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Proposal for a

COUNCIL DIRECTIVE

on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. MINIMUM STANDARDS FOR THE QUALIFICATION AND STATUS OF THIRD COUNTRY NATIONALS AND STATELESS PERSONS AS REFUGEES OR AS PERSONS WHO OTHERWISE NEED INTERNATIONAL PROTECTION

50 YEARS AFTER THE GENEVA CONVENTION: CREATING THE HEART OF THE COMMON EUROPEAN ASYLUM SYSTEM

According to the Conclusions of the Presidency at the Tampere European Council in October 1999, a Common European Asylum System is to include, in the short term, a clear and workable determination of the State responsible for the examination of an asylum application, common standards for a fair and efficient asylum procedure, common minimum conditions of reception for asylum seekers and the approximation of rules on the recognition and content of refugee status. This is to be supplemented with measures on subsidiary forms of protection offering an appropriate status to any person in need of such protection. In addition, the Conclusions make clear that, in the longer term, Community rules should lead to a common asylum procedure and a uniform status for those who are granted asylum valid throughout the Union. Finally, the European Council, in Tampere, urged the Council to step up its efforts to reach agreement on the issue of temporary protection for displaced persons on the basis of solidarity between Member States.

- On 28 September 2000, the Council adopted a Decision (2000/596/EC) establishing a European Refugee Fund as a solidarity measure to promote a balance in the efforts made by Member States in receiving and bearing the consequences of receiving refugees and displaced persons.
- On 11 December 2000, the Council adopted a Regulation (2725/2000/EC) concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention on the State responsible for examining applications for asylum lodged in one of the European Union Member States.
- On 20 July 2001, the Council adopted a Directive (2001/55/EC) on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof;

In addition to the Proposals for the above mentioned acts approved by the Council, the Commission has adopted:

- On 20 September 2000, a Proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status;
- On 22 November 2000, a Communication on a common asylum procedure and a uniform status for those who are granted asylum valid throughout the Union.
- On 3 April 2001, a Proposal for a Council Directive on minimum standards on the reception of applicants for asylum in Member States.

- On 26 July 2001 a Proposal for a Council Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national

As indicated in the scoreboard to review progress on the creation of an area for freedom, security and justice in the European Union, approved by the Council on 27 March 2000, the Commission is now, in the second half of 2001, proposing a Council Directive on minimum standards on the qualification and status of third country nationals and stateless persons as refugees and as persons otherwise in need of international protection. This will complete the Commission's work on a proposed set of "building blocks", which jointly constitute the first step of the "Common European Asylum System" called for by the Tampere European Council.

This Proposal has been drafted on the basis of a number of preparatory activities and background materials.

In the preparatory phases of the legislative process leading to the current Proposal, the Commission organised a series of bilateral consultations with Member States. These consultations were held on the basis of a discussion paper, drafted with a view to facilitating discussions with Member States on how best to legislate in EC legal instruments, rules on the recognition and content of refugee and subsidiary protection status.

In its November 2000 Communication, entitled "Towards a common asylum procedure and a uniform status, valid throughout the Union for persons granted asylum" (the Asylum Communication), the Commission wrote that "*representatives of civil society, associations, non-governmental organisations and local authorities and communities must also be partners in the new system as actors and vectors of asylum values in Europe*". Within this context the Commission consulted in addition to Member States, UNHCR, expert non-governmental organisations in the field such as the European Council on Refugees and Exiles (ECRE) and Amnesty International, specialised non-governmental organisations such as the European Women's Lobby and Save the Children, academic experts such as the ODYSSEUS academic network for legal studies on immigration and asylum in Europe, and representatives of the judiciary such as the International Association of Refugee Law Judges, on the basis of the aforementioned discussion paper.

On 23 and 24 April 2001 a Seminar, held in Norrköping, and entitled "International protection within one single asylum procedure" was organised by the Swedish Presidency of the European Union. This seminar dealt with the following three issues: the interpretation of the refugee definition, subsidiary forms of protection and a single asylum procedure. The discussion held there and the main findings of the seminar, as well as the different background papers prepared for this Seminar were important sources of inspiration in drafting the current Proposal.

Where it relates to the issue of the refugee definition, the present Proposal also draws on a recent academic study undertaken by the Refugee Studies Centre, University of Oxford for the European Commission. This Proposal incorporates the findings of an expert meeting that was organised to discuss this study as well as various relevant national, European and international texts and jurisprudence. It also reflects various recent comparative Council and CIREA overviews of Member States practices regarding the issue of subsidiary protection.

2. SCOPE OF THE PROPOSAL

With regard to the Common European Asylum System, it was agreed at the Tampere European Council that it “should include *the approximation of rules on the recognition and content of the refugee status* and should be complemented by *measures on subsidiary forms of protection offering an appropriate status to any person in need of such protection*”. The main aim being to ensure that a minimum level of protection is available in all Member States for those genuinely in need and to reduce disparities between Member States’ legislation and practice in these areas. Any differences not solely connected with family, cultural or historical factors, likely to influence in one way or another the flows of asylum applicants, should as far as possible disappear between the Member States, where such movement is purely caused by differences in legal frameworks.

This Proposal relates to an instrument for part of the “first-step” of a Common European Asylum System, which is to be “based on the full and inclusive application of the Geneva Convention, thus ensuring that nobody is sent back to persecution, i.e. maintaining the principle of non-refoulement”. The Proposal therefore lays down rules for determining which applicants for international protection qualify for refugee status and which qualify for subsidiary protection status. It does not extend to cover those third country national or stateless persons present in the territory of Member States who Member States currently allow to remain in their territory for reasons not related to a need for international protection, such as compassionate or humanitarian ones.

In the interests of greater harmonisation and limiting unwarranted secondary movement of asylum seekers, this Directive includes provisions on the minimum rights and benefits to be enjoyed by the beneficiaries of refugee and subsidiary protection status. In the main, the rights and benefits attached to both international protection statuses are the same, to reflect the fact that the needs of all persons in need of international protection are broadly similar. However, some differentiation has been made, in recognition of the primacy of the Geneva Convention and the fact that the regime of subsidiary protection starts from the premise that the need for such protection is temporary in nature, notwithstanding the fact that in reality the need for subsidiary protection often turns out to be more lasting. In order to reflect this underlying premise and reality entitlement to some important rights and benefits has been made incremental, requiring that a brief qualification period be served before a beneficiary of subsidiary protection status becomes eligible to claim them.

This Proposal does not address the procedural aspects of granting and withdrawing refugee status or subsidiary protection status. The procedures for asylum applicants are laid out in the Proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status. Article 3 of that Directive makes the applicability of the Directive to applications for international protection, not made specifically in relation to the Geneva Convention, optional. This leaves a potential gap in the European protection regime and allows for differences in Member State practice in this area to continue with a possible negative affect on the goal of limiting unwarranted secondary movement of asylum seekers within the European Union. Member States are therefore encouraged to apply the optional Article 3 of the Proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status to all applications for international protection in a similar manner in the interests of harmonisation

In the Asylum Communication the Commission states that at the end of this first step of the harmonisation process of EU asylum policy, and whatever the result, it will be necessary to consider whether mechanisms can be developed to correct certain differences that might remain or to prevent the phenomenon of divergent interpretation of Community rules. Specific questions related to the issues covered in this Proposal were also already identified in the Communication as being in need of further clarification, such as: should the EU aim for transposing the Geneva Convention status into Community law, should the EU envisage one or more uniform personal statuses and what kind of documents, rights, freedom of movement and right of residence in another Member State should refugees and others in need of international protection have. These questions are not covered by this Proposal because it is envisaged that they will be tackled in the second step of the harmonisation process.

3. GUIDING PRINCIPLES

The Charter of fundamental rights of the European Union reiterated the right to asylum in its Article 18. Flowing from this the Proposal reflects that the cornerstone of the system should be the full and inclusive application of the Geneva Convention, complemented by measures offering subsidiary protection to those persons not covered by the Convention but who are nonetheless in need of international protection. It is argued that the wording of the definition of who is a refugee, as contained in Article 1(A)(2) of the 1951 Geneva Convention, as well as the Convention itself, remains relevant today and is sufficiently flexible, full and inclusive to offer a guarantee of international protection to a significant proportion of those persons in need of it. This approach is in accordance with the principles of interpretation as codified in Article 31(1) of the 1969 Vienna Convention on the Law of Treaties, requiring that a "treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose".

The Directive takes as a starting point the *“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 harmonised application of the definition of the term "refugee" in Article 1 of the Geneva Convention of 28 July 1951 relating to the status of refugee”*. (hereinafter the Joint Position). Other sources of reference were the *“Handbook on procedures and criteria for determining refugee status”* of the office of the United Nations High Commissioner for Refugees (hereinafter the Handbook), drafted with a view to assisting States party to the Convention in interpreting the Convention’s refugee definition, and the EXCOM Conclusions. However, the primary point of reference is the Geneva Convention itself.

The subsidiary protection measures proposed are considered complementary to the protection regime enshrined in the Geneva Convention and its 1967 Protocol and are to be implemented in such a manner that they do not undermine but instead complement the existing refugee protection regime. The definition of subsidiary protection employed in this Proposal is based largely on international human rights instruments relevant to subsidiary protection. The most pertinent of them being (Article 3 of) the European Convention on Human Rights and Fundamental Freedoms (hereinafter the ECHR), (Article 3 of) the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment, and (Article 7 of) the International Covenant on Civil and Political Rights.

Though no specific EU acquis on the issue of subsidiary protection exists, the ECHR and the case law of the European Court on Human Rights provide for a legally binding framework, informing the Commission’s legislative work on this issue. Partly in response to the case law of the European Court of Human Rights and general principles of international humanitarian

law, Member States have developed schemes of “subsidiary” or “complementary” protection. This Proposal has drawn from the disparate Member State systems and has attempted to adopt and adapt the best ones. Rather than creating new *ratione personae* protection obligations incumbent on Member States, the Proposal is clarifying and codifying existing international and Community obligations and practice.

4. THE OBJECTIVES OF THE PROPOSAL

With this Proposal for a Directive, the Commission is pursuing the following aims:

1. Implementing point (1)(c), 2(a), and 3(a) of the first paragraph of Article 63 of the Treaty, paragraph 38(b)(i and ii) of the Vienna Action Plan, Conclusion 14 of the Tampere European Council and relevant references in the Scoreboard presented to the Council and the Parliament in March 2000;
2. Setting out minimum standards on the qualification and status of applicants for international protection as refugees or beneficiaries of subsidiary protection status;
3. Ensuring that a minimum level of protection is available in all Member States for those genuinely in need of international protection and to reduce disparities between Member States’ legislation and practice in these areas as the first step towards full harmonisation.
4. Limiting secondary movements of applicants for international protection influenced solely by the diversity of the applicable rules on recognising refugee status and granting subsidiary protection status;
5. To guarantee a high level of protection for those who genuinely need it, whilst at the same time preventing abuses of asylum applications which undermine the credibility of the system, often to the detriment of applicants in genuine need of protection

5. AN OVERVIEW OF THE STANDARDS IN THE PROPOSAL

This Proposal is composed of seven Chapters:

- (a) The first group of provisions concerns the most general aspects of the Proposal, including its objective and scope as well as the definitions of the concepts that are relevant for a clear understanding of the Proposal.
- (b) The second set of rules focuses on the general nature of international protection, identifying the many common characteristics of its two constitutive elements, refugee status and subsidiary protection status. It outlines general rules on establishing how to determine whether a claim for international protection is well founded or not. Its guiding principle is that international protection of any sort is a type of surrogate protection to be provided in lieu of national protection only when the realistic possibility of obtaining protection from an applicant’s country of origin is absent.
- (c) A third group of rules is specific to the qualification as a refugee. It focuses in particular on the definition of “persecution” and offers an interpretation of this central notion, including the five grounds on which it can be predicated, based on Article 1 (A) of the Geneva Convention. It also contains rules laying down the circumstances in which

Member States may withdraw refugee status when such status is found no longer to be required as well as rules for excluding applicants from such status.

