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QUALIFICATION DIRECTIVE
SYNTHESIS REPORT

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STUDY ON THE "CONFORMITY CHECKING OF THE TRANSPOSITION BY MEMBER STATES OF 10 EC DIRECTIVES IN THE SECTOR OF ASYLUM AND IMMIGRATION" DONE FOR DG JLS OF THE EUROPEAN COMMISSION END 2007(CONTRACT JLS/B4/2006/03)

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The authors of the report wish to thank all national rapporteurs for their efforts and great work. The Amsterdam part of the team has drafted the part of the report that concerns qualification (Articles 1-19) and the Aarhus part of the team has drafted the rights part of the report (Articles 20-36).

II LIST OF NATIONAL RAPPORTEURS

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III GENERAL INTRODUCTION TO THE STUDY

by

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1. PRESENTATION OF THE STUDY

The study contains different types of reports:

1. Two hundred seventy **National Reports** about the implementation of each of the 10 directives in each of the 27 Member States.

2. Ten **Synthesis Reports** for each of the 10 directives about their implementation in the 27 Member States. The abbreviated names used in the study for the 10 directives concerned by this report are:

- Family reunification
- Long-term residents
- Temporary protection
- Reception conditions
- Victims of trafficking
- Qualification
- Assistance for transit
- Carriers Liability
- Facilitation of unauthorised entry and stay
- Mutual recognition (of expulsion)

Those two kinds of reports are all accompanied by a summary.

Each National report is accompanied by a **National Summary Datasheet**. This Summary underlines the most serious problems related to the transposition of the concerned directive in the concerned Member State. Moreover, translations of the most problematic national provisions have been included in this National Summary Datasheet as requested by the Commission.

Each Synthesis Report is accompanied by a **Summary Datasheet** which underlines the most important conclusions and the main problems related to the transposition of the concerned Directive in the 27 Member States. It contains also some recommendations addressed to the Commission.

There are also 27 **Executive Summaries** about the implementation of the 10 directives in each of the Member States.

Apart of the reports, the **Tables of Correspondence** are very important tools to check the transposition of the directives by Member States. One table has been prepared about the implementation of each of the 10 directives in each of the 27 Member States. They have been included in each National Summary Datasheet. It gives a precise overview of the transposition of each provision (sometimes even of each sentence) of the concerned directive: the state of transposition (has actually the provision or not been transposed?), the legal situation (in case of transposition, is there or not a legal problem?) and a reference to the national provisions of transposition. Footnotes giving brief explanations have also been included in the tables. The reader who wants to have more information can easily find in column 2 of the tables a reference to the number of the question to consult the national report. Guidelines explain how the national rapporteurs were asked to complete the table and how they had to understand each mention proposed in the table.

The paper version of the reports is accompanied by a website. Apart from an electronic version of all the reports, the website gives also access to the full text of the national rules of transposition.

2. METHODOLOGY OF THE STUDY

The study has been done in the framework of the "*Odysseus" Academic Network for Legal Studies on Immigration and Asylum in Europe* by a very large team of persons organised as following:

1. The 120 national rapporteurs in charge of the national reports and tables in each Member State for one or several directives. A lot of the rapporteurs are members of the Odysseus Academic Network, but the Network has at this occasion been extended to other persons because of the very large scope of the study and the considerable amount of work to be done;

2. The 27 national coordinators in charge of ensuring progress of the work at national level and responsible for the drafting of the Executive Summary per Member State;

3. The six thematic coordination teams in charge of the synthesis reports per directive:
    - Prof. Kees Groenendijck assisted by Ricky Van Oers, Roel Fernhout and Dominique Van Dam in the Netherlands for Long-term residents as well as by Prof. Cristina Gortazar and Maria-José Castano from Madrid in Spain for certain aspects;
    - Prof. Kay Hailbronner assisted by Markus Peek, Simone Alt, Cordelia Carlitz and Georg Jochum in Germany for Assistance in cases of transit for removal, Mutual recognition of expulsion decisions, Carrier sanctions and Facilitation of unauthorised entry and residence;

- Prof. Henri Labayle assisted by Yves Pascouau in France for Family reunification;
- Prof. Gregor Noll assisted by Markus Gunneflo in Sweden for Temporary protection and Residence permits for victims of trafficking;
- Prof. Thomas Spijkerboer assisted by Hemme Battjes and Bram Van Melle in The Netherlands for the part on Qualification of refugees and subsidiary protection & Prof. Jens Vedsted-Hansen assisted by Jesper Lindholm in Denmark for the part on Rights of refugees and of persons under subsidiary protection.

