom.

29b. Is the burden of proof explicitly on the Member State applying the provision?

Austria	Yes		It is not explicitly formulated in the Asylum Act of 2005, but derives from the Penal Code concerning cases of final judgements and administrative law in respect to Asylum Procedures.
Belgium		No	--
Bulgaria	Yes		Art 75(2) spelling out *in dubio pro fugitivo* principle.
Czech Republic	Yes		--
France			The expulsion order[87] is an administrative decision. Therefore, the administration has to give the reasons why it adopted such a decision under the supervision of the administrative judge. The refugee can as well appeal against the order before the CNDA.
Germany	Yes		According to the prevailing jurisdiction of the Federal Administrative Court, the lack of proof for a certain element in German administrative procedural law generally is on account of the party who would otherwise benefit from this particular element (Federal Administrative Court [FAC], decision of 21 August 2003 – 2 C 14.02, BVerwGE 118, 379; FAC, decision of 29 June 1999 – 9 C 36.98, BVerwGE 109, 174). Consequently, for the examination of the existence of grounds stipulated in Section 60(8) Residence Act or any other grounds for the termination of refugee status the burden of proof is with the German Federal Office for Migration and Refugees.
Hungary	Yes		The asylum legislation does not address this issue, however, according to the Administrative Procedure Act the burden of proof lies on the decision-making

[87] A refugee can only be deported if he constitutes a threat to French public order.

			authority in such a case.
Ireland		--	Not explicit, but likely this would be necessary in practice.
Italy		No	--
Luxemburg	Yes		No comment, due to the literal transposition and the absence of a case of application.
Netherlands*	(Yes)	(No)	Until now there has been a possibility (not a requirement) for the minister to revoke the permit, therefore there is a need and sometimes a duty for an assessment of interests. When he does decide to revoke a permit there are relatively high standards for the assessment and the motivation. There has been some discussion whether this approach can be maintained. According to the minister the directive demands the revocation of the permit. He intends to change the policy. According to the ACVZ there is still a possibility for an assessment.
Poland		No	There are no regulations concerning this issue in Polish legislation. In practice the state has to prove that the reasons for revoking refugee status occurred.
Portugal*		No	Not relevant
Romania		No	According to article 102 of the asylum law "*the procedure to terminate or cancel the forms of protection granted is initiated by the National Refugee Office ex officio or at the suggestion of one of the institutions with attributions in the field of national security or public order*".
Slovakia		No	No provision on this issue
Slovenia			It is not explicitly defined, but it is very likely that this is how the law will be interpreted.
Sweden*	Yes		--
United Kingdom		No	Not explicitly, but there is reference to the provision: "the SSHD must be *satisfied",* and "There will need to be clear and justifiable evidence (of deception)".

29c. Has the term "particularly serious crime" in article 14(4)(b) been defined more precisely in your national legislation and/or jurisprudence?

If the answer is yes please describe.

Austria	Yes		Not in *legislation.* *Jurisprudence:* According to jurisprudence a particularly serious crime can be e.g. murder, rape, child maltreatment, and similar crimes. The terminology contains crimes that violate especially important and sensitive objects of legal protection. Additionally, the crime has to be considered as

			particularly serious also regarding subjective and objective aspects of the respective case, danger of recurrence has to be considered to establish danger to the community, etc.
Belgium		No	--
Bulgaria	Yes		Criteria used to implement are those of Art. 98 of the Criminal Code.
Czech Republic	Yes		The criminal code defines a particularly serious crime as one that incurs a punishment of imprisonment with upper limit 8 years (§ 41 art. 2 Act.n.140/1961, Criminal Code).
France			The law does not define a "particularly serious" crime. One should refer to provisions regarding expulsion of foreigners in general. The French law uses the term 'threat to public order". Some foreigners are protected from expulsion unless this decision is required for public and State safety. There is a massive interpretative case law concerning these terms by administrative courts.
Germany	Yes		1. Serious Crime Compared with the abstract formulation in Article 14 (4) (b), Section 60 (8) Residence Act requires somewhat more precisely that the person in question has been sentenced to more than three years imprisonment, on account of either a "crime", or a "particularly serious offence". In this respect, it is worth noting that according to Section 12 (1) of the German Penal Code, a "crime" is defined as an illegal act which is punished with a minimum one-year imprisonment, while an "offence" constitutes an illegal act on which incurs the punishment of a minimum imprisonment for less than one year or a fine, Section 12 (2) Penal Code. According to Section 12 (3) Penal Code, individual increase or decrease of the sentence due to particular circumstances of the individual case have no impact on the classification of a certain illegal act as a "crime" or an "offence". Thus, depending on the individual circumstances, also offences in the meaning of Section 12 (2) of the German Penal Code may in practice be punished with imprisonment for three years or more. As examples, murder, manslaughter, kidnapping, serious cases of rape, hostage-taking, malicious arson as well as other similarly serious crimes have been mentioned in the jurisprudence (e.g., Higher Administrative Court Mannheim, decision of 18 November 1993 – 12 S 952/93).

			2. Danger to the security of the Federal Republic of Germany or to the general public There is no statutory definition of what exactly constitutes a "danger to the security of the Federal Republic of Germany" in the Residence Act. However, according to prevailing jurisprudence, the terminus refers to threats of a political nature, which are aimed at disturbing the basic legal and political order of the Federal Republic of Germany (e.g. Federal Administrative Court, decision of 30 March 1999 – 9 C 31.98). Such a threat may emanate for example from persons involved in political crimes or terrorist activities in Germany. With respect to a "danger for the general public", it is acknowledged that any criminal act itself constitutes a violation of the public order. In case of a criminal conviction to three or more years of imprisonment, the criminal wrong is regarded severe enough to pose a sufficiently serious danger for the general public and thus, no further assessment of a particular additional risk is required. However, prevailing German jurisprudence under the antecedent provisions (Section 51 (3) Aliens Act) added another criterion to the assessment of a "danger to the security of the Federal Republic of Germany" or the "danger to the general public" which would justify exclusion from the non-refoulement principle and the refugee recognition, respectively: accordingly, the danger must be current and persisting, which means that there must be a risk of repetition or continuation of activities from which the danger emanates (FAC, decision of 30 March 1999 – 9 C 31.98; FAC, decision of 7 October 1975 – 1 C 46.69). It seems that this position will be maintained for the future. The Higher Administrative Court of Lower-Saxony recently decided that exclusion from refugee status under (the first sentence of) Section 60 (8) Asylum on account of criminal offences still requires a risk of repetition (HAC Lüneburg, decision of 2 May 2007 – 11 LA 367/05; HAC Münster, decision of 21 July 2005 – 15 A 1212/04.A and decision of 7 August 2006 – 15 A 2940/06.A).
Greece*		No	--
Hungary	Yes		See question 25a and 28a.
Ireland		No	
Italy	Yes		It includes a specific list of serious crimes (such as

			murder, mafia affiliation, terrorism, import of guns, some sexual crimes, some drug crimes).
Luxemburg		No	--
Netherlands*		No	This term has not been used in the Dutch rules. A permit can be revoked in case the alien is irrevocably condemned for committing a criminal offence for which a jail sentence of 3 years or more is imposed or for which a jail sentence, community service or TBS (detention in a `hospital`) can be imposed and the unconditional part of the sentence meets the requirements of the ´sliding scale´ in art. 3.83 paragraph 2 of the Aliens Order.
Poland		No	--
Portugal*		No	--
Romania	Yes		Article 6 para 4 provides: "In the sense of the present law, a *serious criminal offence* is considered any crime for which the law requires the punishment to deprivation of liberty with a special maximum sentence of over 5 years."
Slovakia	Yes		It is defined in the Slovak Criminal Code
Slovenia	Yes		A criminal act for which the sentence prescribed in the Republic of Slovenia is longer than 3 years.
Sweden*		No	Not specified in the law
United Kingdom	Yes		Under the UK Nationality, Immigration and Asylum Act 2002, a refugee shall be presumed to constitute a danger to the community in the UK, if he is convicted and sentenced whether in the UK or outside to a period of imprisonment of at least two years. SB (cessation and exclusion) Haiti [2005] UKIAT 00036 (7 February 2005) "I am satisfied that the offences for which the appellant was convicted and in particular that of wounding which led to the recommendation for deportation are of a serious nature. I do not accept that those before 1997 should be excluded from consideration. There is no doctrine of estoppel in immigration law and, in my judgment, the respondent is entitled to regard them as pointing to a pattern of incorrigible criminality which taken with the serious wounding offence placed the appellant, even if he is still at risk of persecution in Haiti for a 1951 Convention reason, out with the protection of that Convention as an exception under Article 33(2)."

ARTICLE 14(5)

30a. Does your Member State apply article 14(5)?

Austria	Yes	
Belgium		No
Bulgaria		No
Czech Republic		No
France		No
Germany	Yes	
Hungary	See below[88]	
Ireland		No
Italy	Yes	
Luxemburg	Yes	
Netherlands*		No
Poland		No
Portugal*		No
Romania		No
Slovakia		No
Slovenia	Yes	
Sweden*	Yes	
United Kingdom	Yes	

30b. If the answer is yes, have there been cases where an applicant was refused refugee status on grounds set out in article 14(4) before a decision to grant refugee status was taken?

30c. If the answer is yes, please explain how the "danger to the security of the Member State" or "a danger to the community of that Member State" was interpreted.

Austria		No	--
Germany	Yes		This issue has already been dealt with extensively in German case law before the implementation of the QD. In accordance with Section 60 (8) 1 Residence Act, persons may be excluded from refugee status already in the initial procedure if the prerequisites of Art. 14 (4) QD are met. Normally, this issue is dealt with in revocation procedures regarding persons having committed crimes related to terrorist activities during their stay in Germany (cf. the answer on Q 29c).
Greece			No information available.
Hungary			No information available.

[88]Article 14 (5) was not transposed explicitly. However, as the provision (Section 11 (3), Asylum Act) aiming at the transposition of Section 14 (4) (a) of the QD (which eventually can cover cases falling under the scope of Article 14 (4) (b), too) has the similar wording as that on exclusion for a "*serious non-political crime*." Thus in practice, Article 14 (5) is implicitly transposed into Hungarian law, in respect of Article 14 (4) (a).

Italy		No	--
Luxemburg		No	--
Poland		No	There is no definition of danger to the security or danger to the community in the legislation. These provisions are examined individually.
Romania		No	--
Slovenia		No	--
Sweden*		No	--
United Kingdom			Unable to answer

30d. What status was the applicant given or was s/he deported?

Germany	In case the granting of refugee status is excluded only because the would-be refugee, is regarded to pose a risk for the security of the Federal Republic of Germany or a risk to the general public due to a criminal conviction in the meaning of Section 60 (8) Residence Act, the Federal Office for Migration and Refugees has to examine, whether other forms of protection – in particular those stipulated in Sections 60 (2), (3), (5) or (7) Residence Act – would apply. In this respect, it is worth noting that these regulations prevent deportation, but do not provide for a formal status (see above, chapter III, questions 34 sub.) or grant a right to legal residence. In fact, according to Section 25 (3) Residence Act, a foreigner with respect to whom the Federal Office has established a need for subsidiary protection in the meaning of Sections 60 (2), (3), (5) or (7) Residence Act shall be granted a residence permit. A residence permit, however, must not be granted if the refugee has committed (a) a crime against peace, a war crime or a crime against humanity; (b) a criminal act of significant weight, (c) acts contrary to the purposes and principles of the United Nations, or (d) if the foreigner poses a danger for the security of the Federal Republic of Germany or the general public. In many cases, where the recognition as a refugee is impossible in accordance with Section 60 (8) Residence Act, one of the provisions excluding the grant of a residence permit under Section 25 (3) Residence Act – in particular, Sections 25 (3) (b) or (d) Residence Act – will also apply and thus, the foreigner in question will not receive a residence permit. Even in those cases, however, deportation to the country of origin would only be the last resort and requires not only serious reasons to believe, but also the conviction that the foreigner in question provides an extraordinary risk for the security of the Federal Republic of Germany or the general public. In addition, deportation to the country of origin may only be considered if no other state is willing to accept

	the foreigner. As explained above, Section 60 (8) does not exclude the use of Article 3 CAT and Article 3 ECHR. Some of the respective persons receive this protection. If the person does not meet the inclusion criteria (but is for reasons of procedural requirements "excluded" under Article 14 (4) QD - cf. Q 25c), he or she would not be granted subsidiary protection. As very often, when deportation is not feasible, most of the respective persons will, in practice, receive a tolerated stay permit.
Hungary	No information available
Sweden*	Person has been deported

CHAPTER V: QUALIFICATION FOR SUBSIDIARY PROTECTION

ARTICLE 15

31a. Is refugee status assessed before subsidiary protection is considered? Are there two distinct applications or is it treated as a sequential procedure?

Austria	Refugee status is assessed before subsidiary protection, in a sequential procedure.
Belgium	There is only one application introduced by the asylum seeker. The application is examined under the two forms of protection: first the GC and then, if the status is rejected, under subsidiary protection.
Bulgaria	Sequential procedure is required.
Czech Republic	There is one application for refugee status and subsidiary protection together (application for international protection). First refugee status is assessed and if the conditions to get refugee status are not fulfilled, subsidiary protection is assessed.
France	There is a single procedure for refugee status and subsidiary protection. Refugee status is assessed before subsidiary protection is considered.
Germany	The German Federal Office as well as the courts at all levels decide on qualification for refugee status before qualification for subsidiary protection is assessed. Both assessments take part in the same sequential procedure if an asylum application is filed. However, it is also possible to file an isolated application for subsidiary protection on humanitarian grounds based on Section 60 (2), (3), (5) or (7) Residence Act 2004 (cf. Q 31b). This is, e.g., often the case with unaccompanied children / separated children if their individual fate does not correspond with the criteria according to which refugee status could be granted. If such an isolated application for humanitarian status is made, the local aliens authority is responsible for deciding on the application, but has to involve the Federal Office (Section 72 (2) Residence Act 2004). The decision by the BAMF covers also the question, whether deportation is possible or a tolerance has to be granted (e.g.. because

	of illness or because flights are not available).
Greece	There is one application according to which it is assessed whether the applicant qualifies for protection under refugee or subsidiary protection status.
Hungary	According to Hungarian law, the proceeding authority examines the criteria to qualify for refugee status and for subsidiary protection in a single procedure. It is not possible to apply for subsidiary protection separately.
Ireland	Yes. Two distinct applications; subsidiary protection application is sequential to a refusal of refugee status.
Italy	It is treated as a sequential procedure.
Luxemburg	The refugee status is assessed before subsidiary protection is considered, but in a unique procedure of examination.
Netherlands*	At first it will be examined whether an alien qualifies for refugee status, and then it will be determined whether an alien is eligible for subsidiary protection. This will be done in one procedure; no distinct application is necessary.
Norway	It is a single procedure
Poland	Refugee status is assessed before subsidiary protection. It is treated as a sequential procedure.
Portugal*	Yes, refugee status is assessed before subsidiary protection. National asylum law establishes a single procedure, therefore each application is analysed within both levels of protection.
Romania	Yes, the refugee status is assessed before subsidiary protection.
Slovakia	Yes, the refugee status is assessed first, after that the possibility of subsidiary protection is evaluated. It is a sequential procedure and there is only one application.
Slovenia	It is treated as a sequential procedure.
Sweden*	It is treated as a sequential procedure.
United Kingdom	Refugee status is assessed before subsidiary protection is considered. This is a sequential procedure. Convention – Humanitarian – Discretionary 339C. A person will be granted humanitarian protection in the United Kingdom if the Secretary of State is satisfied that: (i) he is in the United Kingdom or has arrived at a port of entry in the United Kingdom; (ii) he does not qualify as a refugee as defined in regulation 2 of The Refugee or Person in Need of International Protection (Qualification) Regulations 2006; (iii) substantial grounds have been shown for believing that the person concerned, if returned to the country of origin, would face a real risk of suffering serious harm and is unable, or, owing to such risk, unwilling to avail himself of the protection of that country; and (iv) he is not excluded from a grant of humanitarian protection.