- (d) The fourth group of rules provides a framework for identifying three categories of applicants for international protection who do not qualify as refugees but are eligible for the supplementary status of subsidiary protection. The three categories are based on Member States existing obligations under human rights instruments, as well as existing Member State practice in this area, and are designed to complement the refugee protection regime. It also contains rules laying down the circumstances in which Member States may withdraw subsidiary protection status when such status is found no longer to be required as well as rules for excluding applicants from such status.
- (e) A fifth set of rules lays down the minimum obligations that Member States shall have towards those to whom they grant international protection. These obligations include the duration and content of the status flowing from recognition as a refugee or as a beneficiary of subsidiary protection status. The benefits accruing to both categories of international protection status shall be very similar with a few important exceptions with regard to the duration of the status, and certain rights which depend on a qualification period in the case of beneficiaries of subsidiary protection to reflect the potentially more temporary nature of this category.
- (f) Finally, the Proposal outlines in its two final Chapters several rules to ensure the Directive's complete implementation. If the final aims of the future directive are to be met, the instruments that are put in place to reach these aims have to be checked, revised and adjusted to be sure they are going to produce the expected results. It is important that a national contact point is designated and that appropriate measures are enacted to establish direct Cooperation and an exchange of information between the competent authorities. At Community level, it is important to assess whether the purposes of this Directive are met or if there is room for improvement.

The Commission, for its part, envisages the introduction of one Contact Committee. This Contact Committee will facilitate the transposition and the subsequent implementation of this and other Directives in the field of asylum through regular consultations on all practical problems arising from its application. It will help avoid duplication of work where common standards are set and to adopt complementary strategies in combating abuse of the protection regime. In addition, the Committee will facilitate consultation between the Member States on reaching similar interpretations of the rules laid down on international protection that they may lay down at national level. This would greatly help the construction of a Common European Asylum System as envisaged by the Conclusions of the Presidency at the Tampere European Council in October 1999. Lastly, the Committee will advise the Commission, if necessary, on any supplements or amendments to be made to this Directive or on any adjustments deemed necessary.

6. THE CHOICE OF LEGAL BASIS

The choice of legal basis is consistent with the amendments made to the Treaty establishing the European Community by the Amsterdam Treaty, which entered into force on 1 May 1999. Points (1)(c) and 2(a) of the first paragraph of Article 63 of the EC Treaty provides that the Council shall adopt measures on asylum in accordance with the Geneva Convention of 28 July 1951, the Protocol of 31 January 1967 and other relevant human rights instruments, relating to minimum standards on the qualification and status of refugees and persons who

otherwise need international protection. Point (3)(a) of the first paragraph of Article 63 of the EC Treaty provides that the Council is to adopt measures relating to “conditions of entry and residence, and standards on procedures for the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunion”. As this Article applies equally to refugees as to other categories of third country nationals, it constitutes the legal basis for the inclusion in this Proposal of the conditions of residence of refugees, including their rights such as employment and education.

Article 63 is accordingly the proper legal basis for a Proposal to establish minimum standards for the qualification and status of refugees and persons who otherwise need international protection in Member States.

Title IV of the EC Treaty is not applicable to the United Kingdom and to Ireland, unless those Member States decide otherwise in accordance with the procedure laid down in the Protocol on the position of the United Kingdom and Ireland annexed to the Treaties. Title IV is likewise not applicable to Denmark, by virtue of the Protocol on the position of Denmark annexed to the Treaties.

7. SUBSIDIARITY AND PROPORTIONALITY: JUSTIFICATION AND VALUE ADDED

Subsidiarity

The insertion of the new Title IV (Visas, asylum, immigration and other policies related to free movement of persons) in the Treaty establishing the European Community demonstrates the will of the High Contracting Parties to confer powers in these matters on the European Community. But the European Community does not have exclusive powers here.

Consequently, even with the political will to implement a common policy on asylum and immigration, it must act in accordance with Article 5 of the EC Treaty, i.e. the Community may take action only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community. The proposed Directive satisfies these criteria.

The establishment of an area of freedom, security and justice entails the adoption of measures relating to asylum. The specific objective of this initiative is to lay down minimum standards on the qualification and status of refugees and persons who otherwise need international protection in Member States. The standards laid down in this Proposal must be capable of being applied through minimum conditions in all the Member States. Minimum Community standards have to be laid down by the kind of action proposed here. They will help to limit secondary movements of asylum applicants that result from disparities in Member States practices and legislation. Henceforth, applicants for asylum will be less inclined than before to decide on their country of destination on the basis of different protection regimes. They will also be less inclined than before to choose their country of destination on the different level of rights and benefits that Member States attach to recognition of a form of international protection. The continued absence of approximated rules on the qualification and status of refugees and persons who otherwise need international protection would have a negative effect on the effectiveness of other instruments relating to asylum.

Conversely, once minimum standards on the qualification and status of refugees and persons who otherwise need international protection are in place, the operation of, *inter alia*, an effective system for determining which Member State is responsible for considering an asylum application is fully justified. Applicants for international protection who cannot choose in complete freedom where to lodge their application should expect their claims for international protection to be assessed in a similar way in any Member State of the European Union and for successful recognition of such a claim to result in a comparable set of rights and benefits. The idea of a single Member State responsible for examining an application for international protection becomes fairer to applicants if the same minimum standards exist across all Member States. At the same time, minimum standards on the qualification and content of the two protection regimes should limit the importance of factors that determine secondary movements within the Union and, in this way, would help to establish the effectiveness of the mechanisms according to which the responsible Member State is chosen.

Establishing common minimum standards on the qualification and status of refugees and persons who otherwise need international protection is a fundamental tool in making national asylum systems more effective and a Common European Asylum System more credible.

Proportionality

The form taken by Community action must be the simplest form allowing the Proposal to attain its objectives and to be implemented as efficiently as possible. In this spirit, the legal instrument chosen is a Directive, which allows minimum standards to be laid down, while leaving national authorities the choice of the most appropriate form and methods for implementing it in their national system. The Proposal concentrates on a set of minimum standards that are strictly necessary for the coherence of the planned action without laying down standards relating to other aspects of asylum. The Proposal refers to the Proposal for a directive on minimum standards on common asylum procedures (COM(2000) 578), to the Proposal for a Directive laying down minimum standards on the reception of applicants for asylum in Member States (COM(2001)181), the Proposal for a Council Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national (COM(2001) 447), the Council Directive (2001/55/EC) on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof , the amended Proposal for a Council Directive on the right to family reunification (COM(2000) 624) and to the Proposal for a Council Directive concerning the status of third country nationals who are long term residents (COM(2001) 127) to ensure consistency within the Common European Asylum System and with other Proposals for Community instruments in the field of immigration. Finally, several rules require Member States only to comply with certain aims (e.g. they are asked to integrate considerations specific to the applications for international protection from persons having special needs) but leave Member States completely free to choose the means used to achieve this aim. The Proposal, therefore, does not go beyond what is necessary to achieve the objective of the Directive.

COMMENTARY ON ARTICLES

CHAPTER I

Subject matter, definitions and scope

Article 1

This Article defines the purpose of the Directive, which is to provide a framework for an international protection regime, based on existing international and Community obligations and current Member States practice, and separated into the two complementary categories of refugee and subsidiary protection in order to maintain the primacy of the Geneva Convention in such a regime. It lays down minimum standards for the qualification and subsequent status of third country nationals and stateless persons who fall into these categories but does not legislate for persons whom Member States chose to grant a status on strictly humanitarian or compassionate grounds.

Article 2

Definitions

This Article contains definitions of the various concepts and terms used in the provisions of the Proposal.

- (a) Throughout the Proposal, the term “international protection” refers to the protection applied for by third country nationals or stateless persons, or given to them by Member States, instead of protection previously provided by an individual’s country of origin or habitual residence. The whole concept of “international protection” is comprised of the two separate but complementary elements of refugee status and subsidiary protection status.
- (b) Throughout the Proposal, the term “Geneva Convention” refers to the Convention relating to the status of refugees of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967. All Member States are parties to both without any temporal or geographical limitations.
- (c) A “refugee” is a person who fulfils the requirements of Article 1(A) of the Geneva Convention.
- (d) “Refugee status” means the status granted by a Member State to a third country national or stateless person who is a refugee and is admitted as such to the territory of this Member State;
- (e) Throughout the Proposal “person eligible for subsidiary protection” means a person who does not qualify as a refugee but otherwise satisfies the rules regarding international protection set out in Chapters II and IV of this Directive. The term refers to someone who has established a well founded fear of being subjected to other serious harm in their country of origin for one or more of the reasons set out in Chapter IV but does not qualify as a refugee.
- (f) “Subsidiary protection status” is a form of international protection status, separate but complementary to refugee status, granted by a Member State to a third country national

or stateless person who is not a refugee but is otherwise in need of international protection and is admitted as such to the territory of this Member State;

- (g) An “application for international protection” or an “application” is a request by a third country national or a stateless person for protection from a Member State, which can be understood to be on the grounds that he or she is a refugee or a person in need of subsidiary protection. Any application for international protection shall fall to be considered under the provisions of the Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status, and is presumed to be an application for asylum unless a third country national or a stateless person explicitly requests another kind of protection that can be applied for separately;
- (h) “Application for asylum” is defined with reference to the definition of a refugee in the Geneva Convention, set out in Chapters II and III of this Directive
- (i) “Application for subsidiary protection” is defined with reference to the interpretation of three categories of person considered to be in need of international protection according to Member States obligations under certain human rights instruments or drawn from previously existing and widespread Member State practice, which cannot be understood to be on the grounds that he or she is a refugee.
- (j) The definition of “family members” contains provisions for maintaining family unity drawn from the Proposal for a Council Directive laying down minimum standards on the reception of applicants for asylum in Member States.
 - (i) This subparagraph concerns spouses or unmarried partners (who may be of the same sex) but the provision relating to unmarried partners is only applicable in Member States where such relationships are treated in the same way as married couples for legal purposes. This provision generates no actual harmonisation of national rules on the recognition of unmarried couples; it merely allows the principle of equal treatment to operate. To prevent possible abuse, unmarried partners must be in a stable relationship, backed up by evidence of cohabitation or by reliable testimony.
 - (ii) This subparagraph concerns the children of a married or unmarried couple, who are themselves unmarried and dependent, whether or not they are minors. No distinction is made in the treatment of children born outside marriage, of a previous marriage or who are adopted. Unmarried children who are not minors are therefore covered if they are dependent, either because they are objectively unable to meet their own needs or because of their state of health
 - (iii) This subparagraph concerns family members not already covered if they were dependent on the applicant at the time of departure from the country of origin. They must therefore be objectively unable to meet their own needs or may have serious health problems or have undergone particularly traumatic experiences. They can be grandchildren, grandparents, great-grandparents or other adults dependent on the applicant.
- (k) The notion of accompanying family members is defined in relation to the definition of family members set out in paragraph (k) and to the fact that they are present in the host country in relation to the application for asylum. This is to exclude from family

unification, under this Directive, family Members that are in the host country for different reasons (e.g. work) or that are in another Member State or in a third country.

- (l) The concept of “unaccompanied minor” is drawn from the definition in the Council Resolution of 26 July 1997 on unaccompanied minors who are nationals of third countries.
- (m) A "residence permit" refers to any formal documentary authorisation to reside for a limited or indefinite period in the territory of a Member State.
- (n) The notion of “Country of origin” refers to the country of nationality or former habitual residence of the applicant.

Article 3

Scope

This Article concerns the scope of the Directive.

The use of the term “third country nationals and stateless persons” relates to the language used in Article 63(1)(c) of the EC Treaty.

Article 4

More favourable provisions

This Proposal for a Directive focuses only on minimum standards on qualification and status of third country national and stateless persons as refugees or persons who are otherwise in need of international protection. The relevant provisions of the Amsterdam Treaty should not be understood as precluding the Member States from granting more than the agreed minimum standards in this field, particularly in terms of the rights and benefits accorded to those recognised as being in need of international protection. This Article accordingly allows Member States to grant applicants for international protection more favourable conditions insofar as they are compatible with the minimum standards laid down in this Directive.

CHAPTER II

Qualification for international protection

Section 1

International protection

This Chapter sets out the shared underlying necessary requirements for an applicant to qualify for either forms of international protection outlined in this Directive. It draws on and elaborates the principles that underlie qualification for refugee status and subsidiary protection status. It takes as its guiding principle the idea that an individual only has a well-founded fear of being persecuted or otherwise suffering serious harm, and is therefore entitled to protection from a Member State, if protection from a domestic source, most usually the applicant’s home state, is not reasonably available.

Article 5

The elements of international protection

This Article sets out the two separate but complementary types of beneficiary of international protection, namely “refugee” and “beneficiary of subsidiary protection”.