4. The General Coordination team in charge of the overall coordination, methodology and contacts with the Commission as well as for the update of the synthesis report on reception conditions previously done by the Odysseus Academic Network in 2006. Prof. Philippe De Bruycker based in Belgium was therefore assisted by Laurence De Bauche (researcher), Elona Bokshi (manager of the website and also in charge of gathering national rules of transposition) and Nicole Bosmans (administrative and financial secretariat).

The authors are indicated at the beginning of each report with their email address in order to allow the Commission to contact them easily in case of need. The General Coordinator wants to thank warmly all the persons who were involved in this enormous study for their work and in particular their patience because of the many versions of the reports that we exchanged through thousands of emails.

Four meetings were organised: a kick-off and an intermediate meeting with the general and thematic coordination teams, a meeting with the general coordinator and all the researchers assisting the thematic coordinators and a final plenary meeting including almost all national rapporteurs were drafts for the synthesis reports have been discussed.

NGOs were asked to contribute on a voluntary basis by completing the questionnaires or at least part of it. The Member States were given the possibility to comment about the draft national reports (without the table of correspondence). We got only a limited number of contributions and reactions.

The Commission has been closely associated to the study. It was in particular consulted at the beginning on the projects for questionnaires and for tables of correspondence.

All member States are covered by the study, including those not bound by several directives upon the request of the Commission which asked to be informed about the developments in those Member States in comparison with Community law. The reports and tables of correspondence have been completed as if those States were bound by the concerned directives.

3. EVALUATION OF THE RESPECT OF COMMUNITY LAW

The study is about the transposition of 10 directives by Member States. More precisely, it covers extensively the legal measures adopted by the Member States to transpose those directives. As the process of transposition was not finished in some Member States, the

authors decided to take into consideration the projects of national norms of transposition when they were accessible. It is important to note that those projects have been analysed like if they had been adopted as standing, which means that subsequent changes at national level are not covered by the study. The cut-off date for the national rapporteurs is in general 1st October; later developments have only been taken into consideration whenever possible.

The practical implementation of the directives is covered as much as it has been possible to do so. The study came indeed early as the directives have just or even not yet been transposed, so that implementation by Member States is just starting and in particular that the jurisprudence available was very limited. The fact that no practical problems are mentioned does not mean that there are none, but that the rapporteurs have not been informed of their existence.

Explanations are given in the 10 synthesis reports about the transposition of the concerned directive. Fore the mandatory provisions which have not been transposed or pose a problem, the explanations are followed by boxes listing the Member States in order to help the Commission to draw clear conclusions and make the report easy to read. They have been built upon the basis of the tables of correspondence included in the national summary datasheets for each directive and Member State. The guidelines given to national rapporteurs to assess the situation in their Member State are reproduced with the tables to help the reader to understand the methodology.

Some important remarks about the way the transposition of directives was assessed have to be made. The research team had to find a way between different priorities: firstly and obviously, the jurisprudence of the Court of Justice which has strict requirements regarding legal certainty and is even quite rigid on some points. Secondly, pragmatism which leads to check if the directives are effectively applied in practice with less attention given to certain aspects of pure legal transposition. The coordinators tried to find a reasonable middle way between these two approaches and agreed together with DG JLS upon the following elements:

- Administrative circulars of Member States have been considered as formal means of transposition. As much as they are binding for the administrative agents in charge of individual cases, they indeed ensure that the directive is implemented in practice despite they might not be considered sufficient to fulfil the requirements of the Court of Justice regarding an adequate legal transposition. They are nevertheless mentioned in the tables of correspondence separately from laws and regulations.