31b. Who qualifies for subsidiary protection according to your national legislation and/or jurisprudence? Has the transposition of the directive expanded the category of persons who can receive protection?

Austria	Subsidiary protection is granted if the rejection at the border, forcible return or deportation of the individual to his country of origin would constitute a real risk of violation of articles 2 or 3 ECHR or of Protocol 6 or 13 to the Convention or would represent for the alien as a civilian a serious threat to his life or person by reason of indiscriminate violence in situations of international or internal conflicts. It is not granted if there is an IPA. No expansion. Subsidiary Protection formerly did not incorporate the second matter of fact concerning conflicts, but was de facto used by jurisprudence.
Belgium	The law has transposed integrally article 15 but doesn't require an individual threat in c).
Bulgaria	No change since transposition.
Czech Republic	We have nearly literal transposition of serious harm as in Article 15. In addition, subsidiary protection shall be granted to a person whose duty to leave the country would be against the obligations arising from international agreements which the CR is bound by.
France	Article 15 has been transposed by the 10th December 2003 Act (art.L.712-1 CESEDA). Before the transposition of subsidiary protection there was a complementary form of protection called territorial asylum. Territorial asylum was granted to persons whose life or freedom was threatened in their country of origin or who might be victims of treatment contrary to article 3 ECHR. The applications were being examined directly by the Ministry of Interior with a non-suspensive appeal before the administrative court. This protection was mainly directed to Algerians who did not qualify for refugee status because of a restrictive interpretation of the notion of actors of persecution. Although many of them did apply for that protection, it was granted in very few cases. For instance, in 2003, 111 territorial asylum applications were granted out of 27740 applications. The procedure for subsidiary protection is indeed fairer. 84 persons were granted this protection in 2004, and about 550 in 2005 and 2006 (figures still unknown for 2007). The scope of the protection as interpreting by the CNDA, seems to cover the one of territorial asylum. It is sometimes broader because the CNDA delivers protection to persons fearing serious harm from a family member and victims of domestic violence.
Germany	All those who can not get refugee status qualify for subsidiary protection because they cannot prove that they entered Germany without touching a "safe third country (by which Germany is surrounded – all EC – countries are safe third countries) but can not be sent back there within the Dublin procedure, because the other state denies acceptance (these people are by law excluded from getting the right of asylum). And the group of those who face specific "humanitarian problems (for example: gender related mutilation, severe illnesses like AIDS, old age or the risk of starving.)

	The transposition of the directive has expanded the protection. § 60 sec. 3 now says that not only the risk of execution but also the risk for imposition of the death penalty hinders deportation (Art 15 a). Before only the risk of being executed sufficed. There is still a discussion pending in the courts and between experts about the scope of Article 15c for subsidiary protection, and in particular about whether the danger does not have to be individualised, but (like civil war for example– a risk for anyone who lives in that country exists (recital 26). Section 60 Residence Act describes persons qualifying for subsidiary protection as follows: *- A foreigner may not be deported to a state in which a concrete danger exists of the said foreigner being subjected to torture or inhuman or degrading treatment or punishment.* *- A foreigner may not be deported to a state in which he or she is wanted for an offence and a danger of the foreigner being sentenced to the death penalty or being executed applies. In such cases, the provisions on deportation shall be applied accordingly.* *- A foreigner may not be deported if deportation is inadmissible under the terms of the Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms (Federal Law Gazette 1952 II, p. 685).* *- A foreigner should not be deported to another state in which a substantial concrete danger to his or her life and limb or liberty exists. A foreigner shall not be deported to another state if he would be exposed as a civilian to a serious individual threat to limb or life in the context of an international or internal armed conflict. Dangers in the sense of Sentences 1 and 2 to which the population or the segment of the population to which the foreigner belongs are generally exposed, shall receive due consideration in decisions pursuant to Section 60a(1), sentence 1["Temporary Suspension of Deportation"].* *- For the assessment of a prohibition of deportation according to paragraphs 2, 3 and 7, sentence 2, the Articles 4 (4), 5 (1) and (2), and 6 to 8 of the Directive 2004/83/EC (...) shall apply.* The transposition of the QD has effectively broadened the definition of subsidiary protection, for example regarding the recognition of non-state actors as agents potentially causing serious harm. Before the direct application of the QD, the German interpretation of protection under the ECHR did not include dangers emanating from non-state sources. Consequently, health-related dangers were also excluded from the German concept of interpretation. In addition, Article 15 lit. (a) goes beyond the past concept of protection against the death penalty in Section 60(3) Residence Act 2004 by also including the imposition of such penalties, in addition to a danger of execution of

	the death penalty.
Greece	Presidential Decree 96/2008 defines "serious harm" exactly as Article 15 of the Directive does. Before the transposition of the Directive the following provision regulated the so-called "humanitarian status" (art. 8 para. 2 of Presidential Decree 61/1999): "For the approval and issuance of a residence permit on humanitarian grounds the following conditions are particularly taken into consideration: a) objective impossibility of removal or return of the alien to his country of origin or usual residence due to "force majeure" (e.g. serious health reasons of the alien or of members of his family, international embargo imposed on his country, civil war followed by mass violations of human rights etc), b) the fulfilment of the requirements of the non-refoulement clause of article 3 of the 1950 European Convention on Human Rights and the Protection of Fundamental Freedoms (ratified by L.D. 53/1974. Official Gazette 256) or of article 3 of the New York (10.12.1984) International Convention Against Torture (ratified by Greece by L. 1782/1988).
Hungary	According to Section 12 of the Asylum Act: "(1) *The Republic of Hungary shall grant subsidiary protection to a foreigner who does not satisfy the criteria of recognition as a refugee but for whom there is a risk that, in the event of his/her return to his/her country of origin, s/he would be exposed to serious harm and is unable or, owing to fear of such risk, unwilling to avail himself/herself of the protection of his/her country of origin.* *(2) Fear of serious harm or of the risk of harm may also be based on events which occurred following the foreigner's departure from his/her country of origin or on the activities of the foreigner which s/he was engaging in following departure from his/her country of origin."* Section 61 of the Asylum Act reads: "*Upon the examination of the criteria of recognition, the following shall be regarded as serious harm:* *a) threat of the death penalty;* *b) application of torture, cruel, inhuman or degrading treatment or punishment;* *c) a serious threat to the life or physical integrity of a civilian person which is the consequence of indiscriminate violence used in the course of an international or internal armed conflict.*" The earlier form of subsidiary protection (based on the "non-refoulement principle" embedded in aliens legislation) only included paragraphs (a) and (b), but not (c). However, acts and situations falling under the provision of Section 61 (c) of the Asylum Act have usually been recognised as relevant for the application of the prohibition of torture, inhuman and degrading treatment. Thus, while in theory Section 61 (c) may expand the category of persons eligible for subsidiary protection, in practice it is not likely to do so.

	As for Section 61 (b), the Asylum Act uses the wording of the ICCPR (rather than the ECHR and the QD), adding the word "cruel" as well. This, while in principle an important recognition of the importance of the universal instrument, is not likely to mean any difference in practice.
Ireland	Irish law did not provide for subsidiary protection prior to the transposition of the Directive. Regulation 2(1) of SI 518 of 2006 states: "*a person eligible for subsidiary protection*" means a person – (a) who is not a national of a Member State, (b) who does not qualify as a refugee, (c) in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, would face a real risk of suffering serious harm as defined in these regulations, (d) to whom regulation 13 of these regulations does not apply, and (e) is unable or, owing to such risk, unwilling to avail himself or herself of the protection of that country.
Italy	Italian law did not provide subsidiary protection before the transposition of the directive. Only humanitarian protection could be granted at the discretion of the authorities.
Luxemburg	The criteria for subsidiary protection have been literally transposed. Until today, the authority has not once granted subsidiary protection. After a transitional period following the transposition of the directive, the jurisprudence has started to apply the subsidiary protection clause. I.e, an Albanian applicant for non-state persecution in the framework of blood revenge. A Sierra Leonean applicant for fear of persecution from private militia.
Netherlands*	In the national legislation (article 29(1)(b) of the Aliens Act), persons qualify for subsidiary protection when their return would breach of rules of international law, such as article 3 ECHR, article 3 CAT or art. 7 ICCPR. The Minister of Justice makes clear in the explanatory memorandum that he is of the opinion that article 15 QD is wholly covered by article 29(1)(b) of the Aliens Act. He considers article 15 QD as an enumeration of situations in which the prohibition of refoulement is applicable. In the opinion of the Minister article 29(1)(b) of the Aliens Act is not just offering protection for refoulement in cases in which article 3 ECHR or article 3 Convention Against Torture (CAT) is applicable, but also for the situations referred to in article 15 paragraph a or c QD. In several judgments it has been decided, however, that article 15 (c) QD is an amendment of law. From these judgments the conclusion can be drawn that the regional courts consider that article 15 offers a form of protection that was not previously offered. The matter has not yet been resolved. The Dutch Highest Administrative Court referred preliminary questions to the European Court of Justice on the interpretation of article 15(c) Qualification Directive. Hopefully, the answer will make clear whether the category of persons who are

	eligible for protection, is expanded. The State Secretary stated that the referral does not require her to change policy.
Norway	On the contrary – the proposed new legislation expands refugee protection to a wider circle than the directive. In addition, subsidiary status is also given on a pure humanitarian basis
Poland	According to art. 15 an alien who does not fulfill the conditions for being granted refugee status, is granted subsidiary protection, if upon his/her return to the country of origin s/he could face a real risk of suffering serious harm. Serious harm is defined as: 1) death penalty judgment or execution, 2) torture or inhuman or degrading treatment or punishment, 3) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict. Moreover, an alien who does not qualify to be granted neither refugee status, nor subsidiary protection may be granted a tolerated stay permit. According to art. 97 sec. 1 of the Act on granting protection "*an alien shall be granted a tolerated stay permit on the territory of the Republic of Poland if his / her expulsion:* *1) may be effected only to a country where his/her right to life, to freedom and personal safety could be under threat, where he/she could be subjected to torture or inhumane or degrading treatment or punishment, or could be forced to work or be deprived of the right to fair trial, or could be punished without any legal grounds – within the meaning of the Convention on Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 (J.L. of 1993 No. 61, it. 284 and 285, of 1995 No. 36, it. 175, 176 and 177 and of 1998 No. 147, it. 962 and of 2002 No. 127, it. 1084);* *2) is unenforceable due to reasons beyond the authority executing the decision on expulsion or beyond the alien.*" The transposition of the QD expanded the number of international protection statuses that can be granted to persons seeking protection to three. Subsidiary protection did not replace the tolerated stay permit, so at least in theory both forms of protection can still be granted, as the reasons for granting protection differ for both institutions.
Portugal*	Asylum Law presently in force establishes an inclusive subsidiary protection regime: according to article 8 *(Residence Permits for Humanitarian Reasons)* *1. A residence permit for humanitarian reasons shall be granted to aliens or stateless people to whom the provisions of article 1 (guarantee of the right of asylum) do not apply and that are prevented or feel unable to return to the country of their nationality or habitual residence, for reasons of serious insecurity emerging from armed conflicts or from the repeated outrage of human rights violations that occur thereon*
Romania	Article 26 of the Aliens law defines subsidiary protection as follows: "Subsidiary protection can be granted to the alien or stateless person who does not fulfill the conditions to be recognized as a refugee and regarding whom there are well-founded reasons to believe that, in the

	case of returning to the country of origin, or respectively to the country where he has his habitual residence, he will be exposed to a serious risk, in the sense of the provisions of paragraph (2), and who cannot or, due to this risk, does not wish the protection of that country. "*The definition of a serious risk, in the sense of paragraph (1), is:* *1. conviction to a death sentence or the execution of such a sentence; or* *2. torture, inhuman or degrading treatment or punishment; or* *3. a serious, individual threat to one's life or integrity, as a result of generalized violence in situations of internal or international armed conflict, if the applicant is part of the civilian population*".
Slovakia	The Ministry shall grant subsidiary protection to an applicant to whom it did not grant asylum, provided that there are good reasons to consider that the applicant would face a real risk of serious harm if returned to his/her country of origin, unless otherwise stipulated by this Act.
Slovenia	No.
Sweden*	In Sweden subsidiary protection is granted basically according to Article 15. However, Swedish legislation provides for a somewhat wider scope as it considers that also people fleeing "*other severe conflict"* should be granted subsidiary protection.
United Kingdom	Someone who is not recognised as a refugee but who would face a real risk of serious harm on return to their country of origin, is unable to avail themselves of the protection of that country and is not excluded. The transposition of the directive has not expanded the category of persons who can receive protection. Exceptional Leave to Remain (ELR) has been replaced by Humanitarian Protection (HP) and Discretionary Leave (DL).

31c. Has the transposition of the directive effectively narrowed the definition of previous national de facto statuses? If so, has this left a category of persons without a legal status that would previously have been granted a status, or resulted in subsidiary protection status for any persons who previously would have been recognized as refugees?