- (1) This paragraph outlines a definition of a refugee that is consistent with the Geneva Convention and further elaborated in Chapter III of this Directive. It affirms the concept of a refugee as someone who has a well-founded fear of being persecuted only for one or more of five broadly defined reasons: race, religion, nationality, membership of a particular social group and political opinion. The fear must be such that it makes the applicant unwilling or unable to avail him or herself of the protection of the country of nationality.
- (2) This paragraph outlines the definition of who should be eligible for subsidiary protection and directs that the category should be interpreted further by reference to Chapter IV of this Directive. Although the Geneva Convention is thought to be sufficiently broad and inclusive to provide protection for a significant number of those in need of it, international human rights instruments and Member State practice in this area have extended the scope of international protection still further. The Directive’s aim is to provide that a minimum standard of subsidiary protection is available to complement the Geneva Convention in all Member States to reflect what has been existing practice at Member State level and as a step towards harmonisation.

The phrase “serious unjustified harm” is used here as part of the integrated approach taken to the whole concept of “international protection” and its two separate but closely linked components of refugee status and subsidiary protection. Persecution is defined as being a type of serious unjustified harm, which is causally linked to one or more of the five grounds mentioned in the Geneva Convention. Where there is a well-founded fear of serious unjustified harm for a reason not covered by the Geneva Convention then, subject to the criteria in Chapter IV of the Directive, an applicant will be found to be otherwise in need of international protection and granted subsidiary protection status. Whereas the phrase “well-founded fear of being persecuted” is used as a shorthand term of reference in relation to refugees, the complimentary phrase “well founded fear of (suffering) other serious (unjustified) harm” is used in a similar manner throughout the text in relation to beneficiaries of subsidiary protection.

The term “unjustified” is added to the definition of “serious harm” in order to reflect that there are circumstances in which a state *may* be *justified* in taking measures that cause harm to individuals, such as in the event of a public emergency or national security. Such instances of “justified” harm are likely to be rare but it would be contrary to human rights instruments, such as the European Convention on Human Rights and Fundamental Freedoms, to exclude the possibility that some proportionate derogation from human rights standards may, in limited and particular circumstances, be justified, most commonly in the interests of the wider common good.

Beneficiaries of subsidiary protection are not necessarily any less ‘deserving’ of protection than refugees but in order to respect the call for a “full and inclusive application of the Geneva Convention” and in recognition that the Geneva Convention is sufficiently broad and inclusive to cover a significant number of those genuinely in need of international protection, consideration of whether an applicant qualifies for

subsidiary protection shall only normally take place after it has been established that he or she does not qualify as a refugee.

The exception to this rule is when an applicant for international protection lodges an application on grounds that specifically exclude the Geneva Convention. In such a case, qualification should be considered under Chapters II and IV of this Directive, without reference to Chapter III. The provisions of this paragraph are also without prejudice to Member States constitutional obligations (such as Constitutional asylum)

- (3) This paragraph links the elements of international protection as set out in Section 1 with the assessment of the applicant's fear of being persecuted or exposed to serious and unjustified harm in the country of origin, pursuant to Section 2.

Article 6

Extension of international protection to the accompanying family members

This Article provides for the extension of international protection to all accompanying family members defined in Article 2 of this Directive.

- (1) This Paragraph makes clear that dependant family members are entitled to a status equal to that of the main applicant for asylum and that such entitlement is derived simply from the fact that they are family members.
- (2) This Paragraph provides for an exception to the principle set out in paragraph 1. It allows for a family member who would otherwise qualify for a protection status to be excluded from the orbit of this Directive if rules laid out in Chapter III and IV of the Directive, relating to the Exclusion Clauses detailed in the Geneva Convention, apply to them.

Section 2

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

Article 7

Assessment of applications for international protection

This Article addresses the application for international protection and the assessment of whether the application is objectively well founded. It sets out rules to help in establishing whether an application for international protection is well founded or not. In deciding which rules were relevant close attention was paid to the Geneva Convention, the Joint Position, and the Handbook.

- (a) This point reflects the principle that applications for international protection should be examined on a case by case basis in relation to the objective conditions known to exist in the country of origin or habitual residence. Although the burden of proof in principle rests with the applicant, the duty to ascertain and evaluate all relevant facts is shared between the applicant and the Member State responsible for considering the application.

- (b) This paragraph states the principle that the need for international protection is forward looking and that the applicant's fear of being persecuted or exposed to serious and unjustified harm in the country of origin may be well founded if it is objectively established. If there is a reasonable likelihood of the fear being realised after an applicant is returned to the country of origin then the fear is well founded. The relevant enquiry is whether there is a reasonable likelihood of the fear of persecution or otherwise suffering serious harm being realised. A fear of being persecuted or otherwise subjected to serious harm may be well-founded even if there is not a clear probability that the individual will be persecuted or suffer such harm but the mere chance or remote possibility of it is an insufficient basis for the recognition of the need for international protection.
- (c) This paragraph relates to the fact that if an applicant for international protection has already been subject to persecution or serious and unjustified harm, or to direct threats of persecution or serious and unjustified harm this shall be taken as a serious indication of the risk of being persecuted unless a radical and relevant change of conditions has taken place since then in the applicant's country of origin, or in his or her relations with the country of origin.
- (d) This paragraph reflects the principle that in assessing applications for international protection, a holistic assessment must be made of the factual context surrounding the application. For example, where the applicant is a child or adolescent, the assessment of whether a given risk is sufficiently serious to amount to persecution or other serious harm shall take account of child-specific forms of human rights violation.

With the reference to age this paragraph draws particular attention to the potential vulnerability and unique circumstances of a minor's application for international protection. According to Article 3 of the United Nations Convention on the Right of the Child of 1989, "In all actions concerning children ... the best interests of the child shall be a primary consideration". This mandatory principle, implicit in this paragraph, is referred to explicitly in the recitals so that it can be used as a tool for the interpretation of all the provisions of this Proposal for a Directive that concern minors. More specifically, in assessing an application for international protection Member States should take into consideration:

- (a) the fact that the age and maturity of the child and his or her stage of development form part of the factual context of the application
- (b) the fact that children may manifest their fears differently from adults
- (c) the fact that children are likely to have limited knowledge of conditions in their country of origin
- (d) the existence of child specific forms of persecution, such as recruitment of children into armies, trafficking for sex work, and forced labour.

Within this context, the refugee definition, in particular the five grounds for persecution, is thought to be sufficiently broadly defined as to potentially include refugee children. They should not automatically be granted subsidiary protection simply because they are children.

In particular, where the applicant for international protection is a woman, account shall be taken of the fact that persecution, within the meaning of the Geneva Convention, may be effected through sexual violence or other gender-specific means. Where the form of persecution is gender-specific this should not obscure the reason why the persecutory act occurred. For example, sexual violence can be inflicted on refugee women because, for instance, of their religion, political opinion or nationality. In these cases sexual violence is purely a form of persecution and any of the Convention grounds elaborated in Article 12 may be applicable. However, sexual violence to refugee women, such as Female Genital Mutilation can also be inflicted for the one and only reason of their gender. In such situations, the persecution ground “membership of a particular social group” could apply.

The Commission acknowledges the importance and usefulness of specific “Guidelines” for assessing claims of minors, as well as from women applicants for international protection. However it does not deem the first stage of the Common European Asylum System, or the instrument of a Directive as being appropriate for introducing such guidelines at EU level now. It therefore encourages Member States to develop such guidelines at national level in consultation with UNHCR

- (e) An application for international protection may also be based on credible evidence that laws or regulations in force in the country of origin authorise or condone the persecution or other serious harm of the applicant as an individual, or of a relevant group of which the applicant is shown to be a member and there is a reasonable possibility that such laws or regulations will be applied. There shall be no well founded fear if the law is obsolete and not applied in practice.

Article 8

International protection needs arising *sur place*

This Article concerns the issue of an application for international protection which is made *sur place*, in cases where the need for such protection arises only after an applicant is already in the territory of Member State, most frequently as a result of a change of circumstances in the country of origin.

- (1) This paragraph explains that a fear of persecution or otherwise suffering serious harm need not have existed when an individual left his or her country of origin but a *sur place* claim based on relevant changes in the individual’s country of origin since departure shall be recognised only insofar as those changes are shown to give rise to a well-founded fear of being persecuted or suffering other serious harm on the part of the individual.
- (2) This paragraph addresses the issue of *sur place* claims based on the individual’s activities since leaving his or her country of origin. A claim shall be most readily established where the activities relied upon constitute the expression and continuation of convictions previously held in the country of origin, and which are related to the need for international protection. Continuity of this kind is not however an absolute requirement but may give an indication as to the credibility of the application.

This paragraph also addresses the issue of abuse in *sur place* cases. The fact that a fear of persecution or otherwise suffering serious harm was manufactured, does not in itself necessarily mean that such a fear cannot be well founded and therefore sufficient to

warrant the grant of a international protection status. However, where it can be established to a reasonable degree of certainty that the activities since leaving the country of origin were engaged in for the purpose of manufacturing the necessary conditions for being granted an international protection status, Member States are entitled to start from the premise that these activities do not in principle furnish grounds for such a grant and shall have serious grounds for questioning the credibility of the applicant. Member States should ensure though that the competent authorities recognise applicants as persons in need of international protection if the activities of the kind referred to in this paragraph may reasonably be expected to come to the notice of the authorities of the individual's country of origin, be treated by them as demonstrative of an adverse political or other protected opinion or characteristic, and give rise to a well-founded fear of being persecuted or suffering serious and unjustified harm.

Article 9

Sources of harm and protection

This Article is about the concept of State protection and follows the argument that the main rationale behind the Geneva Convention and regimes of subsidiary protection is that everyone is entitled to be free from persecution or other serious harm, and in the face of such harm should be able to access effective State protection.

- (1) This paragraph follows the practice of the vast majority of Member States and other global actors by affirming that the fear of being persecuted or suffering serious unjustified harm may also be well founded where the risk of it emanates not only from the State but also from parties or organisations controlling the State or from non-state actors where the State is unable or unwilling to provide effective protection. The source of the persecution or serious unjustified harm is deemed irrelevant. The relevant enquiry is whether or not an applicant may obtain effective protection against the harm, or threat of harm, in the country of origin. If persecution or other serious unjustified harm stems from the State then such fear is well founded because de facto there is no viable avenue of protection available in the country of origin. If it stems from non-state agents then any such fear is only well founded if the State is unwilling or effectively unable to provide protection against such risk of harm.
- (2) This paragraph is about the evaluation of the effectiveness, including the availability, of State protection. There must be in place a system of domestic protection and machinery for the detection, prosecution and punishment of actions which constitute persecution or other serious harm. The issue at stake is whether such a system as a whole offers a sufficient and accessible level of protection to all members of the population. For the system to offer effective protection, the State must be able and willing to operate it, such that there is no significant risk of persecution or other serious harm being realised.

In the first part of this evaluation, relating to the determination of whether or not the State has taken, or could be reasonably expected to take, adequate steps to control or combat the infliction of harm, Member States should consider the following factors:

- (a) General conditions in the country of origin
- (b) The State's complicity with respect to the infliction of harm at stake

- (c) The nature of State's policies with respect to the harm at stake, including whether there in force a criminal law which makes violent attacks by persecutors punishable by sentences commensurate with the gravity of their crimes
- (d) The influence the alleged persecutors have with State officials
- (e) Whether any official action taken is meaningful or merely perfunctory , including an evaluation of the willingness of law enforcement agencies to detect, prosecute and punish offenders
- (f) Whether there is a pattern of State unresponsiveness
- (g) A denial of State's services
- (h) Whether any steps have been taken by the State to prevent infliction of harm

In the second part of this evaluation, relating to the determination whether the applicant has reasonable access to State protection, Member States should consider the following factors:

- (i) Evidence by the applicant that the alleged persecutors are not subject to the State's control
 - (j) The qualitative nature of the access the applicant has to whatever protection is available, bearing in mind that applicants as a class must not be exempt from protection by the law
 - (k) Steps, if any, by the applicant to obtain protection from State officials and the State response to these attempts
- (3) This paragraph continues from the logic employed in the previous one. Having accepted that it is possible to have a well founded fear of being persecuted or otherwise suffering serious harm at the hands of non-state agents, this Article sets out the limited conditions where non-state bodies can be considered as potential protectors in a similar manner to recognised states. This requires that an international organisation such as the UN or NATO or a stable State-like authority controls the territory of proposed return and is willing and able to give effect to rights and protect an individual from harm in a manner similar to an internationally recognised state for as long as is necessary.

Article 10

Internal protection

This Article is about the potential for flight or protection from persecution or other serious harm within the territory of the country of origin. On the principle that international protection from harm is only required as a secondary alternative to domestic protection, this provision allows Member States to reject applications for international protection if it can be established that effective protection is available in at least part of the country of origin to which the applicant can reasonably be returned.