- Pre-existing norms of transposition meaning laws, regulations and circulars which were adopted before the concerned directive and so obviously not to ensure its formal transposition, have been considered as a mean of transposition. Their content may indeed reflect the provisions of the directives in internal law. This is not in line with the jurisprudence of the Court which has considered that "legislation in force cannot in any way be regarded as ensuring transposition of the directive, which, in article 23(1), second subparagraph, expressly requires the Member States to adopt provisions containing a reference to that directive or accompanied by such a reference" (Commission v. Germany, Case C-137/96 of 27 November 1997). All the ten directives covered by the study contain such an inter-connexion clause. A rigid application of this jurisprudence to our study would have led us to conclude that there is no transposition even when pre-existing rules ensure the implementation of the directive. In line with the approach of DG JLS to assess not only the formal transposition but also the application in practice of the directives, we have not done so

and considered pre-existing national rules as a mean of transposition. They are nevertheless mentioned in the table of correspondence as pre-existing law, regulation or circular not under the item "Yes formally" but "Yes otherwise" together with general principles of internal law which the Court has accepted to consider under certain condition as a mean of transposition (Commission v. Germany, Case C-29/84 of 23 may 1985).

Despite the fact that we agreed with the Commission about these choices, the authors of this study considered necessary to make them explicit as they might seem inadequate from a purely legal point of view. Moreover, they have also decided to present in the tables of correspondence these possibilities separately from the classical ones. The Commission will so be perfectly informed about the situation regarding the transposition of the directives in the Member States. The transparency of the information given in the tables will allow it to take a final position which could depart from the choices done at the beginning of this study.

Finally, the provisions about human rights appearing here and there in the ten directives require some explanations. The obligation for Member States to formally transpose provisions like for instance article 20 §4 of the Qualification directive[1], article 15 §4 of the directive on temporary protection[2] or article 3, §2 of the directive on mutual recognition of expulsion decisions[3], gave raise to long discussions between all the rapporteurs involved in the study. It has been impossible to convince the group of 130 lawyers involved in this study to take a common position about the necessity to transpose or not that kind of provisions. The General Coordinator of this study decided in this context to leave the national rapporteurs free to express their own opinion in their report and table. This means that divergent views might be expressed on the same point by the national rapporteurs. This situation reflects the fact that the lawyers involved in the study face obviously very different situations and react sometimes in relation with the context of their Member State by considering that reminding human rights is either superfluous because they are generally respected, either necessary because they care about possible violations.

From a strictly legal point of view, it appears that all the provisions cannot be considered in the same way. Some articles have an added value and are more than repetitions of human rights provisions, like article 10 of the directive on permits for victims of trafficking which after a first clause on the best interests of the child requires specifically an adaptation of the procedure and of the reflection period to the child, or article 17 of the directive on family reunification which refers to the jurisprudence of the European Court of Human Rights on the right to family life and specifies its scope. Others may be considered as redundant with international treaties like article 20 §4 of the Qualification directive or article 15 §4 of the directive on temporary protection. One may consider superfluous to transpose such a provision in the case of Member States which have ratified the Convention on the right of the child and ensure its implementation, for instance by recognising it a direct effect. More in general it appears that references to human rights in secondary legislation require more attention and that their legal value needs to be clarified (see recommendation on this point below).

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[1] « *The best interest of the child shall be a primary consideration for Member States when implementing the provisions of this chapter that involve minors* ».
[2] « *When applying this article, the Member States shall take into consideration the best interests of the child* ».
[3] « *Member States shall apply this directive with due respect for human rights and fundamental freedoms*».

4. RECOMMENDATIONS ABOUT THE EVALUATION OF THE IMPLEMENTATION OF DIRECTIVES

This part contains some general recommendations to the Commission about the way of checking transposition of directives by Member States (specific recommendations about the 10 directives are included in the Summary Datasheet of each synthesis report per directive). The following three recommendations are based on the experience acquired during this study covering 10 directives in 27 Member States.