Austria	The limitations concerning conflicts and civilians are de facto not relevant within jurisdiction as the facts of relevant cases are normally subsumed under the wider understanding of art 3 ECHR.
Belgium	No
Bulgaria	No
Czech Republic	No, the definition of statuses is almost the same as before.
France	See questions 31b So far, we do not notice a "shift" between subsidiary protection and refugee status. The Geneva Convention still remains the main tool for protection in France. However, article 15(c) is applied to situations very similar to ones eligible under the Geneva Convention because of

	the requirement of the individualisation of the serious harm.
Germany	As far as the experience from the first four months shows: no. The only real change seems to take place in the question of conversing a religious belief, especially with Iranians: Before, most of them did not qualify as refugees (because they were allowed to practise their belief in private surroundings), now very recent decisions by courts and the BAMF have changed and accept them as refugees according to Art 1 A Nr. 2 Geneva Convention because the understanding is that practising (Christian) religion also in public is comprised by the understanding and interpretation of Art 1 A GC.
Hungary	No
Ireland	No
Italy	--
Luxemburg	No
Netherlands*	It has not narrowed the category of persons who will receive protection. The category of persons who will receive protection for medical reasons according to article 3 ECHR will still receive this protection under article 29 paragraph 1 sub b Aliens Act, because this derives from article 3 ECHR.
Poland	It is too early to assess the impact of transposition in this regard. All persons who were granted tolerated stay permits under art. 97 sec. 1 p. 1 of the act on granting protection before 29th May 2008, are now recognized as subsidiary protection recipients. This status allows them to participate in individual integration programs (provided that they apply within 3 months from the date when the amendments to act on granting protection came into force). As mentioned above, now there are three types of protection: refugee status, subsidiary protection and tolerated stay permit. Please see the chart for details. *Act on granting protection to aliens on the territory of the Republic of Poland* *Refugee status*- Art. 13(1), Refugee status is granted to an alien, who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion and membership of a particular social group is unable or unwilling to avail himself/herself of the protection of that country. *Subsidiary protection- Art. 15(1),* An alien who does not fulfil conditions for being granted refugee status, is granted subsidiary protection, if on his/her return to the country of origin he would face a real risk of suffering serious harm. *Tolerated stay permit- Art. 97(1 and 1a),* An alien shall be granted the permit for tolerated stay on the territory of the Republic of Poland if his/her expulsion: 1) may be effected only to a country where his/her right to life, to

	freedom and personal safety could be under threat, where s/he could be subjected to tortures or inhumane or degrading treatment or punishment, or could be forced to work or deprived the right to fair trial, or could be punished without any legal grounds – within the meaning of the Convention on Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 (…) 1a) would violate the right to family life as stated in the European convention on Human Rights (…) or violate child rights as stated in the Convention on the Rights of Child (…).
Portugal*	Not relevant, directive not yet implemented
Romania	Yes, previous conditioned humanitarian protection did not have a provision regarding civilians in internal or international armed conflict but provided for persons who risk infringement of their rights due to their membership to a vulnerable group of persons. My opinion is that the previously definition was broader, because it did not include a strict definition of what individual risk means.
Slovakia	This is a new form of protection that was introduced into Slovak national legislation by the QD.
Slovenia	Yes, previously humanitarian status was granted in cases where a person who had not been granted the right to asylum and for whom deportation was not allowed (non-*refoulement*), if their deportation to their country of origin would pose a threat to their safety or physical integrity in the sense of the ECHR.
Sweden*	Not relevant, directive not yet implemented.
United Kingdom	Exceptional Leave to Remain (ELR) was introduced to focus on those who needed special humanitarian protection but do not qualify as refugees. It was replaced by a new Humanitarian Protection System on 1st April 2003. Humanitarian Protection (HP) will now be granted to those who, though not refugees, would, if removed, face a serious risk to life or person in the country of return arising from the death penalty, unlawful killing or torture, inhuman or degrading treatment or punishment. The Home Secretary also retained the discretion to grant limited leave in "defined and tightly focused" circumstances and this is called Discretionary Leave (DL). This type of leave is often used in relation to Article 8 rather than Article 3 claims, and for unaccompanied minors who are unable to be returned due to lack of reception facilities in their country of origin. Residence permits under transposition are now granted for 5 years to recipients of humanitarian protection as well as recipients of asylum. This used to be 3 years for HP. However, when asylum was granted the recipient was given Indefinite Leave to Remain (ILR).

ARTICLE 15(b)

32. Is article 15(b) interpreted in your Member State in line with its international obligations, i.e. European Court of Human Right's interpretation of article 3? (are the words "in the country of origin" added to the wording of article 3?)

Austria	Yes, the words "in the country of origin" are not added to the reference to article 3 (the wording of article 3 is not repeated).
Belgium	The law holds the words "in the country of origin".
Bulgaria	Yes, the "country of origin" is in the definition
Czech Republic	No, the words "in the country of origin" were not added.
France	The jurisprudence has a very broad interpretation of acts falling under the scope of article 15(b), i.e. domestic violence, forced marriage, human trafficking, mafias, vendetta, traditional rituals… However, there is no guideline regarding what acts fall under the scope of article 15 (b). The ECHR jurisprudence does not seem to be used by OFPRA and CNDA. They do not clarify what harms could fall under article 15(b). The words "in the country of origin" are added.
Germany	Yes. With the 2007 Transposition Act Germany fully implemented Article 15(b) QD. Where the relevant provision before only granted protection from torture in the country of origin, the words "or inhuman or degrading treatment or punishment" have been added. The provision does not play a significant role in the decision practice though, which shows that the broadened scope of subsidiary protection under Article 15(b) QD has not yet been taken into due consideration by the adjudicators. Instead, in relevant cases rather Section 60(7) Residence Act (impending danger for life and limb) is applied.
Greece	The words "in the country of origin" are added to the wording of Article 15.
Hungary	Section 61 (b) of the Asylum Act reads: "*Upon the examination of the criteria of recognition, the following shall be regarded as serious harm: (...)* *b) application of torture, cruel, inhuman or degrading treatment or punishment; (...)"* The Asylum Act uses the wording of the ICCPR (rather than the ECHR and the QD), adding thus the word "cruel" as well. This, while in principle is an important recognition of the importance of the universal instrument, is not likely to mean any difference in practice. No concrete reference is made to the ECHR. The words "in the country of origin" were not transposed. However, Section 45 of the Asylum Act concerning the principle of non-refoulement mentions the applicant's country of origin when phrasing the definition. "*The prohibition of refoulement (non-refoulement) prevails if the person seeking recognition was exposed to the risk of persecution due*

	to reasons of race, religion, ethnicity, membership of a particular social group or political opinion or to death penalty, torture, cruel, inhuman or degrading treatment or punishment in his/her country of origin, and there is no safe third country which would receive him/her."
Ireland	Yes, the words 'in the country of origin' are added
Italy	Yes, it has been transposed literally
Luxemburg	Yes
Netherlands*	The national protection is broader than that afforded by article 15 of the QD
Norway	It follows art. 3.
Poland	Yes it is. No, only the word 'a country' is added.
Portugal*	Not relevant, directive not yet implemented
Romania	The words "country of origin" are added to the wording of article 3. Article 26 from the Asylum Law provides "Subsidiary protection (1) Subsidiary protection can be granted to the alien or stateless person who does not fulfill the conditions to have refugee status recognized and regarding whom there are well-founded reasons to believe that, in the case of returning to the country of origin, respectively to the country where he has his usual residence, will be exposed to a serious risk, in the sense of the provisions of paragraph (2), and who cannot or, due to this risk, does not wish the protection of that country. (2)The definition of a *serious risk*, in the sense of paragraph (1), is: 1. conviction to a death sentence or the execution of such a sentence; or 2. torture, inhuman or degrading treatment or punishment; or 3. a serious, individual threat to one's life or integrity, as a result of generalized violence in situations of internal or international armed conflict, if the applicant is part of the civilian population.
Slovakia	Yes, but the words "in the country of origin" are not added in the law.
Slovenia	No, it is not in line with ECHR.
Sweden*	Yes. The words "in the country of origin" are not added.
United Kingdom	No – reference is made to "country of return" as opposed to "country of origin". It is defined at 339C of the Immigration Rules: "Country of return means a country or territory listed in paragraph 8(1)(c) of Schedule 2 to the Immigration Act 1971: (i) a country of which the applicant is a national or citizen; or (ii) a country or territory in which the applicant has obtained a passport or other document of identity; or (iii) a country or territory in which the applicant embarked for the United Kingdom; or (iv) a country or territory to which there is reason to believe that the claimant will be admitted."

ARTICLE 15(c)

33a. Have there been cases concerning the applicability and interpretation of article 15(c)?

If yes, please explain the scope and interpretation given by the relevant authority.

Austria		No	--
Belgium	Yes		In my opinion there's not enough jurisprudence to distinguish lines of interpretation.
Bulgaria	Yes		Recently, Iraqi applicants were granted subsidiary protection using the exact wording of 15(c).
Czech Republic	Yes		There were few cases of Iraqis, Afghans and Chechens. The given interpretation is inexplicit and not well – founded.
France	Yes		See below
Germany	Yes		It is too complicated to report the details of German jurisprudence with respect to Art 15c. Generally speaking, the exact phrasing of the Art 15 c was not incorporated in § 60 sec.7 Aliens Act. "*Indiscriminate violence"* was not translated, only *"serious individual threat for health or life*". And the interpretation is mostly, but not in all sentences interpreted with reference to recital 26. But the application of this has only just started and the higher courts did not decide the controversial questions – so we have to wait and see, what the jurisprudence within the next 2 or 3 years may find out. According to the Ministry of Interior guidelines, in order to find protection under the Directive, the violation of life or person must be „equivalent to being unavoidable" ("gleichsam unausweichlich"). By applying these standards, the MOI seeks to avoid any enlargement of the scope of protection in comparison to the German system formerly applying without the European provisions.
Greece		No	No information available yet.
Hungary		No	No relevant cases available, very short time elapsed since the entry into force of the Asylum Act.
Ireland	Yes		See *H & Another v Minister for Justice, Equality and Law Reform*, judgment of Feeney J. delivered 27/7/07. The following is an extract of that judgment concerning the definition of serious harm in article 15 and how this definition changes the scope of the obligation on the State in considering cases of subsidiary/complementary protection:

			"*The matters to be considered by the Minister under s. 5 of the Refugee Act 1996 [prohibition of refoulement] differ to some extent from the matters that would now require to be considered under the serious harm definition within article 15 of the Directive. The limitation contained in s. 5(1) of the 1996 Act that the threat be on account of an Applicant's race, religion, nationality, membership of a particular social group or political opinion is not present in article 15 and the obligation that a person be likely to be subject to a serious assault requires a different consideration then the consideration required by article 15(c) of the Directive of a serious and individual threat to a civilians life or person by reason of indiscriminate violence in situations of international or internal armed conflict.* It does not appear to follow that consideration of the statutory matters identified in s. 5 of the 1996 Act would necessarily result in the Minister having considered in each and every case matters which he is now obliged to consider under the provisions of article 15 of the Directive dealing with serious harm." [italics added] Feeney J also discussed how the Article 15 definition of serious harm may result in an individual applicant having a stronger case in showing that their personal circumstances have changed since their initial application for protection (refugee status) was refused: "Under the Regulations the Minister is not obliged to consider applications from persons who were subject to a deportation order prior to the 10th October, 2006, but it is open to such persons to seek to have the Minister to consider their application if they can identify facts or circumstances which demonstrate a change or alteration from what was the position at the time that the deportation order was made. *Those altered circumstances could include a claim that their personal position is effected by the Directives definition of serious harm*. Altered circumstances might also arise as a result of the passage of a prolonged period of time resulting in altered personal circumstances or alterations in the conditions in the Applicant's country of origin. It is open to the Minister in determining whether or not to exercise his discretion to have regard to any new or altered, circumstances or facts identified by the person seeking to have the Minister exercise his discretion." [italics added]
Italy		No	--

Luxemburg	Yes		The authority applies a restrictive interpretation of article 15 (c). In practice, subsidiary protection under article 15 (c) is refused for the same motives as those used for refusing the refugee status.
Netherlands*	Yes		As mentioned above, the State Secretary holds that article 15(c) Qualification Directive falls within the scope of article 29(1)(b) Aliens Act and does not offer a complementary protection and does not contain an amendment of law. Several Regional Courts disagree. There are some judgments in which the courts went into full consideration of the differences between article 29(1)(b) Aliens Act and article 15(c) QD his was for example the case in the judgments of the Regional Court Den Bosch[89] and the judgment of the Regional Court Amsterdam.[90] In the latter judgment the court stated that "*from the words of article 2e QD, especially the words "substantial grounds" and "real risk", can be concluded that, in the definition for a person who is eligible for subsidiary protection, is intended to connect to the case law of the ECHR concerning article 3 ECHR"*. Furthermore, the text of article 15(c) QD led the court to conclude that there is a certain "singled out" criterion for the application of article 15(c) QD. "*From the explanatory memorandum on article 29 paragraph 1 sub b Aliens Act, appears that this ground for granting a status is comparable to article 3 ECHR, article 3 CAT and article 7 International Covenant on Civil and Political Rights (ICCPR). These articles function as supplementary prohibitions for refoulement next to article 33 of the Geneva Convention"*. The Court states that these prohibitions are laid down in article 15(b) QD. Therefore the Court presumes that article 15(c) QD offers a complementary or other form of protection, compared to article 29(1)(b) Aliens Act. In addition, according to the text of article 15(c) QD a situation of international or internal armed conflict should be the cause of the threat. This differs from the text and application of article 29(1)(b) Aliens Act. According to the court this justifies the conclusion that article 15(c) QD offers a protection does not fall within the scope of Article 29(1)(b) Aliens Act.

[89] Regional Court Den Bosch, 29 May 2007, AWB 06/55034 and 12 April 2007, AWB 06/54347
[90] Regional Court Amsterdam, 26 January 2007, AWB 06/51459

			On 12 October 2007 the Dutch highest Administrative Court referred preliminary questions to the European Court of Justice:[91] Should Article 15(c) of Directive 2004/83/EC, be interpreted in manner that this provision is only meant to offer protection in a situation, in which article 3 ECHR, as interpreted by the ECHR in its case law, applies, or does the aforementioned provision offer a complementary or other form of protection, when compared to article 3 ECHR? If article 15c of the Directive, when compared to article 3 ECHR, offers a complementary or other form of protection, what are the criteria for the assessment whether a person who claims to qualify for subsidiary protection status runs a real risk of a serious and individual threat as a consequence of indiscriminate violence, as stipulated in article 15c QD, when read in combination of article 2e QD? After the preliminary referrals there have been some judgments in summary proceedings in which is decided that there cannot be on the merits of the case until the European Court of Justice has decided on the preliminary questions.
Poland		No	Not relevant. Until May the 29th this provision did not exist in Polish law, jurisprudence or practice.
Portugal*		No	Not relevant
Romania	Yes		In cases of Iraqi asylum-seekers the relevant authorities explained that there is no internal or international armed conflict in Iraq.
Slovakia	Yes		This provision was applied to Iraqi asylum seekers
Slovenia		No	
Sweden*	Yes		The provisions of art. 15 are already covered in Swedish legislation. The scope can, according to our opinion, be considered to be somewhat wider in Swedish legislation. A person can be in need of subsidiary protection because of either war or internal armed conflict, but also because of other severe conflicts in the country that do not reach the level of being considered as an armed conflict. The wording in Swedish legislation in that sense is "serious abuse" – which has a wider scope than serious threat. Also, the word "civilian" is not used. There is no requirement that there be an individual risk when there is an armed conflict – however when there is a risk of serious

[91] Council of State, 12 October 2007, 200702174/1

			abuse in a situation of severe conflict (not internal armed conflict) this requirement exists. A problem is that there has been a restrictive interpretation of what has been considered as constituting an internal armed conflict in practice. For instance - Iraq – the Swedish authorities do not consider it to be a situation of armed conflict in Iraq– which means that the applicants have to prove that they are at a greater risk than the general population, or at least that there is a link or a causal connection between the individual and the risk of serious abuse. Also - the requirement in art 2(e); substantial grounds for believing that a person would face a real risk of suffering serious harm as defined in art. 15, can be considered to be more generous than the Swedish requirement; well founded fear for being exposed to serious abuse.
United Kingdom	Yes		KH (Article 15(c) Qualification Directive) Iraq CG [2008] UKAIT 00023 (1) Key terms found in Article 15(c) of the Qualification Directive are to be given an international humanitarian law (IHL) meaning. Subject to (3) below, the approach of the Tribunal in HH & others (Mogadishu: armed conflict: risk) Somalia CG [2008] UKAIT 00022 to this provision is confirmed. (2) Article 15(c) does add to the scope of Article 15(a) and (b), but only in a limited way. It is limited so as to make eligible for subsidiary protection (humanitarian protection) only a subset of civilians: those who can show that as civilians they face on return a real risk of suffering certain types of serious violations of IHL caused by indiscriminate violence. (3) Article 15(c) is not intended to cover threats that are by reason of all kinds of violence. It does not cover purely criminal violence or indeed any other type of non-military violence. Nor does it cover violence used by combatants which targets adversaries in a legitimate way. (4) Where it is suggested that a person can qualify under Article 15(c) merely by virtue of being a civilian, the principal question that must be examined is whether the evidence as to the situation in his or her home area shows that indiscriminate violence there is of such severity as to pose a threat to life or person generally. If such evidence is lacking, then it will be necessary to identify personal characteristics or circumstances that give rise to a "serious and individual threat" to that individual's "life or person". (5) Given that the whole territory of Iraq is in a state of

			internal armed conflict for IHL purposes (that being conceded by the respondent in this case), a national of Iraq can satisfy the requirement within Article 15(c) that he or she faces return to a situation of armed conflict, but will still have to show that the other requirements of that provision are met. (6) Neither civilians in Iraq generally nor civilians in provinces and cities worst-affected by the armed conflict can show they face a "serious and individual threat" to their "life or person" within the meaning of Article 15(c) merely by virtue of being civilians.