- (1) This paragraph makes it a condition of the internal protection alternative that the facts of an applicant's claim for international protection must be considered by Member States before they examine whether an applicant might reasonably be returned.

Only if the application for international protection would otherwise be granted may Member States consider the internal protection option. In other words, only if the applicant establishes a well founded fear of being persecuted or otherwise suffering serious harm in a part of the country of origin shall an examination be made as to whether in another part of the country such fear would be unfounded. In this examination the possibility that effective protection from persecution or other serious harm may be reasonably available in the country of origin must be assessed. Because a national government is presumed to be entitled to act throughout the whole of the national territory, there is a strong presumption against finding internal protection to be available if the agent of persecution is, or is sponsored by, the national government. Internal protection is most likely to prove viable when the harm is threatened by a non-state agent.

- (2) This paragraph is about the considerations to be taken into account in deciding whether the fear of return to a part of the country of origin is well founded. As part of that process it lays down some minimum conditions for establishing if an applicant for international protection may reasonably be refused status and returned to a part of the territory of the country of origin or habitual residence as referred to in paragraph (1). In establishing the reasonableness of return to the proposed site, consideration should be given to the security, political and social circumstances prevailing in that part of the country and to any particular vulnerabilities of the applicant.

CHAPTER III

Qualification for refugee status

The previous Chapter laid down the general pre-conditions necessary for either refugee status or subsidiary protection status to be granted and elaborated the notions of well-foundedness and sources of harm and protection. This Chapter focuses on those factors that are unique to qualification as a refugee, particularly the concept of persecution and its grounds, and is guided very much by the Joint Position and the Geneva Convention, although persecution is not actually defined by the Geneva Convention.

Article 11

The nature of persecution

This Article is about the nature of persecution and lays down some principles for its interpretation.

- (1) As the concept of persecution is not grounded in time, the interpretation of persecution outlined in this Article is intended to be flexible, adaptable and sufficiently open, in order to reflect ever-changing forms of persecution, which may constitute a basis for refugee status.
 - (a) This paragraph lays down the condition that, in order to constitute persecution, acts must be intentional, sustained or systematic and must be sufficiently serious to make return to the country of origin untenable. They must also be based on one of the grounds mentioned in Article 1A of the Geneva Convention as further elaborated in paragraphs 1-5 of Article 12. The repetition of discriminatory measures which, taken separately, may not be serious enough to constitute

persecution, may give rise to a valid claim for refugee status on cumulative grounds.

- (b) This paragraph is about persecution as legal, administrative, police and/or judicial measures, which are either persecutory in themselves or have the appearance of legality and are misused for the purposes of persecution, or are carried out in breach of the law and are sufficiently serious to make return to the country of origin untenable. General measures to safeguard public order, State security, or public health will not usually amount to persecution, so long as they meet the requirements for valid limitation of or derogation from human rights obligations established by international law.
- (c) Points (i) and (ii) of this paragraph are about legitimate law enforcement. Criminal prosecution or punishment for breach of an ordinary law of general application will not usually amount to persecution. It may be otherwise, however, if the State of origin engages in discriminatory prosecution or adjudication; if it imposes discriminatory or inhuman punishment; or if its law purports to criminalise the exercise of a fundamental international human right or to require an individual to commit acts which are in violation of basic norms of international law.
- (d) This paragraph is about military service. It states that prosecution or punishment for refusal to meet a general obligation to perform military service, whether for conscientious objection, absence without leave, evasion, or desertion, will not usually amount to persecution. It may be otherwise, however, if the State of origin denies the applicant due process of law, or engages in discriminatory conscription, assigns duties or conditions of service on a discriminatory basis, or imposes sanctions for failure to meet military service obligations on a discriminatory basis, hence exposing the applicant to disproportionate or excessive punishment or fails to provide a reasonable and non-discriminatory alternative to military service for persons with genuine political, religious, or moral convictions to military service.

In situations of war or conflict, prosecution or punishment for refusal to perform military duties may, by itself, also amount to persecution if the person can establish that performance of military service will require his or her participation in military actions abhorrent to his or her genuine and deep moral, religious or political convictions or to other valid reasons of conscience. Establishing a valid conscientious objection may be facilitated if the military action in which the person would be required to participate is contrary to basic rules of human conduct and/or has been condemned by the international community. This is not, however, indispensable and, even if the military action is generally conducted within the limits prescribed by the laws of war, the person may have valid reasons of conscience for not participating in it. This will be the case, for instance, if the person is a member of an ethnic minority who may be required to participate in military action against that minority.

- (2) This Paragraph further explores the nature of (the reasons of) persecution by laying down some guiding principles for Member States to follow. Qualification as a refugee must in all cases link the well founded fear of persecution with at least one of the five grounds enumerated in the Geneva Convention and set out in Article 13 of this Directive.

- (a) This subparagraph is about the sources of persecution. Persecution is most clearly evident when it emanates from the state itself or from parties or organisations controlling it. In such circumstances the availability of protection from the harm feared or suffered is, almost by definition, unavailable or ineffective. However, it also stated that persecution can originate from non-state agents in the circumstances where a state is *unable or unwilling* to provide effective protection against such persecution. In such cases also, subject to the other qualifying criteria set out in this Directive being met, refugee status should be granted.
- (b) This subparagraph is about the attribution of a Convention reason to an applicant. The fact that the grounds, on which a fear of being persecuted is based, are genuine or simply attributed to the applicant by the State or non-governmental agent of persecution is immaterial. For example, it may be sufficient that a persecutor believes that an individual holds a certain political view, regardless of the truth of the matter, for a persecutory act to be taken against that individual for the single reason of imputed political opinion.
- (c) This subparagraph addresses the subject of generalised oppression or violence. There may be a tendency to exclude from refugee status applicants who have fled, sometimes in large numbers, from situations of large scale oppression and violence because there are so many of them or their circumstances are similar to many others. They are nonetheless entitled to be recognised as refugees if their race, religion, nationality, membership of a particular social group, or political opinion accounts for their well-founded fear of being persecuted. Only when one of these five reasons is not significantly implicated in relation to the fear of persecution are Member States justified in granting subsidiary protection status instead. While persons in flight from civil war or internal or generalised armed conflict are not necessarily Convention refugees, Member States should ensure that neither are they automatically excluded from refugee status

Article 12

The reasons for persecution

This Article outlines principles relating to the reasons of persecution. The Article owes much to the Geneva Convention and the Joint Position and does not seek to create any new reasons not explicitly or implicitly recognised by these instruments.

- (a) This paragraph sets out rules for the interpretation of the concept of “race”. It should be interpreted in the broadest of terms to include all kinds of ethnic groups and the full range of sociological understandings of the term. Persecution is most often well-founded on racial grounds in cases where the persecutor regards the victim of persecution as belonging to a different racial group other than his own, by reason of real or supposed difference, and this forms the grounds for his action or the fear of persecution.
- (b) This paragraph sets out rules for the interpretation of the concept of “religion” and instructs Member States to interpret it so as to include the holding of theistic, non-theistic and atheistic beliefs.. Persecution on religious grounds may occur where such interference targets a person who does not wish to profess any religion, refuses to take up a particular religion or does not wish to comply with all or part of the rites and customs relating to a religion.

- (c) This paragraph sets out rules for the interpretation of the concept of “nationality”. The term nationality is not to be understood only as citizenship, but also refers to membership of an ethnic, cultural or linguistic group, and may overlap with the term ‘race.’
- (d) This paragraph sets out rules for the interpretation of the concept of “Membership of a particular social group”, a term that was deliberately drafted in an open way and needs to be interpreted in a broad and inclusive manner. A group may be defined by a fundamental characteristic, such as gender, sexual orientation, age, family relationship, or history, or by an attribute which is so fundamental to identity or conscience that members of the group should not be required to renounce it, such as trade union membership or the advocacy of human rights.

The concept is not confined to narrowly defined, small groups of persons, and no voluntary associational relationship or de facto cohesion of members is required. The reference to gender and sexual orientation does not imply that this persecution ground necessarily covers all women and homosexuals. Its applicability will depend on particular circumstances and contexts in the country of origin and the characteristics of the persecution and the persecuted.

The interpretation should also allow for the inclusion of groups of individuals who are treated as "inferior" or as "second class" in the eyes of the law, which thereby condones persecution at the hands of private individuals or other non-state actors, or where the State uses the law in a discriminatory manner and refuses to invoke the law to protect that group. This may be the case in situations where women are the victims of domestic violence, including sexual violence and mutilations, in those States where they are unable to obtain effective protection against such abuse because of their gender or social status as married women, daughters, widows or sisters, in that particular society.

- (e) This paragraph sets out rules for the interpretation of the concept of “political opinion”. Holding political opinions different from those of the government is not in itself a sufficient ground for securing refugee status. The applicant must show that the authorities know, or are likely to come to know, about his or her political opinions or attribute them to him or her, that those opinions are not tolerated by the authorities, and that, given the situation in the country of origin, they would be likely to be persecuted for holding such opinions. The political nature of an opinion is not compromised by the objective unimportance of the applicant’s opinions or relevant actions, or by his or her own failure or unwillingness to characterise the opinion as political. An action may also be, or be deemed to be by a persecutor, an expression of a political opinion.

Article 13

Cessation of refugee status

- (1) This Article relates to situations where it is acknowledged that refugee status is maintained until and unless a refugee comes within the terms of one of the cessation clauses in Article 1(C) of the Geneva Convention.

(a) Voluntary re-availment of national protection

This paragraph regulates the situation in which a refugee voluntarily seeks and obtains from the authorities of his or her country of origin a form of diplomatic protection

available only to nationals of that country, such as the issuance or renewal of a national passport, may thereby cease to be in need of such status. Where the contact between a refugee and the diplomatic mission of his or her country of origin is incidental, it is unlikely to evince the requisite intention to secure that State's protection

(b) Voluntary re-acquisition of nationality

This paragraph regulates the situation in which a refugee who has lost the nationality of his or her country of origin, voluntarily seeks and receives again the nationality of that State. Such a person thereby ceases to be a refugee. The re-acquisition of nationality *de jure* alone is insufficient to justify application of this cessation clause; the Handbook provides that the granting of nationality by operation of law or by decree does not amount to voluntary re-acquisition of nationality, unless the nationality has been expressly or implicitly accepted by the refugee.

(c) Acquisition of a new nationality

This paragraph provides that refugee status may be withdrawn when the refugee has acquired a new nationality and enjoys the protection of the country of new nationality. The acquisition of nationality *de jure* alone is insufficient to justify application of the cessation clause, protection from the country of new nationality must also be ensured. The Handbook provides that where international protection status has come to an end by virtue of the acquisition of a new nationality, and the new nationality is subsequently lost, the status may be revived, depending on the circumstances.

(d) Voluntary re-establishment in country of origin

This paragraph regulates the situation in which a refugee returns to his or her country of origin. If return trips can be considered to be taking place on an ongoing basis, then the person in question would cease to be a refugee. Whether or not this is objectively established should be assessed on a case by case basis. Generally speaking, a consistent pattern of regular return visits to the country of origin over a certain period of time would amount to re-establishment in that country. This is particularly so if the refugee avails himself or herself of the benefits and facilities in the country normally enjoyed by citizens.

(e) Change of circumstances in country of origin

This paragraph regulates situations in which refugee status comes to an end due to a change of circumstances in the country of origin. It requires, in conformity with the Handbook and state practice, that such a change is of such a profound and durable nature that it eliminates the refugee's well-founded fear of being persecuted. A profound change of circumstances is not the same as an improvement in conditions in the country of origin. The relevant inquiry is whether there has been a fundamental change of substantial political or social significance that has produced a stable power structure different from that under which the original well-founded fear of being persecuted was produced. A complete political change is the most obvious example of a profound change of circumstances, although the holding of democratic elections, the declaration of an amnesty, repeal of oppressive laws, or dismantling of former services may also be evidence of such a transition.

A situation which has changed, but which also continues to show signs of volatility, is by definition not durable. There must be objective and verifiable evidence that human rights are generally respected in that country, and in particular that the factors which gave rise to the refugee's well-founded fear of being persecuted are durably suppressed or eliminated. Practical developments such as organised repatriation and the experience of returnees, as well as the reports of independent observers should be given considerable weight.

The Member State invoking this cessation clause should ensure that an appropriate status, preserving previously acquired rights, is granted to persons who are unwilling to leave the country for compelling reasons arising out of previous persecution or experiences of serious and unjustified harm, as well as to persons who cannot be expected to leave the Member State due to a long stay resulting in strong family, social and economic links in that country

(f) Changes of circumstances in country of habitual residence

This paragraph is identical to 1(e) except that it relates to situations where a refugee had no nationality at the time refugee status was granted and the fear of persecution was linked to return to the country of habitual residence rather than nationality.