- **Oblige the EU institutions to include tables of correspondence in the final provisions of any directive adopted**

It is clear that the method of checking the implementation of directives still needs to be improved. The increase of the number of Member States and of working languages makes it more and more difficult to check seriously the way they are legally transposed.

There is an absolute need to request the Member States to prepare a table of correspondence (also called concordance or correlation tables) indicating the national norms of transposition for each provision of a directive. The Member States which have prepared the transposition are the best authority to identify precisely these norms of transposition. Leaving it to the Commission or asking external experts to do this part of the job can be considered to large extend as a waste of time and resources. The Member States should be asked only to indicate the rules of transposition and of course not to evaluate its correctness. Even the NIF electronic database of the Commission used by the Member States to notify the rules of transposition is therefore not sufficient. It does not indicate precisely the national norm of transposition for each provision of the directives which might remain difficult to identify in very long national rules. Moreover, Member States send sometimes not only the norms of transposition as some directives require them to communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by the directive. If such a more or less standard provision has been included to allow the Commission to understand the general context of the transposition, it makes the search of the precise norm of transposition more difficult as some Member States transmit a lot of texts.

Remarkably, only one of the 10 directives under analysis contains a provision obliging the Member States to prepare a table of correspondence: following article 4 §2 of the directive on the facilitation of unauthorised entry, transit and residence, "*The Member States shall communicate to the Commission the text of the main provisions of their national law which they adopt in the field covered by this directive**, together with a table showing how the provisions of this directive correspond to the national provisions adopted.** The Commission shall inform the other Member States thereof*". The reasons explaining why only this directive contains such a requirement are not clear. This directive is the result of a State initiative, namely France. The other instruments proposed during the same period by France regarding carrier sanctions and mutual recognition of expulsion decisions do not contain such a clause. The same is true for the Commission's proposals at the origin of the other directives analysed.

There is a strong and urgent need to request such a table from Member States when they transpose a directive. The Commission should intensify its efforts undertaken since five years

so that the European institutions are obliged to include such a clause in any directive adopted as envisaged in its Communication on "A Europe for results: applying Community law"[4].

- **Have a more in-depth debate about the choice of the right instrument instead of favouring directives**

A reflection on the type of instruments of secondary law to be used could also be fruitful. For instance, it seems that a Council decision would have been more appropriate than a directive to regulate the issue of assistance in cases of transit for the purposes of removal by air.

More important, directives should not be automatically chosen for reasons of subsidiarity or proportionality. One may wonder if they are not good reasons for choosing in certain cases a regulation instead of a directive, for example for the qualification of refugees and persons under subsidiary protection in order to ensure a more consistent implementation of the definitions of persons to be protected in the EU by the Member States.

- **Clarify the sense of including human rights references in secondary legislation in view of the future binding effect of the EU Charter on human rights**

As underlined above, many references to human rights have been included in directives adopted in the field of immigration and asylum. Their legal value is doubtful when they only repeat or refer to International or European provisions on human rights. As they may create long discussions during the transposition process by Member States about their need to be transposed and can even create confusion about the precise origin of the concerned human right, they could be omitted and included if relevant in the preamble of the instrument. The need to clarify this point will increase with the entry into force of the new Lisbon Treaty transforming the EU Charter of human rights into a legally binding instrument.

[4] COM(2007)502 of 5 Septembre 2007.

IV SUMMARY DATASHEET AND RECOMMENDATIONS

1. MEMBER STATES COVERED AND NOT COVERED BY THE SYNTHESIS REPORT

The synthesis report covers all Member States bound by the Directive except for Malta, the national report of which was received too late for inclusion in this report due to problems in accessing the draft transposition law. The national Summary Datasheet of Malta is attached to this report, see section VI, while the brief Maltese national report indicating the possible impact of the directive in this Member State should be consulted independently of this synthesis report. Spain is also covered in the report, even though no project of transposition has been drafted and according to our knowledge the Spanish government does not intend to draft such a project in the near future.

2. MEMBER STATES BOUND AND NOT BOUND BY THE DIRECTIVE

All Member States except for Denmark are bound by the Directive. On Denmark, reference is made to section V.5 of this report.