33b. How has your Member State interpreted 'individual'? Is recital 26 used by your Member State? Is the applicant required to show a particular degree of individual harm?

Austria	The applicant has to show individual harm, defined as persecution targeting him personally contrary to random or general effects of a civil war regarding an application for refugee status. Detailed criteria have not been developed by jurisprudence. Concerning subsidiary status the wording transposing the directive into national law ignored the term "individual" of art 15(c).
Belgium	There is no transposition of these terms.
Bulgaria	No.
Czech Republic	The transposition does not involve the word, "individual", but according to the sense of law (Asylum Act) and case law there is a obligation to confer a particular degree of individual harm.
France	The French jurisprudence is more or less in accordance with recital 26. The applicant is required to show a particular degree of individual harm, or at least, why he/she would be more concerned by the serious threat. The Court requires that the applicant be at greater risk of harm than the rest of the population. For example, in two cases about Iraqi nationals, the first one was eligible for subsidiary protection because she was an isolated Christian woman and had a comfortable financial situation; the second one was a former member of the Baath party (CRR, SR, 17 February 2006, Mlle K and M.A.).
Germany	The implementation of Article 15(c) QD falls short of a literal transposition. In particular, the criterion of "*indiscriminate violence*" (in the German version of the QD translated as 'arbitrary violence') is left out of the text of the new legal provision. Moreover Section 60(7), sentence 2 Residence Act 2004 stipulates that dangers generally threatening the entire population of a country or a specific group to which the alien belongs, will be considered only under Section 60a Residence Act 2004 ("Temporary suspension of deportation"). The legislator refers to recital 26 of the QD in the Explanatory Report of the Transposition Act 2007. According to standing practice of German courts, situations of civil war shall usually be addressed by a general deportation ban under Section 60a Residence Act 2004

	("temporary suspension of deportation"). Only a few *Länder* have instituted general deportation bans in recent years. The Federal Administrative Court therefore decided, by applying a so-called 'interpretation in conformity with the German Constitution', that the Federal Office must examine individual cases under Section 60(7) Residence Act 2004 in the absence of such decisions. However, suspension of deportation under Section 60(7) is only granted if there is sufficient evidence that the individual alien would face "*certain death or severest injuries*" upon return. This high burden of proof has increasingly led to a denial of protection. Some courts have however directly applied Article 15 lit. c QD and found that it is applicable also in cases of generalized violence, as long as the applicant personally faces serious harm. Health risks may lead to protection from deportation under this provision if an illness cannot be treated sufficiently in the country of origin, or the individual in question does not have access to a treatment available in principle and this leads to a significant deterioration of the illness. However, the Federal Administrative Court emphasized that illnesses affecting a big number of people in the country of origin – for instance AIDS in some countries – constitute a general danger which only leads to protection if so warranted by the standard of "extreme danger" e.g. due to the absence of treatment leading to imminent death.
Greece	No information available yet.
Hungary	The Asylum Act did not transpose the term "individual", concerning Article 15 (c) of the QD. Section 61 (c) of the Asylum Act refers to: "*a serious threat to the life or physical integrity of a civilian person which is the consequence of indiscriminate violence used in the course of an international or internal armed conflict*". The law-maker apparently considered transposition unnecessary, as this condition is in contradiction with the word "indiscriminate" and the general requirement of individualised processing is anyway set forth by Article 4 (3) of the QD (Section 40 of the Asylum Act).
Ireland	Not interpreted
Italy	Not relevant – no cases so far
Luxemburg	No specific interpretation
Netherlands*	The Dutch judges apply this requirement by referring to recital 26 of the Directive which reads as follows: "*risks to which a population of a country or a section of a population is generally exposed to do normally not create in themselves an individual threat which would qualify as serious harm*". For example, in the judgment of 24 August of 2007 by the Regional Court Arnhem[92] the court states that the term "individual" is deliberately incorporated in recital 26. The court refers to the considerations of the Council of the European Union: "*with regard to article 15 general consensus was noted regarding subparagraphs (a) and (b). Concerning sub-paragraph (c) a vast majority of Member States supported the reference to "individual" in*

[92] Regional court Arnhem, 24 August 2007, AWB 07/30709

	order to avoid an undesired opening of the scope of this sub-paragraph."[93] In other cases the court states that the applicant has only referred to the general situation in a state, for example in Sri Lanka, failing to show an individual threat.[94]
Poland	So far individualization was not interpreted within the context of granting subsidiary protection. Neither was it, as a rule, required for being granted a tolerated stay permit. The authorities emphasize strongly that in order to be granted refugee status, an individualized fear of persecution has to be shown.
Portugal*	The Portuguese Supreme Court has emphasized that the obligation to grant protection for "humanitarian reasons is not discretionary. In practice, the Portuguese Aliens and Borders Service requires applicants to prove their nationality, and to show beyond the doubt that the general situation of insecurity in the country of origin involves personal circumstances, which are directly related to their flight.
Romania	Romanian courts decided that there was neither internal nor international armed conflict in Iraq, so there was no need to assess the term "individual"
Slovakia	No interpretation, but the applicant must show a particular degree of individual harm.
Slovenia	There is no practice yet.
Sweden*	See above
United Kingdom	API Humanitarian Protection Article 15(c) makes it clear that, whilst a situation of international or internal armed conflict does not, in itself, give rise to a claim for protection, it can provide the basis for such a claim where applicants can show that they are individually at risk. That "*risks to which a population of a country or a section of the population is generally exposed do not normally create in themselves an individual threat which would qualify as serious harm*". Applicants cannot rely on the assertion that this ground is met simply because in the country of return there is an international or internal armed conflict where there is indiscriminate violence. The examination of the threatened return (enforced or voluntary) must focus on its foreseeable consequences, taking into account the personal circumstances of the applicant (Vilvaharajah v United Kingdom (1991)14 EHRR), and the risk posed must be specific to the individual. A general situation of violence in the receiving state is not sufficient (HLR v France (1997) 26 E.H.R.R 29). Decision- makers should consult Home Office country information and Operational Guidance Notes in each case on the question of whether a situation of international or internal armed conflict exists. Also, see Iraqi CG case comments above.

[93] Presidency Note to Coreper/Council, 30 September 2002, 12382/02 ASILE 47
[94] Regional court Almelo, 21 August 2007, AWB 07/30690

33c. How has your Member State interpreted 'indiscriminate violence'? Please give examples of situations that were considered to be of 'indiscriminate violence.'

Austria	Violence that can affect everybody.
Belgium	There is no explanation in the law. Jurisprudence is rare and uncertain. It was recognized for Kivu (humanitarian violations by the rebels and the police forces).
Bulgaria	There is no explicit interpretation yet.
Czech Republic	No experience.
France	The French law uses the words "generalised violence". The situation in Iraq was considered to be one of indiscriminate violence, characterised by the perpetration of attacks, exactions and threats targeting some special groups. As for Colombia, the Court stated in 2006 that there was a situation of indiscriminate violence in some areas, characterised by exactions, slaughters, murders, kidnappings, money extortions and threats towards some special groups. When it comes to Somalia, the situation of indiscriminate violence in some areas was characterised by exactions, slaughters, murders, rapes, money extortions and threats towards the inhabitants of these areas (CRR, 17 July 2007). The situation in several areas of North and East of Sri Lanka was considered to be one of indiscriminate violence. The situation is characterised by the perpetration of armed attacks, forced military enlistment including children, bombings, extortion of the civil population, forced displacements (CNDA, SR, 27 June 2008)
Germany	This term has been translated imprecisely into the German version of the QD as "arbitrary violence" ("willkürliche Gewalt"). However, the criterion is left out of the text of the German legal provision. The courts are not discussing the term in their decisions in detail. Exceptionally, courts argue that the interpretation of Recital 26 as a limitation of Article 15 lit. c QD is incorrect. In these decisions, the concept of indiscriminate violence is discussed in conjunction with the term "internal armed conflict". The issue has been discussed especially in cases of Iraqi nationals, which are not qualified for refugee status.
Greece	No interpretation available.
Hungary	No relevant cases available
Ireland	Not interpreted
Italy	No cases so far
Luxemburg	No specific interpretation
Netherlands*	Some courts have judged that the aliens had to make credible why they have a special risk of serious harm by reason of indiscriminate violence. They did not go deep into the issue of indiscriminate violence, but focused on the risk "especially for that specific person" to be the victim of serious harm.
Poland	There is no interpretation.
Portugal*	No interpretation

Romania	Not cases so far. See the answer above.
Slovakia	No definition, however, it was applied in the cases of Iraqi AS
Slovenia	There is no practice yet and it was translated as arbitrary violence.
Sweden*	Yes. For instance a more traditional war scene.
United Kingdom	See Iraqi CG case comments above.

33d. How has your Member State interpreted 'internal armed conflict'? What situations has your Member State considered to be a situation of armed conflict?

Austria	See above
Belgium	It seems that the authorities follow the principles of humanitarian international law (CCE, n° 1968, 26 septembre 2007, RDC, RDE, 2007, n°144, p. 341).
Bulgaria	There is no explicit interpretation yet
Czech Republic	It was interpreted by relation to particular countries such as Iraq or Afghanistan
France	The ongoing situation in Iraq (except the Kurdish part of the country) is considered to be a situation of internal armed conflict because of the conflict between the Iraqi security forces, the Coalition forces and armed groups which conduct continuous and concerted military operations in certain parts of the territory. In Colombia (especially in the areas of Valle del Cauca and Cali Valle), there are violent confrontations between Colombian security forces and the revolutionary Colombian forces that conduct in some areas continuous and concerted military operations and guerrilla warfare in order to control these areas. In Somalia, there are violent confrontations between the army and clans that conduct in some areas continuous and concerted military operations in order to control these areas. In Sri Lanka, there is a conflict between Sri Lanka army and armed Tamil forces and between hostile Tamil groups, which conduct continuous and concerted military operations in certain parts of the territory. They are both responsible of serious violations of international humanitarian law on civil population (CNDA, SR, 27 June 2008)
Germany	The MOI Guidelines interpret the term 'armed conflict' to only include conflicts of a certain minimum dimension. For internal conflicts, a certain intensity and duration are considered necessary; typically civil war or guerrilla fighting are supposed to constitute examples for an internal armed conflict. In contrast to that, conflicts between armed bands, which are locally and timely limited, do not suffice to fulfil the criteria of the QD. Examples of internal armed conflicts as seen by the Federal Office include the conflict in Iraq with the regions of Bagdad, Anbar, Salahaddin, Diyala, as well as the cities of Kirkuk, Mosul, Tal Afar and Basra being the most affected ones, while some courts disagree on this; the conflict in Sri Lanka, although regionally limited, with an emphasis on the Northern province including the Jaffna peninsula, the Northwest province and the

	Eastern province being the most affected areas; and the armed conflict between the provisional government and the Islamic insurgents in Central and Southern Somalia, most of all in Mogadishu. According to the German authorities there are several other conflicts to be qualified "internal armed conflicts", e.g. in Eastern DRC as well as in some regions in Afghanistan.
Greece	No information available yet.
Hungary	No relevant cases available
Ireland	Not interpreted
Italy	Not relevant cases available
Luxemburg	No specific interpretation
Netherlands*	The Dutch highest Administrative Court ruled that according to provisions of international humanitarian law it can be concluded that there is a matter of an "*international or internal armed conflict*" when an organized armed group which is under a responsible command and capable of executing military operations against the armed forces of the authorities of the state on the territory or a part of the territory of that state. These operations must be continuous and consistent. Disturbances and tensions, like riots, don't create an "*international or internal armed conflict*."[95]
Poland	We are not aware of any jurisprudence or practice interpreting this term. However so far we could observe a tendency that coming from the situation of an internal armed conflict was a ground for granting a tolerated stay permit rather than refugee status, especially in regard to Chechen asylum seekers.
Portugal*	Jurisprudence Proc. 015/03 – 29.10.2003 *"I. The granting of residence permit for humanitarian reasons established in article 8, number 1 of Law 15/98, 26th of March is based on the prevalence in the country of nationality of the appellant of a situation of serious insecurity due to armed conflict; One cannot consider a peace situation, even though precarious or a climate of tension as such"* Examples: Sierra Leone, Liberia, …
Romania	No situation where the authorities assessed that in a certain case there existed internal or international armed conflict.
Slovakia	No definition, but it was applied to Iraqi asylum seekers
Slovenia	There is no practice yet
Sweden*	When there are armed factions in opposition to the state's army that hold control over a substantial part of the country in question, allowing them to execute military operations. Also, when the situation for the civilian population is so severe that it is unthinkable of returning anyone to the country in question.
United Kingdom	"Internal armed conflict" is interpreted as an "active war zone". The Home Office conceded in the Iraqi CG case that Iraq was an active war zone.

[95] Council of State, 20 July 2007, 200608939/1

ARTICLE 17

34a. Does national legislation allow exclusion from subsidiary protection in accordance with article 17?

If the answer is no, please state where national law differs.