- (2) International refugee law and practice requires that a decision to withdraw refugee status is based on objective and verifiable evidence and that each case is investigated on an individual basis. Moreover, the person in question should have the opportunity to contest the decision. Such standards are already laid down in various provisions in the Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status. This provision, however, is limited to laying down a minimum standard applicable to the process of assessing the case for cessation, namely that the state wishing to withdraw protection bears the burden of proof in establishing that it is justified to do so.

Article 14

Exclusion from refugee status

- (1) This Article reiterates the principle that a person who comes within the terms of one of the exclusion clauses in Article 1(D) (E) (F) of the Geneva Convention is excluded from refugee status. Exclusion can also occur where the facts requiring exclusion become known after the recognition of international protection.

This Directive does not apply to an applicant who comes within the following situations:

(a) Assistance or protection of the United Nations

This paragraph refers to Exclusion clause Article 1(D) of the Geneva Convention, which applies to any person who is in receipt of protection or assistance from organs or agencies of the United Nations, other than the United Nations High Commissioner for Refugees. The exclusion clause was drawn up within the particular context of Palestine refugees receiving protection from the United Nations Reliefs and Works Agency for Palestine Refugees in the Near East (UNRWA). For purposes of this exclusion clause, the protection or assistance available from the United Nations agency must have the

effect of eliminating or durably suppressing the individual's well-founded fear of being persecuted.

An individual is excluded from refugee status on grounds of United Nations protection or assistance only if he or she has received such protection or assistance before seeking asylum, and has not at any time ceased to receive such protection or assistance. Exclusion under this clause shall not occur if an individual is prevented by circumstances beyond his or her control from returning to the place in which he or she is in principle entitled to benefit from United Nations protection or assistance. When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Directive.

(b) Rights in country of residence

This paragraph relates to situations covered by Article 1 (E) of the Geneva Convention. It prescribes the situation in which refugee status may be denied when an applicant for asylum is recognised by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country. Mere transient or purely temporary presence in such a state is not a basis for exclusion. An applicant shall be excluded only if there is guaranteed full protection against deportation or expulsion.

(c) Applicants not deserving international protection

This paragraph obliges the Member States, in order to maintain the integrity and credibility of the Geneva Convention, not to grant refugee status to an applicant in the situations covered by Article 1 (F) of the Geneva Convention.

- (i) The crimes referred to in this subparagraph shall be interpreted as those defined in international instruments to which the Member States have acceded, and in resolutions adopted by the United Nations or other international or regional organisations to the extent that they have been accepted by the Member States
 - (ii) In applying this particular subparagraph, the severity of the expected persecution should be weighted against the nature of the criminal offence of which the person concerned is suspected. Particularly cruel actions, even if committed with an allegedly political objective, may be classified by Member States as serious non-political crimes.
 - (iii) This subparagraph reflects the fact that the fundamental principles laid down in the Charter of the United Nations should govern the relations of its members with each other and in relation to the international community as a whole. When such principles have been violated by an applicant for asylum he or she may be excluded from refugee status.
- (2) The grounds for exclusion should be based solely on the personal and knowing conduct of the person concerned.
 - (3) The person concerned is entitled to lodge a legal challenge in the Member State concerned. The relevant procedural standards can be found in the Proposal for a

Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status

- (4) This paragraph states that the obligation not to grant refugee status to those undeserving of it, is without prejudice to Member States' obligations under international law, in particular under the European Convention on Human Rights.

CHAPTER IV

Qualification for subsidiary protection status

This Chapter further defines the international protection category of “subsidiary protection”, which has been developed to complement the category of “refugee” interpreted in Chapter III. No specific EU acquis directly related to subsidiary or complementary protection exists but the ECHR and the case law of the European Court on Human Rights provides for a legally binding framework, which informed the choice of categories of beneficiary in this Proposal. The categories and definitions of persons listed in this Chapter do not create completely new classes of persons that Member States are obliged to protect but represent a clarification and codification of existing practice. The three categories listed below in paragraph 2 of this Article are drawn very much from the disparate Member State practices and are believed to encompass the best ones.

Article 15

The grounds of subsidiary protection

After establishing, according to the rules set out in Article 5(2) that an applicant potentially falls within the scope of this Chapter, Member States have three separate but potentially overlapping grounds to consider when establishing whether an applicant falls to be granted subsidiary protection status.

- (a) This subparagraph relates to torture, inhuman or degrading treatment or punishment, reflecting the content of Article 3 of the ECHR. In establishing whether an applicant qualifies according to this criteria Member States should not apply a greater threshold of severity than is required by the ECHR but in all cases an application must be well-founded, as outlined in Chapter II.
- (b) This subparagraph relates to the well-founded fear of a violation of other human rights. When considering granting subsidiary protection status on the basis of this ground Member States shall have full regard to their obligations under human rights instruments, such as the ECHR, but shall limit its applicability only to cases where the need for international protection is required. In particular they should consider whether the return of an applicant to his or her country of origin or habitual origin would result in serious unjustified harm on the basis of a violation of a human right and whether they have an extraterritorial obligation to protect in this context.
- (c) This subparagraph relates to situations where an individual is displaced from his or her country of origin and is unable to return there. The definition of this subparagraph is without prejudice to Article 11(2) (c) and is drawn from Article 2(c) of the Council Directive on minimum standards for giving temporary protection in the event of a mass influx of displaced persons. In the case of subsidiary protection though, an applicant must still establish a well-founded fear for his or her life on an individual basis. Although the reasons for the fear may not be specific to an individual he or she must

still establish that the fear is well founded in their particular case. Member States are bound to cover persons falling into this category where they arrive in a Council agreed 'mass influx' so it is consistent and appropriate to include them also when they arrive individually, and do not qualify as a refugee.

Article 16

Cessation of subsidiary protection status

- (1) This paragraph is about the principle that subsidiary protection status is maintained until such time as it is established by the competent authorities that such protection is no longer required because the reason for granting such status has ceased to exist.
- (2) This paragraph reiterates the principle that subsidiary protection may be withdrawn if the change of circumstances in the country of origin or of habitual residence is of such a profound and durable nature that it eliminates the need for subsidiary protection. A profound change of circumstances is not the same as an improvement in conditions in the country of origin. The relevant inquiry is whether there has been a fundamental change of substantial political or social significance that has produced a stable power structure different from that under which the original well-founded fear of being persecuted was produced. A complete political change is the most obvious example of a profound change of circumstances, although the holding of democratic elections, the declaration of an amnesty, repeal of oppressive laws, or dismantling of former services may also be evidence of such a transition.

A situation which has changed, but which also continues to show signs of volatility, is by definition not durable. There must be objective and verifiable evidence that human rights are generally respected in that country, and in particular that the factors which gave rise to the subsidiary protection beneficiary's well-founded fear of suffering unjustified harm are durably suppressed or eliminated. Practical developments such as organised repatriation and the experience of returnees, as well as the reports of independent observers should be given considerable weight.

Article 17

Exclusion from subsidiary protection status

- (1) This Article obliges Member States not to grant subsidiary protection to an applicant in the specific situations described in this. Exclusion can also occur where the facts requiring exclusion become known after the recognition of international protection.

This Directive does not apply to an applicant who comes within the following situations:

- (a) The crimes referred to in this subparagraph shall be interpreted as those defined in international instruments to which the Member States have acceded, and in resolutions adopted by the United Nations or other international or regional organisations to the extent that they have been accepted by the Member States.
- (b) In applying this particular subparagraph, the severity of the expected persecution should be weighted against the nature of the criminal offence of which the person concerned is suspected. Particularly cruel actions, even if committed with an

allegedly political objective, may be classified by Member States as serious non-political crimes.

- (c) This subparagraph reflects the fact that the fundamental principles laid down in the Charter of the United Nations should govern the relations of its members with each other and in relation to the international community as a whole. When such principles have been violated by an applicant for international protection he or she may be excluded from subsidiary protection status.
- (2) The grounds for exclusion should be based solely on the personal and knowing conduct of the person concerned.
- (3) The person concerned is entitled to lodge a legal challenge in the Member State concerned. The relevant procedural standards can be found in the Proposal for a Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status
- (4) This paragraph states that the obligation not to grant subsidiary protection to those undeserving of it, is without prejudice to Member States' obligations under international law, in particular under the European Convention on Human Rights.

CHAPTER V

Refugee status and subsidiary protection status

Article 18

Content of international protection

- (1) This paragraph is aimed to clarify that the content of refugee status as laid down in this Proposal for a Directive cannot be interpreted as limiting in any sense the rights set out in Articles 3-34 of the Geneva Convention.
- (2) This paragraph introduces three rules: the first one is aimed to make clear that the rules laid down in this Chapter apply to both categories of persons in need of international protection defined in Article 2, unless otherwise indicated; the second one is meant to ensure that the transition from being an applicant for international protection to being a refugee or beneficiary of subsidiary protection shall in principle never result in a decrease in the level of protection; finally, the third rule laid down in this paragraph, requires that the level of rights granted to refugees and to the beneficiaries of subsidiary protection is enjoyed equally by their accompanying family members.
- (3) This paragraph introduces a general clause, concerning the interpretation of the rules of Chapter V that have to be specifically adapted when they are applicable to persons with special needs. Without being exhaustive (any other category of persons with special needs should be taken into account) this paragraph lists the groups that in the practices of Member States and in the relevant studies have been regarded as having special needs in relation to psychological and health care. It was felt necessary to specify for single women that they usually have "special needs" only if they come from countries where they are subject to substantial gender-related discrimination. Other gender specific health and hygiene needs, such as shaving things and condoms for men, or sanitary towels and contraceptives for women, are no special needs.

Article 19

Protection from refoulement and expulsion

In accordance with Articles 32 and 33 of the Geneva Convention, this Article confirms the Member States' obligation not to expel refugees and to respect, in relation to them, the principle of *non-refoulement*. It confirms, in accordance with The European Convention on Human rights, the same obligation in relation to the victims of torture or inhuman or degrading treatment or punishment. Finally, it requires Member States to not expel the beneficiaries of the other forms of subsidiary protection and to respect, in relation to them, the principle of *non-refoulement* within the same limits laid down in Articles 32 and 33 of the Geneva Convention.

Article 20

Information

This Article provides for persons enjoying international protection to receive the necessary information on the rules governing such protection. This is also in line with the relevant provisions in the other asylum-related (Proposal for) Directives.

Article 21

Residence permits

- (1) The five-year period proposed in this paragraph reflects a balance between the different practices of Member States. The permit is subject to the criteria set out in the cessation and exclusion clauses of this Directive.
- (2) This paragraph addresses the issue of the duration of residence permits that are granted to the beneficiaries of subsidiary protection status. This status is considered, in the majority of Member States, as a temporary one. Accordingly the beneficiaries of subsidiary protection should be provided with a residence permit valid for an initial period of one year. This permit should be automatically renewed at intervals of not less than one year, unless the granting authorities establish that the subsidiary protection is no longer required.

Article 22

Long-term residence status

This Article obliges Member States to apply, notwithstanding its Article 3(2)(b), the Directive concerning third country nationals who are long-term residents and make that Directive applicable to the beneficiaries of subsidiary protection status under the focus of this Proposal for a Directive. According to the Commentary to Article 3(2)(b) of the Proposal for a Directive concerning third country nationals who are long-term residents “*Persons covered by a form of subsidiary or additional protection are excluded. The fact that the concept of subsidiary protection is not harmonised at Community level precludes coverage of this category of persons in this Proposal. But the Commission believes that such persons, who are legal residents, must have access to long-term resident status if they meet the criteria. The Conclusions of the Tampere European Council of 15 and 16 October 1999 state that “[refugee status] should also be completed with measures on subsidiary forms of protection offering an appropriate status to any person in need of such protection*”. The Commission is

planning in 2001 to present a Proposal concerning subsidiary protection that could extend to access to long-term status for this category of third-country nationals". Accordingly, as the concept of subsidiary protection is to a great extent harmonised by this Proposal for a Directive it is reasonable and coherent to make it a requirement for Member States to extend the application of the Directive concerning third country nationals who are long-term residents to the beneficiaries of subsidiary protection status falling under the scope of this Proposal for a Directive. Beneficiaries of subsidiary protection are to be treated in the same way as refugees for the purposes of long-term residency because their needs and circumstances are much the same and having spent the qualifying period of five years in a Member State they will have demonstrated that their need for international protection is no longer temporary.