3. STATE OF TRANSPOSITION OF THE DIRECTIVE

Number of Member States which have transposed the directive:	12
Number of Member States which have **NOT AT ALL** transposed the Directive (even no project of transposition is known):	2
Number of Member States where the process of transposition is pending (meaning there is project of transposition but it is not yet adopted):	12

MEMBER STATES	STATE OF TRANSPOSITION
AUSTRIA	- TRANSPOSED
BELGIUM	- TRANPOSED
BULGARIA	- TRANPOSED
CYPRUS	- IN PROCESS OF BEING TRANSPOSED
CZECH REPUBLIC	- TRANPOSED
DENMARK	- (not bound)
ESTONIA	- TRANPOSED
FINLAND	- IN PROCESS OF BEING TRANSPOSED
FRANCE	- TRANPOSED
GERMANY	- TRANPOSED
GREECE	- IN PROCESS OF BEING TRANSPOSED
HUNGARY	- IN PROCESS OF BEING TRANSPOSED
IRELAND	- IN PROCESS OF BEING TRANSPOSED
ITALY	- IN PROCESS OF BEING TRANSPOSED
LATVIA	- IN PROCESS OF BEING TRANSPOSED
LITUANIA	- TRANPOSED
LUXEMBOURG	- TRANPOSED
MALTA	NOT TRANSPOSED
NETHERLANDS	- IN PROCESS OF BEING TRANSPOSED
POLAND	- IN PROCESS OF BEING TRANSPOSED
PORTUGAL	- IN PROCESS OF BEING TRANSPOSED
ROMANIA	- TRANPOSED
SLOVAKIA	- TRANPOSED
SLOVENIA	- IN PROCESS OF BEING TRANSPOSED
SPAIN	- NOT TRANSPOSED
SWEDEN	- IN PROCESS OF BEING TRANSPOSED
UNITED KINGDOM	- TRANPOSED

4. TYPES OF TRANSPOSITION OF THE DIRECTIVE

Most Member States transposed most of the provisions on qualification by means of law or regulations (Belgium, Cyprus, Czech Republic, (Denmark)[5], Estonia, Finland, Greece, Hungary, Ireland, Italy, Latvia, Luxembourg, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia), although some of these states rely on general principles of law where parts of Article 4, on procedural issues, are concerned. Transposition by use of circulars is quite rare. A number of Member States however did not transpose all provisions stating rules for the interpretation of the definition of refugees and persons eligible for subsidiary protection into legal provisions. These states instead rely on the relevant definitions as interpreted by their domestic courts, which interpretation occasionally is steered by preparatory works to the domestic law and relevant general principles of law (Austria, Czech Republic, Finland, France, Germany, and Sweden; see for details below under 7). For Spain it is also reported that as regards interpretation issues case-law is usually in conformity with relevant Directive provisions, although a (proposal for) an implementation act is still absent. A project of transposition is not even foreseen in the near future.

5 As mentioned above, Denmark has not formally transposed the Directive, while doemestic law of this Member States does include a wide range of norms which to a higher or lesser degree constitute conformity with the Directive, see section V.5 of this report.

5. EVALUATION OF THE NUMBER OF PROBLEMS (QUANTITATIVE APPROACH BASED ON THE NATIONAL TABLES OF CORRESPONDENCE AND NOT RELATED TO THE SERIOUSNESS OF THE PROBLEMS)

This current assessment is based on the national tables of correspondence, consisting of the numbers of provisions transposed, not transposed, legal problems etc. This document provides quantitative results but no value judgements can be based on these quantitative data. Trivialities and fundamental issues carry the same weight. Therefore no conclusions can be drawn from this table in itself. Two general tendencies in the transposition by the Member States however might be inferred.