Austria		No	National law does not incorporate regulations concerning the exclusion from subsidiary protection.
Belgium	Yes		Belgium didn't transpose art. 17.1 d).
Bulgaria	Yes		Article 17(1) and (3) of the law
Czech Republic	Yes		--
France	Yes		
Germany		No	Article 17 QD has not been transposed in Germany. A positive status of persons under subsidiary protection is not foreseen. Exclusion from subsidiary protection is anchored in the exclusion from a residence permit for persons fulfilling the conditions of Article 17 QD. As a consequence, access to most of the rights guaranteed in Articles 20 to 34 QD is denied, with the exception of non-refoulement, accommodation and limited social benefits.
Greece	Yes		--
Hungary	Yes		
Ireland	Yes		Not applicable.
Italy		No	It is broader. Sections a and c are literally implemented, section b considers serious crimes committed in or outside the country as crimes for which the sentence provided by the Italian law is at least 4 years and at most 10 years. Section d regulates who constitutes a danger to the security of the State or to public order and security.
Luxemburg	Yes		--
Netherlands*		No	Article 17(3) QD differs from the Dutch article 3.77(2) Aliens Order. Dutch law just requires that the crimes are criminal offences. Besides this, it looks like the QD demands that the alien has solely left his country to avoid the sanctions. This requirement does not exist in the Aliens Order. In case a policy of categorical protection is imposed for the (a part of) the country of origin and this (part of the) country falls within the scope of article 15 QD, it is possible that it is in breach of the Directive to deny a permit to a person who would be eligible for categorical protection, just because he was condemned to do community services or a fine or he was discharged of liability to conviction by payment of a fixed penalty. Besides that, it is unclear whether it is

			accepted to make a division in the public order policy for different forms of subsidiary protection (categorial protection and article 3 ECHR).
Norway	Yes		--
Poland	Yes		Art. 17 was transposed literally. Tolerated stay permit it is, under art. 102 sec. 1 of the act on granting protection, withdrawn if: *1) the reason for granting the permit for tolerated stay has ceased to exist;* *2) an alien has voluntarily applied for protection to the authorities of the country of origin;* *3) an alien has left permanently the territory of the Republic of Poland;* *4) it may constitute a threat to the state security and defense as well as to the public security and policy.* *2. In the decision on withdrawing the permit for tolerated stay, an alien staying in the territory of the Republic of Poland, shall be issued a decision on expulsion, in which a time limit not exceeding 14 days from the date the decision has become final should be established, unless prior to rendering the decision on withdrawing the permit for tolerated stay an alien was rendered the decision on expulsion which has not been yet executed (...)*
Portugal*	Yes		--
Romania	Yes		Article 28 provides Causes for exclusion from granting subsidiary protection (1)Subsidiary protection is not granted to aliens and stateless persons for whom there are serious reasons to believe that: a. They have caused a crime against peace and humanity, a war crime or another offence defined according to the relevant international treaties to which Romania is a party or another international document which Romania is obliged to abide by; b. Have committed a serious common law offence outside Romania, before being admitted to Romanian soil; c. Have committed deeds which are contrary to the goals and principles, as they are mentioned in the Preamble and articles 1 and 2 of the United Nations Charter; d. Are a danger to Romania's public order and national security. e. Have instigated or were accomplices to committing the acts stipulated at letters a) – d). (2)Also, subsidiary protection is not granted to aliens

			or stateless persons who planned, facilitated or took part in committing terrorist acts, as they are defined in the international instruments to which Romania is a party.
Slovakia	Yes		--
Slovenia	Yes		--
Sweden*		No	So far no exclusions at all.
United Kingdom	Yes		--

34b. What rights and status are accorded to people excluded from subsidiary protection who cannot be returned under article 3 ECHR or other international human rights instruments?

Austria	*See above*
Belgium	This issue is not ruled by the law. They usually apply for regularization under a very long and subjective procedure…In fact they are tolerated on the territory but without rights.
Bulgaria	No explicit legal arrangement exists in this respect
Czech Republic	There exists a special tolerance status in the Aliens law (3 months – 1 year), but this status is granted very rarely.
France	There are no rights and status accorded, although they cannot be returned under article 3 ECHR
Germany	Since there is no exclusion from subsidiary protection, the principle of non-*refoulement* applies to those people. According to Section 25 (3) 2 Residence Act they are not granted a residence permit. Instead, they receive a toleration permit which excludes them from the rights normally granted to people who are given a residence permit on account of their subsidiary protection. It may be granted for several (mostly six) months and it may be prolonged (even for years – but only on a monthly basis).
Greece*	Humanitarian Status can be granted in Greece
Hungary	Asylum legislation Section 45 of the Asylum Act sets the principle of non-refoulement with regard to persons falling under its scope (persons seeking/entitled to protection): "(1) *The prohibition of refoulement (non-refoulement) prevails if the person seeking recognition is exposed to the risk of persecution for reasons of race, religion, ethnicity, membership of a particular social group or political opinion or to death penalty, torture, cruel, inhuman or degrading treatment or punishment in his/her country of origin and there is no safe third country which would receive him/her."* *(2) In the case of an unaccompanied minor, the prohibition of refoulement also prevails if the unification of the family or the provision of any state or other institutional care is not possible either in his/her country of origin or in any other state receiving him/her.* *(3) In its decision relating to the refusal of an application for recognition or the revocation of recognition, the refugee authority*

	shall establish whether the prohibition of refoulement prevails or not." Aliens legislation A more generally applicable interpretation of the non-refoulement principle is provided in Act II of 2007 on the admission and right of residence of third-country nationals (hereinafter referred to as Aliens Act) and its executive Government Decree No. 114/2007 (V.24.). These provisions are not limited to asylum-seekers/persons benefiting from protection. Section 51 (1) of the Aliens Act reads: "*Third-country nationals may not be turned back or expelled to the territory of a country that fails to satisfy the criteria of safe country of origin or safe third country regarding the person in question, in particular where the third-country national is likely to be subjected to persecution on the grounds of his/her race, religion, nationality, social affiliation or political conviction, nor to the territory or the frontier of a country where there is substantial reason to believe that the expelled third-country national is likely to be subjected to the death penalty, torture or any other form of cruel, inhuman or degrading treatment or punishment (non-refoulement).*" Section 52 further reinforces the above principle: *"(1) The immigration authority shall take into account the principle of non-refoulement in the proceedings relating to the ordering and enforcement of expulsion measures.* *(2) A ban on the enforcement of expulsion measures ordered by the court may be imposed by the sentencing judge.* *(3) Where Subsection (2) applies, the person expelled may appeal directly to the sentencing judge to declare the expulsion non-enforceable. If the person expelled submits the request that was addressed to the sentencing judge, to the immigration authority, the immigration authority shall forward it without undue delay to the competent sentencing judge with its opinion attached.* *(4) The enforcement of expulsion shall be suspended for the duration of the proceedings before the sentencing judge.*" Section 124 (5) of the Government Decree 114/2007 prescribes that those falling under the scope of the non-refoulement principle are to be recognised as "befogadott" (tolerated status) and a humanitarian residence permit has to be issued for them. They are granted considerably fewer rights than those under subsidiary protection (e.g. they are enabled to work in Hungary in the possession of a work permit, which according to long-standing experience often prevents these persons from entering the labour market, while refugees and beneficiaries of subsidiary protection do not need to obtain such a permit).
Ireland	An applicant still has a right to have an application for leave to remain in the state on humanitarian grounds determined pursuant to Section 3

	of the Immigration Act 1999. Inherent in this application is an examination of the right to non-*refoulement*.
Italy	It is not clear yet
Luxemburg	The status of tolerance is granted to people in this situation. The rights under this status are social security and the authorization for a temporary activity
Netherlands*	Although the alien cannot be expelled to the country of origin the Immigration and Naturalisation Service does not always grant a status. According to article C4/3.11.2 Aliens Circular, the situation in which a person does not receive a permit and is not expelled, should be restricted. The rights accorded to them are the same as those accorded to refugees who are not granted a status on public order grounds and include: non-discrimination, freedom of religion, access to court, right to education, prohibition on the imposition of penalties on account of their illegal entry or presence, prohibition of expulsion save on grounds of national security or public order, prohibition of refoulement and some other basic rights, which are also mentioned in the Geneva Convention.
Poland	If a person is excluded from refugee status or subsidiary protection, and cannot be returned due to the ECHR, s/he shall be granted a tolerated stay permit (see art. 97 of the act on granting protection). Having a tolerated stay permit an alien, under article 101 of the act on granting protection, cannot be expelled either (*An alien who has been granted a tolerated stay permit must not be rendered the decision on obligation to leave the territory of the Republic of Poland or the decision on expulsion*.).
Portugal*	No specific rights and status are accorded to people under such conditions. However, they can apply for a Residence Permit under the Aliens' Law if they fulfill its requirements.
Romania	They might be granted protection but only if they do not represent a threat to public order or national security. Toleration is a temporary measure that allows the foreigner to remain on Romanian territory but does not give any other civil rights. Article 89 of Government Ordinance 194/2000 (the Aliens Law) also provides "Interdiction of removal (1) Removal is forbidden in the following cases: a) the alien is a minor child and his parents have a stay right in Romania; b) the alien is the parent of a minor child who is a Romanian citizen, if the minor is looked after by him or if there is an obligation to pay alimony, obligation that the alien fulfills regularly; c) the alien is married to a Romanian citizen, and their marriage is not one of convenience; d) the alien has exceeded the age of 80; e) there are justified worries that his life is endangered or that he will be subject to torture, inhuman or degrading treatment in the state where he is about to be delivered; f) removal is forbidden by the international documents that

	Romania is part of; (2) The stay right in Romania of the persons referred to under para. (1) may be granted or renewed, as the case may be, by the Authority for Aliens, for any of the purposes set forth under Chapter IV. (3) The implementation of the removal measures shall be suspended in the case of aliens who are in any of the situations specified under art. 15 para. (1), until the date when the reasons for which their exit from Romania is not allowed will have ceased. (4) Aliens who are a threat to public order or national security or who suffer from a disease that threatens the public health and refuse to be subject to the measures established by the medical authorities are exempted from the provisions of par. (1), (2) and (3)."
Slovakia	They can be granted the tolerated residence for up to 180 days with the right to prolong it
Slovenia	Permission to stay according to the Aliens Act.
Sweden*	So far no exclusions from subsidiary protection.
United Kingdom	Temporary admission (TA) or short periods of discretionary leave (DL) until removal is possible.

34c. Has the transposition of article 17 served to reduce the number of applicants being granted subsidiary protection who would have benefited from that status previously?

34d. If the answer is yes, which provisions are most often used to exclude applicants?

Austria		--	Not relevant as the directive has not been transposed in this respect.
Belgium		No	--
Bulgaria		No	--
Czech Republic		No	--
France		No	Subsidiary protection did not exist before the transposition of the directive
Germany		No	No statistics available yet
Greece*			Not relevant
Hungary		No	
Ireland		No	Subsidiary protection did not exist prior to the transposition of the directive.
Italy	--	--	Not known yet
Luxemburg		No	--
Netherlands*		No	--
Poland			Unknown. It is too early to assess the implications of the transposition of the QD in this regard.
Portugal*	--	--	Not relevant
Romania		No	--
Slovakia		No	--
Slovenia		No	--
Sweden*		No	--

United Kingdom	--	--	Unable to comment

ARTICLE 17(1)

35a. Has national legislation or case law defined "serious crime" from article 17(1)(b)?

If the answer is yes, please provide the definition or give examples from case law.

Austria		No	*As explained above*
Belgium		No	--
Bulgaria	Yes		Criteria used to implement are those of Art. 98 of the Criminal Code.
Czech Republic	Yes		The definition of a "serious crime" is in the Criminal Code. Serious crime is every crime for which a sentence of over 8 years can be imposed and other crimes that are on a special list (ex: high treason, terrorist attack, trafficking of human being, rape, murder, and many others).
France	--	--	The CNDA uses the same definition as for refugee status
Germany	Yes		According to the explanatory memorandum on the provision of 60 (8) Residence Act 2004, Section 25(3) Residence Act 2004 the term 'serious crime' is to be defined along the lines of Section 60 (8) 1 Residence Act 2004 with a view to preventing such persons from obtaining a residence permit. Section 60 (8) 1 Residence Act 2004 provides for the incorporation of Article 33 (2) of the 1951 Convention into the national asylum system. A serious crime in this regard is a crime for which the respective person was sentenced to a prison term of a minimum period of three years. No first instance case law is known in this regard.
Greece	Yes		Crimes that are punishable by three months' imprisonment under Greek criminal law.
Hungary	Yes		Section 15 of the Asylum Act reads: *"No subsidiary protection shall be granted to a foreigner* *a) in whose case there is good reason to assume that* *aa) s/he committed a crime against peace, a war crime or a crime against humanity as defined in international instruments;* *ab)* s/he committed a crime which is punishable by imprisonment for five years or more *under the relevant Hungarian rules of law;* *ac) s/he committed a crime contrary to the purposes and principles of the United Nations;* *b) his/her stay in the territory of the Republic of*

			Hungary violates national security." According to this interpretation, the evaluation of the crime committed by the asylum-seeker in consideration depends only on the measure of the imprisonment foreseen by Hungarian law and not on a complex evaluation of all related factors. In consequence, the asylum authority does not have any possibility to assess such a case on an individual basis. As a result: ▪ The exclusion clause becomes automatically applied in case of every crime where the maximum imprisonment foreseen by the Hungarian Criminal Code exceeds 5 years. This also includes crimes such as armed and non-armed robbery, various cases of drug abuse, forgery of public documents committed by a public official, etc. ▪ The asylum authority does not have the liberty to consider mitigating circumstances (such as age, lack of any previous criminal activity, repentance, etc.), which are otherwise taken into consideration in criminal procedures. This provision is therefore in contradiction with the QD. Also see questions 25a and 28a.
Ireland		No	Not applicable.
Italy	Yes		Crimes for which the sentence provided by Italian law is between 4 years and 10 years.
Luxemburg		No	--
Netherlands*		No	There is no difference between the crimes that can lead to the revocation of refugee status or subsidiary protection. A permit can be revoked in case the alien is irrevocably condemned for committing a crime for which a jail sentence of 3 years or more is imposed, or for which a jail sentence, community service or TBS (detention in a `hospital`) can be imposed and the unconditional part of the sentence meets the requirements of the ´sliding scale´ in art. 3.83 paragraph 2 of the Aliens Order.
Poland		No	There is no definition of serious crime. Article 7 par. 2 of the Penal Code defines only a crime: "*The crime is a prohibited act subject to a penalty of imprisonment of not less than 3 years or to a more severe penalty."* Moreover it "*may be committed only with intent*" (art. 8) and "*a prohibited act is committed with intent when the perpetrator has the will to commit it, that is when he is willing to commit or when foreseeing the*

			possibility of perpetrating it, he accepts it" (art. 9 par 1).
Portugal*	Yes		According to article 3(1)I of article 3 of Asylum Law *(exclusion and refusal of asylum):* *1. Shall not benefit from asylum I those who have committed serious crimes punishable with more than three years of imprisonment.*
Romania	Yes		Article 6(4) of the asylum law provides that "*In the sense of the present law, a serious criminal offence is considered any crime for which the law requires the punishment to deprivation of liberty with a special maximum sentence of over 5 years*."
Slovakia	Yes		It is defined in the criminal code. The particular serious crime is the crime for which the punishment is imprisonment for at least 10 years.
Slovenia	Yes		Criminal act for which the prescribed sentence in the Republic of Slovenia is longer than 3 years.
Sweden*		No	--
United Kingdom	Yes		Crime in consideration of deportation (not necessarily as an interpretation of 17(1)(b) of the QD) is considered particularly serious if there are elements of sex, arson, violence, drugs. There is a discussion of "particularly serious crime" at SB (cessation and exclusion) Haiti [2005] UKIAT 00036 cited above. Serious crimes against humanity include genocide and torture (see Commissioner of Police for the Metropolis and Others, Ex Parte Pinochet [1999] UKHL 17 (24 March 1999)).

35b. Has national legislation/practice given a more detailed definition of "danger" and whether the authorities will test the balance between the community and the applicant as provided for in article 17(1)(d)?

35c. If the answer is yes, please explain the interpretation given, how the balance is assessed, and give example(s) if applicable.