Article 23

Travel document

- (1) This paragraph confirms the obligation laid down in Article 28 of the Geneva Convention requiring Member States to issue to persons that they recognise as refugees, "travel documents for the purpose of travel outside their territory unless compelling reasons of national security or public order otherwise require", in the form of the Schedule to the Geneva Convention.
- (2) Beneficiaries of subsidiary protection may be in a position to apply for and to receive a travel document from the consular authorities of their country of origin or ordinary residence (e.g. when these authorities are able to continue their work even if in the country they represent there is a situation of widespread generalised and indiscriminate violence arising from armed conflict). This paragraph is meant to ensure that travel documents are issued to beneficiaries of subsidiary protection status, only when they are unable to obtain a national passport from their consular authorities (e.g. there are no longer functioning consular authorities).

Article 24

Access to employment

- (1) The Member States shall authorise refugees to engage in employed or self-employed activities under the same conditions as nationals. This principle of equal treatment also applies to remuneration, social security related to employed or self-employed activities, and other conditions of employment. Access to employment encourages independence and enables those concerned to provide for themselves and no longer require assistance.
- (2) This paragraph codifies a practice in the majority of Member States to offer activities such as employment-related education opportunities for adults, vocational training and practical workplace experiences to refugees with a view to facilitating their integration.
- (3) As a minimum standard the Commission proposes that Member States be required to put in place rules that do not exclude the access of beneficiaries of subsidiary protection status and their accompanying family members to employed or self-employed activities six months after they have been granted the subsidiary protection status. Access to employment encourages independence and enables those concerned to provide for themselves and no longer require assistance. It could also prove useful in reintegrating

beneficiaries enjoying subsidiary protection status on their possible return to their country of origin.

- (4) As a minimum standard the Commission proposes that Member States be required to put in place rules that do not exclude the access of beneficiaries of subsidiary protection status and their accompanying family members to employment-related education opportunities for adults, vocational training and practical workplace experiences one year after they have been granted the subsidiary protection status.
- (5) This paragraph obliges Member States to ensure that, after access to the labour market is granted in accordance with paragraphs 1, 2, 3 and 4, ordinary law in the Member State applicable to remuneration, to the access to social security systems relating to employed or self employment activities, and other conditions of employment shall apply in the same way as they do to nationals.

Article 25

Access to education

- (1) This paragraph concerns the schooling and education of minors enjoying international protection. Reference is made to the concept of “minors” without specific reference to “school age”, as this age varies from one Member State to another, and the United Nations Convention on the Rights of the Child does not make the schooling of minors conditional on their age. As the principle of equal treatment applies minors enjoying international protection should be given free access to the public education system. This provision lays down one of the rules that illustrate the special attention to minors that characterise the Proposal as whole.
- (2) This paragraph obliges Member States to allow adults enjoying international protection access to the general education system, as well as to vocational training, further training or retraining, under the same conditions as EU nationals. Adults enjoying international protection may have been forced to abandon their studies or vocational training when they fled their country of origin. They should therefore be allowed access to the general education system and to vocational training, further training, or retraining during the period of temporary protection. In addition, the knowledge they acquire in this way could be useful in reintegrating them on their possible return to their country of origin.
- (3) Persons enjoying international protection must have the same right to recognition of their qualifications as nationals. This encompasses also the obligation of the Member State to take into consideration all the diplomas, certificates and other evidence of formal qualifications – i.e. including those acquired outside the EU – of the person concerned and his relevant experience, by comparing the specialised knowledge and abilities certified by those diplomas and that experience with the knowledge and qualifications required by the national rules (Case C-238/98 *Hocsman*).

Article 26

Social Welfare

As with anyone covered by a form of protection and lacking the necessary resources, Member States should make available to those enjoying international protection the social welfare support and means of subsistence necessary for a normal and dignified life for the duration of this protection. The Member States may choose the form this assistance and

means of subsistence will take, to ensure that they are consistent with the social welfare arrangements of the individual Member States.

Article 27

Health and psychological care

- (1) In this paragraph Member States are required to provide beneficiaries of international protection access to health and psychological care under the same conditions as nationals of the Member State that has granted the status.
- (2) This Article is about victims of torture and organised violence, and is in line with the relevant provisions of the *Directive laying down minimum standards on the reception of applicants for asylum in Member States*. This paragraph provides for special medical help to be given by Member States to those who have been the victims of torture, rape or other serious acts of violence. This should include victims of organised violence and of gender related violence, to ensure that people traumatised by exposure to ethnic cleansing are covered by the provision.
- (3) Minors are often the victims of many specific forms of abuse, neglect, exploitation, torture, cruel, inhuman and degrading treatment or suffer from armed conflicts. Member States are required to provide minors that have been victimised with rehabilitation services, appropriate mental health care and qualified psycho-social counselling, when it is necessary.

Article 28

Unaccompanied minors

This Article concerns the specific needs of unaccompanied minors.

- (1) Member States are required to provide as soon as possible for the necessary representation of the unaccompanied minor applying for international protection to ensure that the minor's needs are duly met in the enforcement of the provisions of this Directive.
- (2) In view of the minor's vulnerability and potential for abuse, the principle of regular assessments by the appropriate welfare authorities of the actual situation of the minor is provided for in this paragraph.
- (3) This paragraph contains rules to be understood as an explicit enforcement of the principle of safeguarding the best interests of the child in relation to reception conditions. Member States are required to provide unaccompanied minors who lodge an application for international protection with one of the listed forms of housing from the moment they are admitted to the territory to the moment they have to leave the country in which the application was lodged or in which the application is being examined.
- (4) This paragraph provides for siblings to be kept together (this rule may be disregarded only in exceptional circumstances such as the sudden mass influx of applicants for international protection, for a brief period of time) and changes of their residence should be kept to a minimum.

- (5) This paragraph concerns efforts to trace relatives, and the principle of confidentiality applicable to such efforts, as far as they are in the best interest of the child.
- (6) To properly meet the needs of unaccompanied minors during asylum procedures, Member States must ensure that staff working with unaccompanied minors receive appropriate training on their needs.

Article 29

Access to appropriate accommodation

This Article is concerned with the issue of accommodation. The minimum standards laid down in this paragraph enable the Member States to provide accommodation or housing for persons enjoying international protection as part of their national reception scheme. These provisions may in some cases allow for temporary accommodation centres. They may also take the form of collective structures or separate flats. Suitable accommodation means that for single refugees gender segregated accommodation and sanitary installations should be provided. Alternatively Member States may provide persons enjoying international protection the means to obtain housing if they do not have sufficient resources.

Article 30

Freedom of movement within the Member State

This Article forbids the Member State that has granted international protection status to limit the freedom of movement to persons who have been granted such a protection status within its territory.

Article 31

Access to integration facilities

- (1) This paragraph codifies a practice existing in most of the Member States. The Commission welcomes the attention already given by Member States to the many related situations (education, social welfare, health care, housing and other integration facilities) which play a vital role in supporting successful integration of refugees into the society and in particular into the labour market. Indeed the Commission believes that it is necessary to provide specific support for disadvantaged groups, including many refugees, rather than only allowing them equal access into mainstream employment and education opportunities. In this respect, the Commission recalls Guideline 7 of the Employment Guidelines for 2001 (Council Decision 2001/63/EC of 19 January 2001 on Guidelines for Member States' employment policies for the year 2001), and which reads as follows:

"7. Each Member State will:

- identify and combat all forms of discrimination in access to the labour market and to education and training;*
- develop pathways consisting of effective preventive and active policy measures to promote the integration into the labour market of groups and individuals at risk or with a disadvantage, in order to avoid marginalisation, the emergence of 'working poor' and a drift into exclusion;*

- *implement appropriate measures to meet the needs of the disabled, ethnic minorities and migrant workers as regards their integration into the labour market and set national targets where appropriate for this purpose."*

Programmes designed to facilitate the integration of refugees into the society of the Member State could for instance include:

- (a) a “tailor made plan of action” regarding employment and education;
- (b) language courses;
- (c) basic and advanced training courses;
- (d) measures aimed at promoting self-maintenance;
- (e) events organised to provide an introduction to the history and culture of the Member State;
- (f) events arranged jointly with citizens of the Member State to promote mutual understanding.

The above programmes are potentially eligible for financing under the European Refugee Fund.

- (2) This paragraph provides for beneficiaries of subsidiary protection status access to programmes referred and elaborated upon in paragraph (1), not later than one year after their status is granted.

Article 32

Voluntary return

This Article grants persons recognised as being in need of international protection access to voluntary return programmes for those who wish to return on a voluntary basis to their country of origin. Member States are encouraged to facilitate such returns. Candidates for voluntary return must be fully informed of the conditions in which they will return. The Member States may use exploratory visits as a way of helping candidates. Exploratory visits enable some candidates to visit their country of origin for a short time to see for themselves the security situation and the circumstances of reintegration, before voluntary return is fully completed. The above programmes are potentially eligible for financing under the European Refugee Fund.

CHAPTER VI

Administrative cooperation

Article 33

Cooperation

This Article concerns Cooperation among Member States, and between them and the Commission.

Member States are required to appoint a national contact point and take the appropriate measures to establish direct Cooperation, including the exchange of visits, and an exchange of information between the competent authorities.

Article 34

Staff and resources

This Article is about staff and material resources.

- (1) This paragraph is based on the consideration that applicants for asylum are a group of people with a specific background and needs. It must be ensured that authorities and other organisations implementing this Directive have received the necessary basic training with respects to their needs.
- (2) This paragraph requires Member States to allocate the necessary resources in connection with the national provisions enacted to implement this Directive to ensure that these provisions can be enforced.

CHAPTER VII

Final provisions

Article 35

Non-discrimination

Within the target group specified in the Directive introducing international protection, there may be persons of different race, ethnic origin, nationality, religion and believes. This paragraph emphasises that the granting of international protection must be free of all discrimination based on these factors and other factors such as sex, age, sexual orientation or handicap and that the Member States must ensure that this principle is respected.

The wording is based on Article 3 of the Geneva Convention, Article 13 of the EC Treaty and Article 21 of the Charter of Fundamental Rights of the European Union. This provision is without prejudice of obligations descending from international instruments such as the European Convention on Human Rights and Fundamental Freedoms (Article 14).

Article 36

Reports

This Article is about reports. The Commission is instructed to draw up a report on the Member States' application of the Directive, in accordance with its role of enforcing provisions adopted by the institutions under the Treaty. It is also given the task of proposing possible amendments to the Directive.

A first report must be submitted no later than two years after the deadline for transposition of the Directive in the Member States. The Member States should send the Commission all the information that is appropriate for drawing up this report

After presenting the report the Commission must draw up a report on the application of the Directive at least every five years.

Article 37

Transposition

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

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

2. Member States shall communicate to the Commission the text of the provisions of national law relating to the enforcement of this Directive.

Article 38

This Article lays down the date when the Directive enters into force. This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

Proposal for a

COUNCIL DIRECTIVE

on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular point 1(c) , 2(a) and 3 (a) of the first paragraph of Article 63 thereof,

Having regard to the Proposal from the Commission¹,

Having regard to the opinion of the European Parliament²,

Having regard to the opinion of the Economic and Social Committee³,

Having regard to the opinion of the Committee of the Regions⁴,

Whereas:

- (1) A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of progressively establishing an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Community.
- (2) The European Council at its special meeting in Tampere on 15 and 16 October 1999 agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention relating to the Status of Refugees of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967, thus maintaining the principle of *non-refoulement* and ensuring that nobody is sent back to persecution.
- (3) The Geneva Convention and Protocol provide the cornerstone of the international legal regime for the protection of refugees.
- (4) The Tampere Conclusions provide that a Common European Asylum System should include in the short term the approximation of rules on the recognition and content of refugee status.