Austria		No	--
Belgium		No	--
Bulgaria	Yes		There is a National Security Concept adopted by the Parliament (State Gazette N46/22.04.1998) to define acts that constitute a danger to national security or the community. If the individual has undertaken activity that threatens the basic rights and liberties of the citizens, or, the national borders, territorial integrity and national independence and sovereignty or serious danger of armed attack, *coup*

			d'etat or reversal of the constitutional arrangements to establish political dictatorship or economic coercion or in any manner whatsoever the democratic functioning of the country is endangered.
Czech Republic		No	--
France	Yes		The national legislation has not given a more detailed definition of danger. The jurisprudence gives some examples. In CRR, 25 July 2006, M.B., the applicant was twice condemned for sexual assault. In CRR, 1 February 2006, Mlle O. alias Mlle I., the applicant was part of a prostitution system. She was not excluded from the protection partly because she was a witness in a criminal process against the prostitution organization.
Germany	Yes		No exact definition of who constitutes "*a danger to the community or to the security of the Member State in which he or she is present*" was found in the Federal Office's or the courts' practice. However, the practice of the Federal Office suggests that especially persons in a leadership position of the exile branch of a terrorist organisation placed on the United Nations or EU list of terrorist organisations are subject to the application of this provision. The question whether an individual actually constitutes a danger for the security of the state is normally assessed on an individual basis taking into account in particular, the current danger emanating from the organisation and the individual's involvement in the organisation. In this regard it is also considered necessary that there is a high probability that the individual will continue its activities in the future.
Greece		No	No information available yet.
Hungary		No	However, it is to be noted that the actual wording of the Asylum Act ("violates national security") may be understood as a higher standard than the wording of the QD ("constitutes a danger to the community or the security of the Member State"). While no relevant jurisprudence is yet available to confirm this, the intention of the lawmaker may have been to make this provision applicable only in cases where serious acts violating national security have already taken place, as compared to cases where only suspicions arise about such a danger.
Ireland		No	Not applicable.
Italy		No	--
Luxemburg		No	--

Netherlands*	(Yes)	(No)	In the Dutch rules there is no division for exclusion, cessation or revocation for permits based on refugee status or on subsidiary protection. See the answers concerning refugee status.
Poland		No	There is no definition of danger in the legislation. We are not aware of asylum cases where this issue was considered, but the balance test is being applied in immigration cases.
Portugal*	--	--	Not relevant
Romania		No	The asylum law does not provide such a distinction but criminal law and jurisprudence does. Also Romania adopted the Law 51/1991 regarding National Security that defines acts that constitute threats to Romanian national security
Slovakia		No	--
Slovenia		No	--
Sweden*		No	--
United Kingdom	Yes		UNHCR guidance on the narrowness of the exclusion clause and the need for great caution about its application and the balance which has to be struck between the danger to the host community and their remaining risk to the claimant on his return is considered but not binding. R v SSHD ex parte Chahal [1995] 1 WLR 526 in which the Court of Appeal considered whether a balance had to be struck in an exclusion case. It took the view that it did. "The effect of there being no balance in Article 33(2), as we conclude, is to emphasize that the tests for "a particularly serious crime" and "danger" must be higher than they would be if there were a balance to be undertaken. We have allowed for this in our conclusions on those issues. It is in particular the "danger" threshold which would be affected by the risk on return to the refugee, if a balance were to exist and which we see as quite a high threshold in its absence." SB (cessation and exclusion) Haiti [2005] UKIAT 00036 also discusses the balancing exercise.

ARTICLE 17(2)

36. How has article 17(2)'s "instigate or otherwise participate in" language been applied?

Austria	This term has not been applied.
Belgium	Not known jurisprudence available

Bulgaria	No practice yet
Czech Republic	Nearly literal transposition of this article
France	No application to subsidiary protection so far. I assume it would be applied in the same manner as to refugee status.
Germany	Article 17(2) has not been transposed in Germany but the provision is reflected in the decision on granting a residence permit under Section 25 (3) Residence Act. The procedure of granting a residence permit is to be conducted by the local authorities independently from the decision on the granting of subsidiary protection (which is done by the Federal Office for Migration and Refugees.) As there are over 600 local aliens authorities in Germany it is difficult to assess the practice in this regard.
Greece	No practice yet.
Hungary	This rule was not transposed into Hungarian legislation.
Ireland	Art. 17(2) has been transposed directly in Regulation 13(2) of SI 518 of 2006.
Italy	Not relevant, not known yet
Luxemburg	Article 17 (2) has been transposed literally. No application of this article to our knowledge.
Netherlands*	See question 27c.
Poland	It has not been applied so far. We are not able to assess how these provisions are going to be applied under current legislation.
Portugal*	Not relevant
Romania	No definition. No case of application in practice of article 17(2) from the Directive (article 28 of the Romanian Asylum Law) reported yet
Slovakia	Exclusion shall also apply to persons who instigate or otherwise participate in the commission of the crimes or acts.
Slovenia	This is defined only in criminal legislation; there has not yet been application in practice.
Sweden*	No
United Kingdom	Regulation 7(3) Article 1F(a) and (b) of the Geneva Convention shall apply to a person who instigates or otherwise participates in the commission of the crimes or acts specified in those provisions.

ARTICLE 17(3)

37a. Does your national legislation or jurisprudence provide for the exclusion of a person from subsidiary protection on the ground established in article 17(3)?

Austria		No	--
Belgium		No	--
Bulgaria	Yes		--
Czech Republic	Yes		Nearly literal transposition. A person who has committed a crime in the sense of article 17(3) is excluded from subsidiary protection.
France		No	--
Germany		No	--
Greece	Yes		The only difference is that Presidential Decree 96/2008

			has added in Article 17(3) of the Directive the requirement that the sanctions that are threatened in the country of origin for the crime committed should not be highly disproportionate compared to the sanctions that are threatened for the same crime in Greece.
Hungary		No	Consider however question 35a.
Ireland	Yes		Art. 17(3) has been transposed directly in Regulation 13(3) of SI 518 of 2006.
Italy		No	--
Luxemburg	Yes		The directive was transposed literally on this point.
Netherlands*		No	Article 17(3) QD differs from the Dutch article 3.77 paragraph 2 Aliens Order. Article 17(3) QD demands that the crimes are punishable by imprisonment. The Aliens Order just requires that the crimes are criminal offences. Besides this, it looks like the QD demands that the alien has solely left his country to avoid the sanctions. This requirement does not exist in the Aliens Order.
Poland	Yes		Art. 17(3) of the QD was transposed literally (see art. 20 sec. 3 of the act on granting protection).
Portugal*		No	--
Romania	Yes		According to article 28 of the Asylum law "*subsidiary protection is not granted to aliens and stateless persons of whom there are serious reasons to believe that:* *a. They have caused a crime against peace and humanity, a war crime or another offence defined according to the relevant international treaties to which Romania is a party or another international document which Romania is obliged to abide by;* *b. Have committed a serious common law offence outside Romania, before being admitted to Romanian soil;* *c. Have committed deeds which are contrary to the goals and principles, as they are mentioned in the Preamble and articles 1 and 2 of the United Nations Charter;* *d. Constitute a danger to Romania's public order and national security;* *e. Have instigated or were accomplices to committing the acts stipulated at letters a) – d).* *Also, subsidiary protection is not granted to aliens or stateless persons who planned, facilitated or took part in committing terrorist acts, as they are defined in the international instruments to which Romania is a party*".
Slovakia	Yes		The law states that the Ministry shall also deny subsidiary protection when the applicant is suspected,

			on well-founded grounds, of having committed prior to his entry to the Slovak Republic, an act outside the scope of Paragraph 2, which, according to a separate regulation, constitutes an offence, which would be punishable by imprisonment of at least 5 years, and has left the country of origin only in order to avoid criminal prosecution.
Slovenia	Yes		"…outside the scope of paragraph 1…" is omitted in transposition of the directive into the Slovene law.
Sweden*		No	--
United Kingdom	Yes		339D of the Immigration Rules: (iv) prior to his admission to the United Kingdom the person committed a crime outside the scope of (i) and (ii) that would be punishable by imprisonment were it committed in the United Kingdom and the person left his country of origin solely in order to avoid sanctions resulting from the crime.

37b. Are there additional national law criteria for exclusion from subsidiary protection status?

If the answer is yes, please describe and give some examples.

Austria		No	--
Belgium		No	--
Bulgaria		No	--
Czech Republic		No	--
France		No	--
Germany		No	--
Greece		No	--
Hungary		No	
Ireland		No	Not applicable.
Italy		No	But see answer to 34a.
Luxemburg		No	--
Netherlands*		No	--
Poland		No	--
Portugal*		No	--
Romania		No	--
Slovakia		No	The Ministry shall also deny subsidiary protection when the applicant has several citizenships and refuses protection of the State of his/her citizenship, provided that it is not a State- country of origin where s/he would face a real risk of serious harm.
Slovenia		No	--
Sweden*		No	--
United Kingdom		No	--

III. CHAPTER VI: SUBSIDIARY PROTECTION STATUS

ARTICLE 19

38. Does your national legislation or jurisprudence permit the revocation of subsidiary protection status on the grounds set out in article 19?

If not, please indicate where national law/jurisprudence differs.

Austria		No	National asylum legislation does not explicitly constitute revocation on grounds of misrepresentation or omission of facts, etc., but permits i.e. revocation of subsidiary protection if the reasons for granting it do not exist (anymore). This is to be interpreted according to the provisions of article 19 of the directive. Procedures can be reopened according to administrative law. Concerning exclusion *see above*.
Belgium	Yes		--
Bulgaria	Yes		--
Czech Republic	Yes		--
France	Yes		--
Germany	Yes		According to Section 73 (3) Asylum Procedures Act, the decision whether the preconditions set forth in Section 60 (2), (3), (5) or (7) Residence Act for the granting of subsidiary protection from refoulement has to be withdrawn, if the decision is erroneous and it has to be revoked, if these prerequisites are not met anymore. Thus, the provision follows a similar systematic approach as Sections 73 (1) and (2) Asylum Procedures Act with respect to the termination of refugee status. In particular, in a "revocation procedure", not only the persistence of the grounds for the initial granting of subsidiary protection, but also the absence of any exclusion grounds must be reviewed. Differences, however, arise from the fact that persons in need of subsidiary protection are not granted a formal status in Germany. Therefore, the exclusion grounds, which are by and large similar to the grounds set forth in Article 17 (1) and (2) QD, have been incorporated in Section 25 (3) Residence Act. According to this provision which regulates the residence status of persons granted protection from refoulement under Section 60 (2), (3), (5) or (7) Residence Act, a foreigner with respect to whom the Federal Office has established a need for subsidiary protection *must not* be granted a residence permit if the refugee has committed

			a crime against peace, a war crime or a crime against humanity, a criminal act of significant weight, acts contrary to the purposes and principles of the United Nations, or if the foreigner poses a danger for the security of the Federal Republic of Germany or the general public.[96] If those reasons only arise or come to light after the granting of a residence permit under Section 25 (3) Residence Act, they may constitute a basis for the revocation of the residence status. To this effect, Section 52 (1) No.5 Residence Act dealing with the revocation of the residence permit now explicitly allows to revoke the residence permit, which was granted on the basis of Section 25 (3) Residence Act to a person in need of subsidiary protection in accordance with Section 60 (2), (3), (5) and (7) Residence Act if the competent aliens' authorities determines that (a) the preconditions for the granting of subsidiary protection set forth in Section 60 (2), (3), (5) and (7) Residence Act do not apply any longer; (b) the foreigner in question fulfils one of the exclusion grounds as provided for in Section 25 (3) 2 Residence Act; (c) a prior decision of the Federal Office or an administrative court on the granting of subsidiary protection is lifted or becomes invalid. This regulation has been recently introduced into German law and no respective practice is known so far. It thus remains to be seen whether the aliens' authorities responsible for the revocation of a residence permit will in this respect – particularly with a view to the interpretation of the exclusion grounds set out in Section 25 (3) Residence Act - take over the relevant principles developed by the Federal Office for Migration and refugees with regard to the termination of refugee status, or whether they will establish different criteria.
Greece	Yes		--
Hungary	Yes		Section 18 of the Asylum Act reads: "*(1) The legal status of subsidiary protection shall cease if* *a) the beneficiary of subsidiary protection acquires Hungarian nationality;* *b) the beneficiary of subsidiary protection is being*

[96] See above, question 30d.

			recognised by the refugee authority as a refugee; *c) the asylum authority revokes the status of subsidiary protection.* *(2) Subsidiary protection shall be withdrawn if the beneficiary of subsidiary protection* *a) has repeatedly and voluntarily re-availed himself/herself of the protection of the country of his/her nationality;* *b) having lost his/her nationality, s/he has voluntarily re-acquired it;* *c) has acquired a new nationality and enjoys the protection of the country of his/her new nationality;* *d) has voluntarily re-established him/herself in the country which s/he had left or outside which s/he had remained owing to fear of serious harm or the risk of such harm;* *e) the circumstances on the basis of which s/he was recognised as a beneficiary of subsidiary protection have ceased to exist;* *f) waives the legal status of subsidiary protection in writing;* *g) was recognised in spite of the existence of reasons for exclusion referred to in Section 14 or such reason for exclusion prevails in respect of his/her person;* *h) the conditions for recognition did not exist at the time of the adoption of the decision on his/her recognition;* *i) concealed a material fact or facts in the course of the refugee procedure or issued an untrue declaration in respect of such a fact or facts or used false or forged documents, provided that this was decisive for the recognition of his/her recognition as beneficiary of subsidiary protection.* *(3) Subsection (2), paragraph e) is not applicable to a beneficiary of subsidiary protection who is able to cite a well-founded reason arising from the former serious harm that affected him/her for refusing the protection of his/her country of origin."* The Asylum Act uses the terms "revoke" and "cease" in a different way, not entirely following the logic of the QD. Revocation is treated as a sub-category of cessation (Section 18 (1) (c)), while the conventional grounds for the cessation of refugee status are included in the list of grounds for revocation of subsidiary protection (Asylum Act 18 (2), see above). To sum up: provisions of Section 18 (1) (a) and (b), (2) (a), (b), (c), (d) and (f) differ from those of the QD while they can be considered as based on Article 16 thereof to some

			extent. Section 18 (2) (e), (g), (h) and (i) are in compliance with the relevant provisions of the QD.
Ireland	Yes		Ref. Regulation 14 of SI 518 of 2006.
Italy	Yes		--
Luxemburg	Yes		--
Netherlands*		No	There is a difference between the Dutch ground for revocation and the ground for revocation in the QD. According to the Dutch Aliens Act the misrepresentation or omission of facts should have led to the rejection of the application. According to the QD the misrepresentation or omission of facts should be decisive for the granting of refugee status. The policy with respect to this ground for revocation is laid down in article C5/2 of the Aliens Circular. It follows from this article that the misrepresentation of facts includes the submission of fake documents, as far as those documents (also) have been decisive for the positive decision. "*(Also) have been decisive for rejection*" is a less strict criterion than "*decisive for the granting of the status*". On this issue the Dutch policy could be in breach of the QD. The grounds for revocation or refusal are mentioned in article 32 Aliens Act. There is also a ground for revocation that is not mentioned in the directive. This ground is applied when the person who is granted a refugee status, moved his main residence outside of the Netherlands*. It is possible that this ground cannot be used anymore in the future because it is not mentioned in the directive.
Poland	Yes		--
Portugal*	Yes		--
Romania	Yes		Article 101 from the Asylum Law provides "Cancellation of subsidiary protection Subsidiary protection is cancelled in the following situations: a) in the case in which, after granting subsidiary protection, it is discovered that the alien is in one of the situations stipulated in article 28; b) when the person who was granted subsidiary protection has made false statements, omitted to present certain data or used false documents, which were decisive in granting the form of protection and there are no other reasons for maintaining subsidiary protection;"
Slovakia	Yes		--
Slovenia	Yes		--
Sweden*	Yes		--
United Kingdom	Yes		--

CHAPTER VII: CONTENT OF INTERNATIONAL PROTECTION

This section does not attempt a comprehensive evaluation of the impact of Chapter VII. Rather, it seeks a general view of the effect of a few articles of particular importance to the integration of protection beneficiaries: articles 23 (family unity), 26 (access to employment), and 27 (access to education).

ARTICLE 23

39a. Has article 23 been transposed into national legislation?