¹ OJ C
² OJ C
³ OJ C
⁴ OJ C

- (5) The Tampere Conclusions also provide that rules regarding refugee status should be complemented by measures on subsidiary forms of protection, offering an appropriate status to any person in need of such protection.
- (6) The main aim of this Directive is to ensure that a minimum level of protection is available in all Member States for those genuinely in need of it because they cannot reasonably rely on their country of origin or habitual residence for protection.
- (7) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular this Directive seeks to ensure full respect for human dignity, the right to asylum of applicants for asylum and their accompanying family members, and the protection in the event of removal, expulsion or extradition, promoting the application of Articles 1, 18 and 19 of the Charter.
- (8) This Directive should be implemented without prejudice to Member States' existing international obligations under human rights instruments.
- (9) This Directive is without prejudice to the Protocol on asylum for nationals of Member States of the European Union as annexed to the Treaty Establishing the European Community.
- (10) The recognition of refugee status is a declaratory act.
- (11) The Handbook on Procedures and Criteria for Determining Refugee Status of the Office of the United Nations High Commissioner for Refugees provides valuable guidance for Member States when determining refugee status according to Article 1 of the Geneva Convention.
- (12) Minimum standards for the definition and content of refugee status should be laid down to guide the competent national bodies of Member States in the application of the Geneva Convention.
- (13) It is necessary to introduce common concepts of the criteria for recognising applicants for asylum as refugees within the meaning of Article 1 of the Geneva Convention.
- (14) In particular, it is necessary to introduce common concepts of: protection needs arising *sur place*; sources of harm and protection; internal protection; and persecution, including the reasons for persecution.
- (15) In particular, it is necessary to introduce a common concept of the persecution ground "membership of a particular social group", which shall be interpreted to include both groups which may be defined by relation to certain fundamental characteristics, such as gender and sexual orientation, as well as groups, such as trade unions, comprised of persons who share a common background or characteristic that is so fundamental to identity or conscience that those persons should not be forced to renounce their membership.
- (16) In particular, it is necessary when assessing applications from minors for international protection that Member States should have regard to child-specific forms of persecution, such as the recruitment of children into armies, trafficking for sex work, and forced labour.

- (17) Minimum standards for the definition and content of subsidiary protection status should also be laid down. The subsidiary protection regime should be complementary and additional to the refugee protection regime enshrined in the Geneva Convention.
- (18) It is necessary to introduce criteria on the basis of which applicants for international protection are to be recognised as eligible for subsidiary protection status. Those criteria should be drawn from international obligations under human rights instruments and practices existing in Member States.
- (19) The approximation of rules on the recognition and content of refugee status and subsidiary protection should help to limit the secondary movements of applicants for asylum between Member States, where such movement is purely caused by differences in legal frameworks.
- (20) The Directive should not affect the conditions under which Member States may, in accordance with their own domestic law, permit persons to enter or remain in their territory where the return of those persons to their own country would endanger their safety owing to circumstances not covered by this Directive.
- (21) It is in the very nature of minimum standards that Member States have the power to introduce or maintain more favourable provisions for third country nationals and stateless persons who ask for international protection from a Member State, where such a request is understood to be on the grounds that the person concerned is either a refugee within the meaning of Article 1(A) of the Geneva Convention, or a person who otherwise needs international protection.
- (22) In accordance with Article 2 and Article 3(2) of the Treaty, this Directive, as regards its objectives and content, aims to eliminate inequalities, and to promote equality, between men and women.
- (23) The “best interests of the child” should be a primary consideration of Member States when implementing this Directive
- (24) The implementation of this Directive should be evaluated at regular intervals.
- (25) Since the objectives of the proposed action, namely to establish minimum standards for the granting of international protection to third country nationals and stateless persons by Member States cannot be sufficiently attained by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

General provisions

Article 1

Subject matter

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

Article 2

Definitions

For the purposes of this Directive:

- (a) “International protection” means refugee status and subsidiary protection status.
- (b) “Geneva Convention” means the Convention relating to the status of refugees done at Geneva on 28th July 1951, as supplemented by the New York Protocol of 31 January 1967;
- (c) “Refugee” means a third country national or a stateless person who fulfils the requirements laid down by Article 1(A) of the Geneva Convention and set out in Chapters II-III of this Directive;
- (d) “Refugee status” means the status granted by a Member State to a person who is a refugee and is admitted as such to the territory of that Member State and/or permitted to remain and reside there;
- (e) “Person eligible for subsidiary protection” is a person who does not qualify for refugee status but otherwise satisfies the rules regarding international protection set out in Chapters II and IV of this Directive.
- (f) “Subsidiary protection status” means the status granted by a Member State to a third country national or a stateless person who is a person eligible for subsidiary protection and is admitted as such to the territory of that Member State and/or permitted to remain and reside there;
- (g) “Application for international protection” means a request by a third country national or a stateless person for protection from a Member State, which can be understood to be on the grounds that the applicant is either a refugee or a person eligible for subsidiary protection. Any application for international protection is presumed to be an application for asylum save where the applicant explicitly requests another kind of protection that can be applied for separately;
- (h) “Application for asylum” means a request by a third country national or a stateless person for international protection from a Member State, which can be understood to be on the grounds that the applicant is a refugee within the meaning of Article 1(A) of the Geneva Convention.

- (i) “Application for subsidiary protection” means a request by a third country national or a stateless person for international protection from a Member State which cannot be understood to be on the grounds that the applicant is a refugee within the meaning of Article 1(A) of the Geneva Convention, or follows rejection of such a request, but can be understood to be on the grounds that the applicant is a person eligible for subsidiary protection;
- (j) “Family members” means:
 - (i) the spouse of the applicant or his/her unmarried partner in a stable relationship, where the legislation or practice of the Member State concerned treats unmarried couples in a way comparable to married couples;
 - (ii) the children of the couple referred to in point (i) or of the applicant alone, on condition that they are unmarried and dependent and without distinction as to whether they were born in or out of wedlock or adopted;
 - (iii) other close relatives who lived together as part of the family unit at the time of leaving the country of origin, and who were wholly or mainly dependent on the applicant at that time
- (k) “Accompanying family members” means the family members of the applicant who are present in the same Member State in relation to the application for asylum;
- (l) "Unaccompanied minors" means third-country nationals and stateless persons below the age of eighteen, who arrive on the territory of the Member States unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person; it includes minors who are left unaccompanied after they have entered the territory of the Member States;
- (m) "Residence permit" means any permit or authorisation issued by the authorities of a Member State, in the form provided for under that State's legislation, allowing a third country national or stateless person to reside on its territory;
- (n) “Country of origin” means the country of nationality or former habitual residence.

Article 3

Scope

This Directive shall apply to all third country nationals and stateless persons who make an application for international protection at the border or on the territory of a Member State and to their accompanying family members and to all those who receive such protection.

Article 4

More favourable provisions

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

CHAPTER II

Qualification for international protection

Section I

International protection

Article 5

The elements of international protection

1. Refugee status shall be granted to any third country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, and to any stateless person, who, being outside the country of former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
2. Without prejudice to existing constitutional obligations, subsidiary protection shall be granted to any third country national or stateless person who does not qualify as a refugee, according to the criteria set out in Chapter III of this Directive, or whose application for international protection was explicitly made on grounds that did not include the Geneva Convention, and who, owing to a well-founded fear of suffering serious and unjustified harm as described in Article 15, has been forced to flee or to remain outside his or her country of origin and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.
3. The applicant's fear of being persecuted or exposed to other serious and unjustified harm in the country of origin shall be assessed in accordance with Section 2.

Article 6

Extension of international protection to the accompanying family members

1. Member States shall ensure that accompanying family members are entitled to the same status as the applicant for international protection.
2. The rule laid down in paragraph 1 is not applicable where the accompanying family Member is excluded from refugee and subsidiary protection status pursuant to Chapters III and IV.

Section 2

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

Article 7

Assessment of applications for international protection

In assessing an applicant's fear of being persecuted or exposed to other serious and unjustified harm, Member States shall take into account, as a minimum, the following matters:

- (a) all relevant facts as they relate to the country of origin at the time of taking a decision on the application;
- (b) whether the applicant's fear of being persecuted or exposed to other serious and unjustified harm in the country of origin is objectively established, in that there is a reasonable possibility that the applicant will be persecuted or otherwise subjected to serious harm if returned to the country of origin;
- (c) whether the applicant has already been subject to persecution or other serious and unjustified harm or to direct threats of persecution or other serious and unjustified harm, in that this would strongly indicate a reasonable possibility that the applicant might suffer further persecution or harm in the future;
- (d) the individual position and personal circumstances of the applicant, including factors such as background, gender, age, health and disabilities so as to assess the seriousness of persecution or harm. Where the form of persecution is gender-specific or child-specific, account shall be taken of the fact that persecution, within the meaning of the Geneva Convention, may be effected through sexual violence or other gender-specific means;
- (e) whether there is credible evidence that laws or regulations are in force and applied in practice in the country of origin which authorise or condone the persecution of the applicant or the infliction upon the applicant of other serious and unjustified harm.

Article 8

International protection needs arising sur place

1. A well-founded fear of being persecuted or otherwise suffering serious unjustified harm may be based on events which have taken place since the applicant left his country of origin.
2. A well-founded fear of being persecuted or otherwise suffering serious unjustified harm may be based on activities which have been engaged in by the applicant since he left his country of origin, save where it is established that such activities were engaged in for the sole purpose of creating the necessary conditions for making an application for international protection. That is not the case where the activities relied upon constitute the expression and continuation of convictions held in the country of origin, and they are related to the grounds for recognition of the need for international protection.

Article 9

Sources of harm and protection

1. Member States shall consider that the fear of being persecuted or of otherwise suffering unjustified harm is well-founded whether the threat of persecution or other serious unjustified harm emanates from:
 - (a) the State;
 - (b) parties or organisations controlling the State;
 - (c) non-State actors where the State is unable or unwilling to provide effective protection.
2. In evaluating the effectiveness of State protection where the threat of persecution or other serious unjustified harm emanates from non-State actors, Member States shall consider whether the State takes reasonable steps to prevent the persecution or infliction of harm, and whether the applicant has reasonable access to such protection. There must be in place a system of domestic protection and machinery for the detection, prosecution and punishment of actions which constitute persecution or other serious and unjustified harm. Where effective State protection is available, fear of being persecuted or otherwise suffering serious unjustified harm shall not be considered to be well founded, in which case Member States shall not recognise the need for protection.
3. For the purpose of this Directive, “State” protection may also be provided by international organisations and stable quasi-State authorities who control a clearly defined territory of significant size and stability, and who are able and willing to give effect to rights and to protect an individual from harm in a manner similar to an internationally recognised State.

Article 10

Internal protection

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

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

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

CHAPTER III

Qualification for refugee status

Article 11

The nature of persecution

1. In the determination of whether a well-founded fear of being persecuted has been objectively established, the term persecution shall be considered to cover as a minimum any of the following situations:
 - (a) the infliction of serious and unjustified harm or discrimination on the grounds of race, religion, nationality, political opinion or membership of a particular social group, sufficiently serious by its nature or repetition as to constitute a significant risk to the applicant's life, freedom or security or to preclude the applicant from living in his or her country of origin;
 - (b) legal, administrative, police and/or judicial measures when they are designed or implemented in a discriminatory manner on the grounds of race, religion, nationality, political opinion or membership of a particular social group and if they constitute a significant risk to the applicant's life, freedom or security or preclude the applicant from living in his or her country of origin;
 - (c) prosecution or punishment for a criminal offence if, on the grounds of race, religion, nationality, political opinion or membership of a particular social group:
 - (i) the applicant is either denied means of judicial redress or suffers a disproportionate or discriminatory punishment
 - (ii) the criminal offence for which the applicant is at risk of being prosecuted or punished, purports to criminalise the exercise of a fundamental right
 - (d) prosecution or punishment for refusal to meet a general obligation to perform military service on the grounds of race, religion, nationality, political opinion or membership of a particular social group:
 - (i) if the conditions stated in paragraph (c) (i) apply.
 - (ii) in situations of war or conflict, if the person can establish that performance of military service will require his or her participation in military activities which are irreconcilable with the applicant's deeply held moral, religious or political convictions, or other valid reasons of conscience.
2. The following principles shall, as a minimum, govern the determination of whether a well-founded fear of being persecuted should result in the recognition of an applicant as a refugee
 - (a) it is immaterial whether the persecution stems from the State, parties or organisations controlling the State, or non-State actors where the State is unable or unwilling to provide effective protection.

- (b) it is immaterial whether the applicant actually possesses the racial, religious, national, social or political characteristic which attracts the persecutory action, provided that such a characteristic is attributed to him or her by the agent of persecution;
- (c) it is immaterial whether the applicant comes from a country in which many or all persons face the risk of generalised oppression.

Article 12

The reasons for persecution

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

- (a) the concept of race shall include considerations of colour, descent, or membership of a particular ethnic group;
- (b) the concept of religion shall include the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief;
- (c) the concept of nationality shall not be confined to citizenship but shall include membership of a group determined by its cultural, ethnic, or linguistic identity, common geographical or political origins or its relationship with the population of another State;
- (d) the concept of social group shall include a group which may be defined in terms of certain fundamental characteristics, such as sexual orientation, age or gender, as well as groups comprised of persons who share a common background or characteristic that is so fundamental to identity or conscience that those persons should not be forced to renounce their membership. The concept shall also include groups of individuals who are treated as "inferior" in the eyes of the law;
- (e) the concept of political opinion shall include the holding of, or the being conceived of as holding, an opinion on a matter related to the State or its government or its policy, whether or not that opinion has been acted upon by the applicant.