Austria		No	National law incorporates the "family-procedure", but i.e. the term family is not interpreted according to art. 8 ECHR. Art 24 to 34 to which art. 23 refers constitute various provisions that would have to be analysed in great detail to elaborate the transposition.
Belgium		No	The family of a refugee or beneficiary of subsidiary protection benefits of the right to family reunification under the same conditions as other migrants who are allowed to stay in Belgium. One specificity is that family reunification is allowed for the parents of the unaccompanied minor refugee if there is no other major responsible on the territory (art. 10, §1, 7°, of the law). Another specificity for refugees is that the conditions of sufficient housing and health insurance are not required if the family link pre-exists and if the application for family reunification is introduced within one year after the recognition of the status of refugee (art. 10, §2, al. 3, of the law).
Czech Republic	Yes		Refugee status can be granted also to the following family members of recognised refugees: husband/wife, children under 18 years, parents of refugees under 18 years, persons responsible for an unaccompanied minor who has been recognized as a refugee. The same definition exists for subsidiary protection.
France	Yes		The right to family unity is recognised under French law. Members of the refugee's family (persons in a long and stable relationship, underage children, with the same nationality) have access to refugee status. If they don't apply for asylum, a permanent residence permit is delivered (but only for married persons). If they are abroad, they can apply for a visa.

			The same rules apply for subsidiary protection. However, subsidiary protection beneficiaries and their family receive a renewable one-year permit.
Germany	Yes		No - The legislation on refugees is in line with Art. 23 QD. In particular, family members are granted refugee protection under Section 26 Asylum Procedures Act. There is a right to family reunification under certain conditions (Section 29 (1), 30 (1) No 3 c Residence Act). Refugees are or may be granted the right to family reunification even when they do not to fulfil preconditions normally required for it (basic knowledge of German for spouses, Section 30 (1) Residence Act; economic self-sufficiency and sufficient living space, Section 29 (2) Residence Act). No comparable provision exists for people granted subsidiary protection. Family reunification is only granted exceptionally (Section 29 (3) Residence Act). Even though Art. 23 (2) QD allows the imposition of conditions on family members it may be doubted whether this is still in conformity with the directive.
Greece	Yes		Presidential Decree 96/2008 is more favourable to Article 23 of the Directive in the sense that it mentions that the benefits, once they have been granted, are retained in the case of a minor also when he has reached adulthood and in the case of marriage also after the annulment of the marital status because of divorce, separation or death of the beneficiary of international protection. However, paragraph 5 of Article 23 of the Directive in its totality has not been transposed into national law.
Hungary	Yes		Basic principles Basic principles of the Asylum Act include respect for the principle of family unity: *"When implementing the provisions of the present Act, the principle of the unity of the family shall be borne in mind."* (Section 4 (2) of the Asylum Act) Considering the criteria of recognition as a refugee, the Asylum Act explicitly foresees the right to family reunification as set out in section 7 (2): "*Except as set out in Section 8, subsection (1), for the purpose of maintaining family unity, upon application, the family members of a foreigner recognised as a refugee on the basis of subsection (1) shall be recognised as refugees."* This provision

			aims to facilitate family reunification as well as subsection 3 of the present section imposing that "*If a child is born in the territory of the Republic of Hungary to a foreigner recognised as a refugee, upon application, the child shall be recognised as a refugee."* These provisions also apply to beneficiaries of subsidiary protection and temporary protection foreseen in Section 13 and 20 of the Asylum Act. <u>Family reunification</u> The Act II of 2007 on the admission and right of residence of third-country nationals (Aliens Act) regulates refugees' right to family reunification (see Section 19 of the Aliens Act, together with Section 58 of its executive Government Decree No. 114/2007 (V.24.)). Both refugees and beneficiaries of subsidiary protection have the right to family reunification (family in this case meaning the spouse, under-age children, under-age children of the spouse, dependent parents, and brothers/sisters or other direct-line relatives if they cannot provide for themselves), with three preferential conditions: ▪ Even non-dependent parents are entitled to benefit from family reunification in case of a minor refugee/beneficiary of subsidiary protection. ▪ The usual conditions (livelihood, accommodation, health care) are only to be examined by the authority after six months have elapsed since the grant of protection. ▪ Family links in case of refugees/beneficiaries of subsidiary protection can be substantiated in every due way (no documentary evidence is necessary to this end). <u>Family union during the asylum procedure</u> The implementing Government Decree of the Asylum Act also obliges the asylum authority and refugee reception centres to respect the principle of family unity as set out in Section 21 (6): "*When accommodating asylum seekers within a reception centre, while taking into account the potentially different legal status of family members, the refugee authority shall ensure family unity and, in the absence of a request to the contrary, keep family members together and ensure the protection of the*

			family life of applicants thus placed." Furthermore, family unity shall be maintained even when people with special needs or unaccompanied minors are taken into consideration. According to Section 33 (2) of the Government Decree: *"(2) As far as possible, family unity shall be maintained even when providing separated accommodation to a person who has special needs.* *(...)* *(7) When housing unaccompanied minors, family unity shall be maintained by keeping siblings together, taking into account their age and degree of maturity."* This obligation can be considered as an important step forward by implementing the directive very progressively. However, due to practical problems and the capacity of accommodation, this provision may not always be respected by establishments arranging the accommodation of asylum seekers, refugees or beneficiaries of subsidiary protection.
Ireland	Yes		Transposed within the scope given to Member States in Article 23 to define the rights and entitlements of family members of recipients of subsidiary protection.
Italy	Yes		The provision is new.
Luxemburg	Yes		Article 23 has been transposed literally.
Netherlands*		No	According to the State Secretary the law as well as the policy are already in accordance with the Qualification Directive. However according to the Dutch Council for Refugees the Dutch asylum law/policy is not in accordance with the directive because in the Netherlands a distinction is made between family members with the same nationality and family members who have a different nationality. For family members of the same nationality it is quite easy to receive the same rights as the family member who first received a residence permit, if that person lodges an application for family reunification within three months after receiving the residence permit. In that case the family members do not need to pay for the application and the person who first received a residence permit does not need to have enough salary to maintain his/her family. The family members also do not need to ask for visa and do not need to have a passport. Until 2007, the person who first received a residence permit had to have enough salary, the family members needed passports and

			visa and had to pay a lot for the application. However in 2007 this policy changed in a positive way, which means that the person who first had a residence permit does no longer need to have enough salary. However, the other obligations must still be fulfilled.
Poland	Yes		A recognized refugee or tolerated stay permit recipient can apply for reunification with a family member. To do so s/he can apply for a residence permit for a fixed period of time for his/her relative/s. However, the conditions for entitlement to family reunification are different for a refugee and a person granted tolerated stay. A recognized refugee can submit the application for a residence permit for a fixed period of time for his/her relative within 3 months from the date when refugee status was granted. In this case no prerequisites have to be met. However, if s/he claims reunification after 3 months, the same conditions must be fulfilled as for applicants granted permit to settle, long-term resident's EC residence permit or tolerated stay. A tolerated stay permit recipient can apply for a family reunification if s/he has been staying in Poland for at least two years on the basis of residence permit (provisions concerning residence permits for a fixed period of time apply). A recognized refugee who has not applied for the family reunification within 3 months from the date on granting the status and a tolerated stay permit recipient are obliged to possess: • a stable and regular source of income enough to cover the cost of maintenance of herself/himself and members of his/her family supported by him/her, • health insurance within the meaning of provisions on common health insurance or documents confirming that the cost of medical treatment in Poland is covered by an insurer. The following persons are regarded as family members: • a person married to an alien. Such marriage has to be recognized under the Polish law. On the basis of article 18 of the Constitution of the Republic of Poland, a marriage is defined as "*a*

			union of a man and a woman"; • a minor child of an alien, including an adopted child, if the alien exercises actual parental control over the child. In this regard only a spouse, a child and an adopted child are considered as family members. Consequently reunification with parents, siblings and grandparents is not possible. However an exception was made regarding an unaccompanied minor who has been granted refugee status. In this case, an ascendant relative (parent or grandparent) is considered too. Nonetheless, if a child has been granted a tolerated stay permit s/he will not be reunified with these relatives. According to the amended act on granting protection and the aliens act, beneficiaries of subsidiary protection are entitled to family reunification only after they have been granted a permit to settle (it can be given to persons granted subsidiary protection after 7 years of interrupted stay in Poland). The law does not provide for reunification with other close relatives (possible only under the "other circumstances" for granting a residence permit for a fixed period of time clause).
Portugal*	--	--	Directive not yet transposed
Romania	Yes		There are some references to article 23 of the directive: article 7 of the Asylum Law relating to family unity. According to this article "*the Romanian authorities guarantee the respect of the principle of family unity, according to the provisions of the present law*". Articles 24 and 27 provide some criteria for granting refugee status or subsidiary protection by family members.
Slovakia	Yes		--
Slovenia	Yes		The article has been transposed in line with the directive.
Sweden*	Yes		--
United Kingdom		No	Provisions for the grant of leave to family members (spouse and dependant children) can be found in the Immigration Rules. However, the condition attached is that they are pre-flight dependants who were living in the same household. Any other family members are subject to the discretion of the Home Office and normally have to satisfy the test for exceptionally compassionate and compelling circumstances. There is no presumption in favour of

			family unity.

39b. If refugees and recipients of subsidiary protection are treated differently with respect to family unity, please indicate the main differences.

Austria	If the family member of a person with subsidiary status is outside Austria, that person is only granted entry after the first extension of the limited right of residence of the family member that already has subsidiary protection (unless conditions no longer exist).
Belgium	See above.
Czech Republic	No
France	No difference
Germany	In cases of subsidiary protection, family reunification is excluded in the law
Greece	Article 23 of Presidential Decree 96/2008 does not treat recipients of subsidiary protection differently with respect to family unity.
Hungary	No differences; see above.
Ireland	No differences.
Italy	No difference
Luxemburg	No differences in treatment regarding family unit
Netherlands*	No difference
Poland	*See note 39a.*
Portugal*	Directive not transposed
Romania	No difference
Slovakia	No difference
Slovenia	They are treated equally.
Sweden*	Only regarding the cost of transport of the family. The Swedish Migration Board pays for the travel costs of the family members of refugees.
United Kingdom	--

ARTICLE 26

40a. Has article 26 been transposed into national legislation?

Austria	--	--	Persons with subsidiary protection still need a work permit during their first year of protection and afterwards are exempted from this requirement. Activities such as employment-related education opportunities and vocational training strongly depend on the region of residence within the country due to the federal system.
Belgium	Yes		Refugees can work without any limitation. Beneficiaries of the subsidiary protection benefit of a work permit, (permit C, annually renewable, valid for any profession, obtained with few formalities) during their temporary stay on the territory (5 years). If they want to work freelance, they need an authorisation

			during the same period. Afterwards, they can work without any limitation. In practice, it is rather simple to obtain the work permit. It is enough to establish that the person has been granted subsidiary protection. The granted permit is annual and renewable.
Czech Republic	Yes		Recognized refugees have access to the labour market under the same conditions as nationals. Recipients of subsidiary protection have been treated in the same manner as recognized refugees since January 2008, when the law was changed.
France	Yes		Refugees and subsidiary protection beneficiaries have access to employment as soon as the protection is recognised.
Germany	Yes		No – The legislation on refugees is in line with Art. 26 QD. Persons granted a residence permit due to their need for subsidiary protection have limited access to the labour market that depends on a review of the availability of privileged aliens for a particular job. The Directive provides for a right to a work permit in principle and limits the possibilities for withholding this right for an undefined period of time. German law does not contain a right to a work permit in principle (cf. Section 25 (3) and 4 (2) Residence Act). Moreover, German provisions only allow ending the review of availability of privileged aliens after 4 years of residence or 3 years of employment as a discretionary decision, not as a right. Both aspects do not seem to satisfy the requirements of the Directive.
Greece	Yes		Presidential Decree 96/2008 grants the same rights to recognised refugees and beneficiaries of international protection. The Presidential Decree refers to the provisions of national legislation concerning access to employment, and in particular to Presidential Decree 189/1998.
Hungary	Yes		According to Section 5 of the Asylum Act: *"A person seeking recognition shall be entitled to work in the territory of the reception centre within one year of the submission of the application for recognition and according to the general rules applicable to foreigners thereafter."* The provisions governing the legal status of refugees declare: "*Unless a rule of law or government decree expressly provides otherwise, except as set out in subsections (2) and (3), a refugee shall have the rights and obligations of a Hungarian citizen"* but "*a refugee ... may not fulfil a job or responsibility and may not hold an office, the fulfilment or holding of which is tied by law to Hungarian nationality"* (Section 10 of the

			Asylum Act). Having the rights and obligations of a Hungarian citizen means that recognised refugees have the right to seek employment without a work permit if Hungarian nationality is not required to fulfil the post in question. Beneficiaries of subsidiary protection also have the right to work as stipulated by the Asylum Act in Section 17: "*Except as set out in subsections (2) and (3), unless a rule of law or government decree expressly provides otherwise, a beneficiary of subsidiary protection shall have the rights and obligations of a refugee.* • *In deviation from Section 10, subsection (3), paragraph a), a beneficiary of subsidiary protection shall be entitled to the travel document determined in a separate legal rule.* • *A beneficiary of subsidiary protection shall have no suffrage."* We can consider the above-mentioned provisions as regulation that complies with the directive; moreover the Asylum Act does not require that the situation of the labour market be taken into consideration to grant access to employment for beneficiaries of subsidiary protection. Rules related to the access to labour market do not apply to beneficiaries of temporary protection. Beneficiaries of temporary protection are not entitled to work in Hungary
Ireland	Yes		Transposed in Section 3 of the Refugee Act 1996 confers employment rights on refugees, and in SI 518 of 2006, Regulation 19 (1)(b) confers similar rights on subsidiary protection recipients.
Italy	Yes		--
Luxemburg	Yes		Article 26 has been transposed literally
Netherlands*	Yes		It already had been in the legislation.
Poland	Yes		Both recognized refugees and recipients of subsidiary protection have full access (there is no distinction between them and Polish citizens) to the labour market, including a right to register as unemployed (this entitles them to free medical treatment). Moreover, both have a right to run a self-owned business.
Portugal*		No	Directive not transposed
Romania		No	According to article 20 of the Asylum Law acknowledging refugee status or granting subsidiary protection offers the beneficiary the right to be employed by natural or legal persons, to exercise

			unpaid activities, to exercise freelance professions, to carry out legal activities, and to perform commercial acts and deeds, including economic activities independently, under the same conditions as Romanian citizens.
Slovakia	Yes		--
Slovenia	Yes		Slovenia has not transposed "*vocational training and practical workplace experiences*".
Sweden*		No	Directive not yet transposed
United Kingdom	Yes		344B. The Secretary of State will not impose conditions restricting the employment or occupation in the United Kingdom of a person granted asylum or humanitarian protection.

40b. If refugees and recipients of subsidiary protection are treated differently with respect to employment access, please indicate the main differences.

Austria	Refugees do not need a special working permit. They have the same rights as Austrians.
Belgium	As was mentioned above beneficiaries of subsidiary protection benefit from a work permit (permit C, annually renewable, valid for any profession, obtained with few formalities) during their temporary stay on the territory (5 years). If they want to work as freelance, they need an authorisation during the same period. Afterwards, they can work without any limitation.
Czech Republic	Until December 2007 recipients of subsidiary protection were not allowed to work without a work permit. This was changed in January 2008.
France	No difference
Germany	Recognized refugees are entitled to access to the labour market immediately after their recognition comes into force. In cases of subsidiary protection, people have to face a waiting period of one year and after that, access is a question of discretion (only possible if no German or EU citizens are available).
Greece	--
Hungary	See above
Ireland	No differences in treatment.
Italy	Refugees can have access to civil service employment when it is possible for EU citizens. Subsidiary protection beneficiaries and other regular migrants cannot.
Luxemburg	Since the transposition was literal, the only difference in treatment concerns access to employment, where recognized refugees have equivalent access conditions to nationals.
Netherlands*	No difference
Poland	They are treated in the same way
Portugal*	Directive not yet transposed
Romania	No differences
Slovakia	--

Slovenia	They are treated equally
Sweden*	No difference. The residence permit includes a right to work.
United Kingdom	--

ARTICLE 27

41a. Has article 27 been transposed into national legislation?

Austria		No	The practical transposition is deficient.
Belgium	Yes		Equality in education was assured before the transposition.
Czech Republic	Yes		All minors granted refugee or subsidiary protection status have full access to the education system under the same conditions as nationals.
France	Yes		Refugees and subsidiary protection beneficiaries have access to education.
Germany		No	The legislation on refugees is in line with the QD. Legislation on persons with subsidiary protection does not fulfil the requirements of equal treatment with nationals of the receiving state. Persons with this status presently are only entitled to public financial support for their studies if they have stayed in Germany with a legal stay permit for at least five years and have been employed for that time (Section 8 (2) Bundesausbildungsförderungsgesetz). This issue is not a question for the Federal Government but for the 16 federal states (*Länder*). All school – laws in these counties enclose provisions concerning the right of people under subsidiary protection to access common schools – but not Universities - automatically.
Greece	Yes		Article 27of the Directive has been transposed verbatim in the Presidential Decree 96/2008. There is no differential treatment between refugees and recipients of subsidiary protection with respect to access to education.
Hungary	Yes		Act LXXIX of 1993 on Public education (hereinafter referred to as Act on Education) stipulates children's obligation to attend primary and secondary education. As set out in Section 110 of the Act on Education, minors who are not Hungarian citizens are obliged to attend primary and secondary school after the submission of the asylum application if – having reached the age of 6 years – they are asylum-seekers, recognised refugees or beneficiaries of temporary protection. Section 15 of the executive Government Decree of the

			Asylum Act foresees that: *"Upon reception, asylum-seekers shall be entitled to the following provisions and benefits: ... reimbursement of costs related to the obligatory school participation of the asylum seeker*". People entitled to international protection including asylum seekers receive pecuniary aid, namely the school-start benefit. (Section 15 (3) (a) of the Government Decree). Section 21 of the Government Decree foresees that: "*Within the scope of placement and care at a reception centre, in addition to provisions referred to in paragraph (1), unaccompanied minors shall be provided with preparatory language training in order to facilitate their participation in public education upon the issuance of the order to refer their application for asylum to a procedure of merit."* Furthermore in Section 29 the decree foresees that: *"In order to ensure that asylum- seekers conform with their obligation to attend school education, the refugee authority shall reimburse the costs related to their education at a primary school, an institute for the education of the mentally handicapped, a grammar school, a vocational school or a school for training skilled workers."* According to Section 30: *"(1) In order to conform with the obligation to attend school education, the legal guardian of an asylum-seeker attending a primary school, an institute for the education of the mentally handicapped, a grammar school, a vocational school or a school for training skilled workers may lodge an application with the refugee authority requesting school-start benefit.* *(2) School-start benefit may be used once per year up to the extent of the minimum old-age pension."*
Ireland	Yes		Transposed in Regulation 19(1)(b), which actually goes further than article 27 of the Directive in that it affords the subsidiary protection recipient the same rights of access to education as Irish citizens.
Italy	Yes		--
Luxemburg	Yes		Article 27 has been transposed literally
Netherlands*	Yes		It was already included in the national legislation.
Poland	Yes		According to the Polish Constitution everyone shall have the right to education and education up to 18 years of age shall be compulsory. Thus, both recognized refugees and subsidiary protection recipients have full access to all types of schools under the same conditions as citizens. Besides, both recognized refugees and persons granted subsidiary protection have access to higher education on the

			same conditions as Polish citizens.
Portugal*		No	Directive not transposed
Romania	Yes [97]		According to article 20 acknowledging refugee status or granting subsidiary protection offers the beneficiary with access to all types of education, under the conditions stipulated by the law for Romanian citizens.
Slovakia	Yes		--
Slovenia	Yes		Practical problems could arise regarding minors who enrolled in the education system a few years before they became adult and who then became adults before they could finish primary or secondary school, because they are no longer entitled to the same level of rights. The Ministry of Education has explained that they will then be enrolled in the schooling system according to quota for foreigners and will be able to finish schooling although they will have become adults during their schooling.
Sweden*	Yes		--
United Kingdom		No	However, information on the Home Office website states that asylum seeking children and dependant children of asylum seekers of school age should be enrolled at school.

41b. If refugees and recipients of subsidiary protection are treated differently with respect to access to education, please indicate the main differences.

Austria	n/a
Belgium	n/a
Czech Republic	No.
France	No difference
Germany	See above.
Greece	--
Hungary	See above
Ireland	No differences in treatment.
Italy	No difference
Luxemburg	No differences in treatment regarding access to education.
Netherlands*	No difference is made.
Poland	See question 41a.
Portugal*	Directive not transposed
Romania	No differences
Slovakia	No difference
Slovenia	They are not treated differently.
Sweden*	No difference.
United Kingdom	--

[97] But not entirely.

ARTICLES 20-34

42. Please share any additional information you consider relevant regarding how your Member State has upheld the rights of protection beneficiaries pursuant to Articles 20-34. In particular, please highlight ways in which your state recognizes different sets of rights for refugees versus those granted subsidiary protection:

Austria	Different sets of rights exist especially concerning travel documents, which are practically never given to persons with subsidiary protection. The granting of social welfare and the respective regulations highly depend on the respective region due to the federal system, the same counts for access to accommodation.
Czech Republic	From January 2008 the situation of both categories of protection beneficiaries is the same. Until December 2007, recipients of subsidiary protection couldn't be registered as job applicants, so they had to pay health insurance themselves. Their access to social benefits was also very restricted.
France	The main difference between refugees and subsidiary protection beneficiaries is about the residence permit. Refugees receive a permanent residence permit (actually a renewable ten-year permit) whereas the subsidiary protection beneficiaries receive a renewable one-year residence permit. They can apply for a permanent permit after five years. Refugees are eligible for the minimum insertion income (RMI) as soon as the protection is recognised. Subsidiary protection beneficiaries can obtain this allowance after five years in France. Instead, they can obtain a waiting allowance (ATA), which is lower and does not include a package of social advantages. However, in March 2008, the Ministry of Labour, Social Affairs, Family, and Solidarity decided to grant the minimum insertion income to subsidiary protection beneficiaries. A new Act establishing a new minimum income as a substitute to RMI is about to be adopted: according to the proposal, SP beneficiaries won't have access to the new income before five years of residence. According to Article L.711-2 CESEDA resulting from the bill adopted on 20th November 2007, refugees will benefit from an individualised service in order to facilitate access to work and housing. We are still waiting for the application Decrees. Subsidiary protection beneficiaries won't be eligible for this service. A judicial right of access to accommodation (*droit au logement opposable*) was created a year ago. According to a decree, refugees will have access to this right as soon as the protection is recognised, whereas the subsidiary protection beneficiaries shall be in France for two years before acceding to the mechanism enforced by the law.
Germany	Recognized refugees get access to social benefits to (nearly) the same

	extent as citizens (According to Art 23 and 24 GC). In cases of subsidiary protection, there is a specific system of social benefits that reduces the benefits in general for about 30 % and offers no access to some specific benefits concerning medical treatment and financing of housing – the details are too complicated to be written here. Regarding social assistance (Art. 28 QD), German provisions impose additional criteria on persons with subsidiary protection in relation to support grants for children and education. In particular, support grants are only awarded if the person in question has been legally staying in Germany for at least three years. A residence permit is not granted automatically under the subsidiary protection regime, contrary to what is the case for refugees and persons granted asylum (Section 25 (1) and (2) Residence Act). Section 25 (3) Residence Act provides for exceptions to the granting of a residence permit as well as for some kind of discretion for the competent aliens authority (cf. Q 3 and 30d). The law would as well from its wording allow for a residence permit for a period shorter than one year. It seems that this is not done in practice. As the local aliens authorities grant residence permits, a "national practice" does not exist and the respective problems faced in this regard vary widely within Germany.
Greece	In most respects Presidential Decree 96/2008 grants the same rights to recognised refugees and beneficiaries of international protection. The only differences concern residence permits (Article 24 of the Directive) and travel documents (Article 25 of the Directive).
Ireland	Subsidiary protection under the Directive has not been in force for a sufficiently long period to form a definitive opinion on the manner in which the Irish state has upheld these rights, particularly in view of the fact that all decisions made to date have been negative. The same set of rights are afforded to subsidiary protection recipients as are afforded to refugees.
Luxemburg	Administrative procedures treat refugees and recipients of subsidiary protection differently. A refugee receives rather automatically a residency permit valid for three years and liable for renewal. A person granted subsidiary protection must apply for a residency permit valid only for one year and liable for renewal.
Netherlands	Refugees and beneficiaries of subsidiary protection receive the same rights. Interesting for other countries may be that in the Netherlands there is a special policy for unaccompanied minors who are not recognized as refugees and who are not granted subsidiary protection on asylum grounds (article 3 ECHR, trauma and general protection policy). They can receive a regular residence permit if they fulfil specific conditions.
Poland	Regarding art. 24 of the directive, Polish law provides that recognized asylum seekers are provided with residence permits valid for 3 years

	and subsidiary form of protection recipients – 2 years (see art. 89i of the act on granting protection). At present we consider integration and access to accommodation (art. 31 of the directive) a major problem.
Slovenia	Persons granted subsidiary protection have nearly the same rights as refugees. The only difference refers to the right to a residence permit, because persons with subsidiary protection are granted temporary permits (for 3 years) whereas refugees receive permanent permits.
United Kingdom	There is little hard evidence of the precise impact of the new policy of granting only limited leave to refugees, though we are concerned that refugees will increasingly be pushed into short term agency work as they reach the end of their period of leave, even if they subsequently receive ILR. For refugees undertaking degrees, particularly part time degrees which are often a more appropriate study route for refugees, there will be no guarantee that they will be able to complete their course. Limited leave additionally affects refugees' ability to access funding: career development loans require that an individual has ILR, and mainstream lenders are unlikely to provide finance that has longer term repayment. The situation is similar for refugees wanting to start their own business as most Community Development Finance Institutions (CDFIs) require applicants to have ILR. Further, the Chartered Institute of Housing has noted that limited leave will frustrate people's ability to look for permanent housing. We welcome the Home Office intention to continue issuing travel documents to cover the period of leave an individual has in the UK. In our experience it is of the utmost importance that people are able to visit relatives in other countries, particularly when families have been split up during the chaos of flight and seek asylum in different countries. We are concerned, however, about current requirements that an individual provide evidence that they cannot obtain a national passport before being eligible for a Certificate of Identity (CID) travel document. This requirement is only waived if IND accepts that an individual has a fear of their national authority. In practise, whilst some recipients of subsidiary/complementary protection are rightly exempted from the need to provide this proof, many others are unreasonably required to approach their national authorities for evidence of being formally and unreasonably refused a passport. In many cases, national authorities fail or refuse to provide such evidence. As a result, individuals are unable to travel outside the UK. We have additional long-standing concerns about problems with the recognition of the CID. We regularly hear from people who have been recognised by the UK as being in need of protection, have obtained a CID and are deeply distressed to find themselves unable to travel elsewhere in Europe, for example to meet relatives after years of separation. The fact that no signatory to the Schengen Agreement

recognises the CID is a sign of the severity of the problem. We would therefore welcome additional efforts to ensure the recognition of travel documents issued to people with subsidiary/complementary protection status. We believe that this is an opportune moment to raise the issue with our EU counterparts, given the provisions on travel documents in the Qualification Directive and the forthcoming deadline for all EU member states to comply.

We support measures to ensure that refugees and others with status have access to employment and employment-related education and training opportunities under equivalent conditions as nationals. We note, however, that some employers, including government bodies such as Jobcentre Plus, impose restrictions on employing non-nationals. These restrictions have a negative impact on those with recognised international protection status, and we would welcome an end to such practices.

We believe that greater efforts are required to create a level playing field for those with protection status who face distinct barriers as they strive to integrate. For example, there is little structured provision for those with status to: receive accreditation of prior (experiential) learning; to access NARIC, which establishes the UK equivalent of qualifications; to embark upon vocational ESOL training; to be assisted to conduct skills audits; and to benefit from appropriate information, advice and guidance. These are not currently provided through SUNRISE or Jobcentre Plus (JCP). As a majority of refugees have higher level skills and education (NVQ level 3 and above), JCP is largely unable to offer tailored support and appropriate employment to them. Neither is there a consistent JCP policy allowing advisers to be flexible in allowing refugees to take extended or additional training while remaining on benefits. This has created an increasing problem of underemployment of those with protection status, which we predict will be exacerbated for refugees by the granting of only five years leave to remain.

We believe that there is a tension between the policy of encouraging refugee integration and the treatment of refugees in relation to access to Higher Education. We believe that the Department for Education and Skills should take a stronger role in promoting refugees as fully eligible for home student fees and student support. Student support is currently available to those with ILR and refugee status. We would like this to continue, despite the policy on granting limited leave to refugees, and believe those with subsidiary/complementary protection should be included. At present, the latter have to satisfy the 3 year 'ordinarily resident' test before the start of the course in order to be eligible for student support.

In relation to children, we welcome the UK's commitment to continue its legal responsibility to make education available for all children of

	compulsory school age, irrespective of immigration status. Furthermore, we welcome the Government's support of the development and dissemination of high quality information to education professionals working with refugee pupils in the context of its commitment to raise the attainment and achievement of all children and young people. We are disappointed, however, that the Government has not introduced a dedicated grant to support local authorities and schools to develop resources and continuous professional training for teachers working with refugee pupils. Furthermore, we are concerned that the DfES' new Ethnic Minority Achievement Grant funding formula and the replacement of the ring-fenced Vulnerable Children's Grant with the new un-hypothecated Children's Services Grant will impact on the delivery of high quality support for refugee pupils. We recognise that the UK is in compliance with the minimum standards on access to health care outlined in the Qualification Directive. However, we would like to reiterate our concerns about the barriers faced in accessing health services by many people with protection status in the UK. In addition to barriers stemming from poverty, social exclusion and a lack of cultural awareness amongst providers, language can be particularly problematic where access to high quality interpreting services is not ensured as a matter of course. There are additional problems with access to GP registration, as well as refugees' awareness of their own rights and entitlements. We are hopeful that the newly translated information provided to people at the point of granting leave to remain will contain comprehensive information about entitlement to healthcare services. We are aware that some people with protection status are being denied care as a result of confusion about entitlement among health providers. This confusion has become particularly problematic since April 2004, and the introduction of the NHS (Charges to Overseas Visitors) (Amendment), which ended free entitlement to secondary care for rejected asylum seekers. The UK should restore entitlement to secondary care for all refugees and asylum seekers, but pending this, there is an urgent need for more effective training for health providers and information, interpreting and advocacy services to ensure that refugees are able to access the healthcare to which they are entitled.