Article 13

Cessation of refugee status

1. Member States shall maintain refugee status until and unless the refugee:
 - (a) has voluntarily re-availed himself or herself of the protection of the country of nationality; or
 - (b) having lost his or her nationality, has voluntarily re-acquired it; or

- (c) has acquired a new nationality, and enjoys the protection of the country of his or her new nationality; or
- (d) has voluntarily re-established himself or herself in the country which he or she left or outside which he or she remained owing to fear of persecution; or
- (e) can no longer, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of nationality;
- (f) Being a person with no nationality, he or she is able, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, to return to the country of former habitual residence.

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

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

2. The Member State which has granted refugee status shall bear the burden of proof in establishing that a person has ceased to be in need of international protection for one of the reasons stipulated in paragraph 1.

Article 14

Exclusion from refugee status

1. Member States shall exclude from refugee status any applicant:
 - (a) who is at present receiving protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees;
 - (b) who is recognised by the competent authorities of the country in which he or she has taken up residence as having the rights and obligations attached to the possession of the nationality of that country;
 - (c) where there are serious reasons for considering that:
 - (i) the applicant has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
 - (ii) the applicant has committed a serious non-political crime prior to his or her admission as a refugee;
 - (iii) the applicant has been guilty of acts contrary to the purposes and principles of the United Nations.
2. The grounds for exclusion shall be based solely on the personal and knowing conduct of the person concerned.

3. Member States shall ensure that persons so excluded have the right to bring proceedings before a court against a decision to exclude them from international protection.
4. The application of the exclusion shall not in any manner affect obligations that Member States have under international law.

CHAPTER IV

Qualification for subsidiary protection status

Article 15

The grounds of subsidiary protection

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

- (a) torture or inhuman or degrading treatment or punishment; or
- (b) violation of a human right, sufficiently severe to engage the Member State's international obligations or;
- (c) a threat to his or her life, safety or freedom as a result of indiscriminate violence arising in situations of armed conflict, or as a result of systematic or generalised violations of their human rights.

Article 16

Cessation of subsidiary protection status

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

Article 17

Exclusion from subsidiary protection status

1. Member States shall exclude from subsidiary protection status any applicant where there are serious reasons for considering that:
 - (a) the applicant has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

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

CHAPTER V

Refugee status and subsidiary protection status

Article 18

Content of international protection

1. The rules laid down in this Chapter shall be without prejudice to the rights laid down in the Geneva Convention.
2. The rules laid down in this Chapter shall apply both to refugees and persons eligible for subsidiary protection unless otherwise indicated. The level of rights attached to a protection status shall not be lower than that enjoyed by applicants during the determination process and shall be enjoyed equally by the accompanying family members of the qualified beneficiary.
3. When implementing the provisions of this Chapter, Member States shall take into account the specific situation of persons who have special needs such as: minors in general, unaccompanied minors, disabled people, elderly people, single parents with minor children, victims of torture or sexual abuse or exploitation, pregnant women and persons suffering from infirmity, whether mental or physical. Member States shall also take into account the specific situation of single women who, are subject to substantial gender-related discrimination in their country of origin.

Article 19

Protection from refoulement and expulsion

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

Article 20

Information

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

Article 21

Residence permits

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

Article 22

Long-term residence status

Notwithstanding Article 3(2)(b) of Council Directive.../...EC. [concerning the status of third country nationals who are long term residents]⁵ Member States shall grant persons enjoying subsidiary protection status long term-residence status on the same terms as those applicable to refugees under that Directive.

Article 23

Travel document

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

⁵ OJL

Article 24

Access to employment

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

Article 25

Access to education

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

Article 26

Social Welfare

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

Article 27

Health and psychological care

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

Article 28

Unaccompanied minors

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

Article 29

Access to appropriate accommodation

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

Article 30

Freedom of movement within the Member State

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

Article 31

Access to integration facilities

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

Article 32

Voluntary return

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

CHAPTER VI

Administrative cooperation

Article 33

Cooperation

Member States shall each appoint a national contact point, whose address they shall communicate to the Commission, which shall communicate it to the other Member States.

Member States shall, in liaison with the Commission, take all appropriate measures to establish direct Cooperation and an exchange of information between the competent authorities.

Article 34

Staff and resources

1. Member States shall ensure that authorities and other organisations implementing this Directive have received the necessary basic training with respect to the needs of both male and female applicants and their accompanying family members, as well as the specific needs of minors, in particular unaccompanied minors.

2. Member States shall allocate the necessary resources in connection with the national provisions enacted to implement this Directive.

CHAPTER VII

Final provisions

Article 35

Non-discrimination

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

Article 36

Reports

By 30 April 2006 at the latest, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose any amendments that are necessary. Member States shall send the Commission all the information that is appropriate for drawing up that report. After presenting the report the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States at least every five years.

Article 37

Transposition

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

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

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

Article 38

Entry into force

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

Article 39

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

*For the Council
The President*

LEGISLATIVE FINANCIAL STATEMENT

Policy area(s): JUSTICE AND HOME AFFAIRS

Activity(ies): Asylum and Immigration

TITLE OF ACTION: PROPOSAL FOR A COUNCIL DIRECTIVE ON MINIMUM STANDARDS FOR THE QUALIFICATION AND STATUS OF THIRD COUNTRY NATIONALS AND STATELESS PERSONS AS REFUGEES OR AS PERSONS WHO OTHERWISE NEED INTERNATIONAL PROTECTION

1. BUDGET LINE(S) + HEADING(S)

A0 7030 (meetings)

2. OVERALL FIGURES

2.1. Total allocation for action (Part B): EUR million for commitment

2.2. Period of application:

2001(September-2006)

2.3. Overall multi-annual estimate on expenditure:

(a) Schedule of commitment appropriations/payment appropriations (financial intervention) *(see point 6.1.1)*

EUR million *(to 3rd decimal place)*

	Year n	n + 1	n + 2	n + 3	n + 4	n + 5 and subs. years	Total
Commitments							
Payments							

(b) Technical and administrative assistance and support expenditure *(see point 6.1.2)*

Commitments							
Payments							

Subtotal (a)+(b)							
Commitments							
Payments							

(c) Overall financial impact of human resources and other administrative expenditure
(see points 7.2 and 7.3)

Commitments/ payments	0.029	0.029	0.029	0.029	0.029	0.029	0.175
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TOTAL (a)+(b)+(c)							
Commitments	0.029	0.029	0.029	0.029	0.029	0.029	0.175
Payments	0.029	0.029	0.029	0.029	0.029	0.029	0.175

2.4. Compatibility with the financial programming and the financial perspective

X Proposal compatible with the existing financial programming

2.5. Financial impact on revenue¹:

X No financial implications (involves technical aspects regarding implementation of a measure)

Note: All details and observations pertaining to the method of calculating the effect on revenue should be included in a separate annex.

EUR million (to 1 decimal place)

Budget line	Revenue	Prior to action (Year n-1)	Situation following action							
			Year n	n+1	n+2	n+3	n+4	n+5		
	(a) Revenue in absolute terms									
	(b) Change in Revenue	Δ								

(Please state each budget line involved, adding the appropriate number of rows to the table if there is an effect on more than one budget line)

¹ For further information see a separate guidance paper.

3. BUDGET CHARACTERISTICS

Type of expenditure		New	EFTA participation	Participation applicant countries	Heading Financial Perspective
Comp/ Non-comp	Diff/ Non-diff	YES/ NO	YES/NO	YES/NO	No

4. LEGAL BASIS

Article 63 of the EC Treaty, point 1(c) of first paragraph, and point 2(a)

5. DESCRIPTION AND GROUNDS

5.1. Need for Community intervention²

5.1.1. Objectives pursued

The aim of the Directive is to establish minimum standards on the qualification and status of applicants for international protection as refugees or beneficiaries of subsidiary protection status;

The proposal is one of the Community initiatives on asylum related issues for the purpose of achieving a Common European Asylum System. The November 2000 Communication of the Commission on asylum, states that at the end of the first stage, in which the current Proposal has been presented, and whatever the result, it will be necessary to consider whether mechanisms can be developed to correct certain differences that might remain or to prevent the phenomenon of divergent interpretation of Community rules.

5.1.2. Measures taken in connection with ex ante evaluation

Not applicable

5.1.3. Measures taken following ex post evaluation

Not applicable

5.2. Actions envisaged and arrangements for budget intervention

With respect to this Directive, the Commission intends to establish a Contact Committee.

The reasons to establish this Committee are the following. Firstly, the Committee is to help the Member States implement the minimum standards in a forward-looking and Coordinating spirit. Secondly, it is to be the forum for Member States that wish to go jointly beyond the minimum standards at this stage of the harmonisation process. Thirdly, it is to set aside the impediments and create the necessary conditions for achieving the objective set by the European Council in Tampere.

² For further information see a separate guidance paper.

Thus, the Committee could promote further approximation of asylum policy in the future and it could pave the way forward from minimum standards on the recognition and content of refugee and subsidiary protection status to towards a common asylum procedure and a uniform status, valid throughout the Union, for persons granted asylum.

In the period before 30 April 2004 the Contact Committee will meet three times a year to prepare transposal of the Directive and henceforth two or three times a year to facilitate consultation between Member States on additional standards, etc.

5.3. Methods of implementation

Not applicable

6. FINANCIAL IMPACT

6.1. Total financial impact on Part B - (over the entire programming period)

(The method of calculating the total amounts set out in the table below must be explained by the breakdown in Table 6.2.)

6.1.1. Financial intervention

Commitments in EUR million (to the 3rd decimal place)

Breakdown	Year N	N + 1	N + 2	N + 3	N + 4	N + 5 and subs. Years	Total
Action 1							
Action 2							
Etc.							
TOTAL							

6.1.2. *Technical and administrative assistance, support expenditure and IT expenditure (Commitment appropriations)*

	Year N	N + 1	N + 2	N + 3	N + 4	N + 5 and subs. Years	Total
1. Technical and administrative assistance							
(a) Technical assistance							
(b) Other technical and administrative assistance: - intra muros: - extra muros: <i>of which for construction and maintenance of computerised management systems</i>							
Subtotal 1							
2. Support expenditure							
(a) Studies							
(b) Meetings of experts							
(c) Information and publications							
Subtotal 2							
TOTAL							

6.2. Calculation of costs by measure envisaged in Part B (over the entire programming period)³

(Where there is more than one action, give sufficient detail of the specific measures to be taken for each one to allow the volume and costs of the outputs to be estimated.).

Commitments in EUR million (to the 3rd decimal place)

Breakdown	Type of outputs (projects, files)	Number of outputs (total for years 1...n)	Average unit cost	Total cost (total for years 1...n)
	1	2	3	4=(2X3)
<u>Action 1</u> - Measure 1 - Measure 2 <u>Action 2</u> - Measure 1 - Measure 2 - Measure 3 <i>Etc.</i>				
TOTAL COST				

If necessary explain the method of calculation

³ For further information see a separate guidance paper.

7. IMPACT ON STAFF AND ADMINISTRATIVE EXPENDITURE

7.1. Impact on human resources

Types of post		Staff to be assigned to management of the action using existing and/or additional resources		Total	Description of tasks deriving from the action
		Number of permanent posts	Number of temporary posts		
Permanent officials or Temporary staff	A				<i>If necessary, a fuller description of the tasks may be annexed.</i>
	B				
	C				
Other human resources					
Total					

7.2. Overall financial impact of human resources

Type of human resources	Amount EUR	Method of calculation *
Officials		
Temporary staff		
Other human resources (give budget line)		
Total		

The amounts are total expenditure for twelve months.

7.3. Other administrative expenditure deriving from the action

Budget line (number and heading)	Amount EUR	Method of calculation
Overall allocation (Title A7) A07030 – Meetings	29 250	3 meetings/year at average cost of EUR 9 750 (15 x EUR 650) per meeting
Information systems (A-5001/A-4300)		
Other expenditure - Part A (state which)		
Total	29 250	

The amounts are total expenditure for twelve months.

I.	Annual total (7.2 + 7.3)	EUR 29 250
II.	Duration of action	6 Years
III.	Total cost of action (I x II)	EUR 175 500

8. FOLLOW-UP AND EVALUATION

8.1. Follow-up arrangements

Not applicable

8.2. Arrangements and schedule for the planned evaluation

Not applicable

9. ANTI-FRAUD MEASURES

Not applicable