(1) It can be inferred that Austria, Cyprus, Finland, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, the Netherlands, Poland, Portugal, Romania, Slovakia and Sweden are countries with a relatively high number of provisions that are legally in order, with in addition a low number of legal problems and non-transposed provisions (over 50 provisions legally in order and 10 or less provisions causing a legal problem). They could be referred to as the least problematic or non-problematic group of countries. This group could be bluntly divided in two as consisting of Member States with either a long and well established tradition of practice and jurisprudence (e.g. Austria, Finland, Germany, the Netherlands; hence a relatively large amount of provisions are not transposed, since jurisprudence and practice are already in conformity) or Member States with a large amount of provisions that were literally transposed (Cyprus, Greece, Hungary, Italy, Luxembourg, Poland, Portugal, Romania and Slovakia). Although the impression might be given that the latter group performs well in transposing the provision, information from national rapporteurs suggests that in practice this is not always the case. This issue however will be touched upon in the recommendations (par. 9).

(2) As to a number of Member States, the sum of problematic and not transposed provisions exceeds 20, which is almost one third of the total amount of 63 mandatory provisions (Belgium, Bulgaria, Czech Republic, Estonia, France, Lithuania, Spain and the United Kingdom). There is however not really a binding common factor explaining this phenomenon (i.e. less transposition combined with more legal problems when transposition occurs). For France this low number of actual transposition of provisions is mitigated in a way by the number of provisions (6) that were not transposed, but guaranteed by standing case law. The Belgium, Bulgarian, Estonian, Lithuanian, Spanish and United Kingdom rapporteurs stated a relatively high amount of non-transposition; especially on the rights part, the Belgian legislative efforts fall short of the standard demanded by the directive (as will be shown below in the qualitative assessment, par. 6). The norms of transposition in Bulgaria, Estonia and Lithuania were often too broad and vague to count as sufficient means of transposition, which was sometimes caused by the use of pre-existing legislation to transpose the Directive. As to Spain it is no surprise that they have come out as violating many of the provisions of the directive since no project of transposition has been drafted since the entry into force of the directive. Current legislation seems to vary and only cover parts of the directive. The rapporteurs from the Czech Republic and the United Kingdom also found a lot of inconsistencies between domestic legislation and the wording of the directive and hence indicated a relatively large number of problems. Latvia and Slovenia are not separately

mentioned in this analysis, but if one needs to categorise these Member States, they can be categorised as somewhere in between the two above mentioned categories.

6. EVALUATION OF THE SERIOUSNESS OF PROBLEMS (QUALITATIVE APPROACH BASED ON THE NATIONAL SUMMARY DATASHEETS AND VERTICAL APPROACH AS IT ENVISAGES THE SITUATION PER MEMBER STATE)

In evaluating the seriousness of problems it is hard to draw any substantial conclusions since: (1) the distinction between very important and less important provisions is impossible to make when it comes to the provisions on qualification. These provisions define the scope for international protection and are therefore considered to be equally important. (2) In addition to this, if certain provisions have a greater numerical impact (e.g. the number of times an internal flight alternative is used to deny an applicant international protection compared to the number of times the issue of *refugié sur place* is relevant) this would prove to be a valid way of assessing which provisions are more important than others, but since no statistical information is available, it is virtually impossible to draw any valid conclusions. Apart from these precautions, the assessment will be done according to the types of problems discussed below, *viz*. the definition of persons eligible for subsidiary protection (Articles 2(e) and 15), the obligation to grant status and (grounds for) exclusion, cessation, revocation and withdrawal of status (Articles 11-14 and 16-19), the interpretation of the definition of refugee and of person eligible for subsidiary protection (Articles 5-10) and procedural rules (Articles 4, 14(2) and 19(4)).

First of all however it is to be mentioned that until now, Spain has no project of transposition, although it has transposed a considerable bit of the directive by pre-existing legislation. This causes the Spanish rapporteur to list in the national summary datasheet various provisions as not transposed; these cover all types of problems mentioned above, but especially the interpretative provisions (Articles 5-10) and the procedural rules (Articles 4, 14(2) and 19(4)). Spain will therefore not be mentioned separately below, since problems covering all four types are indicated.

Since the actual assessment whether an infringement procedure has to be started against a Member State is to be taken by the European Commission (and the actual judgement thereupon *in ultimo* lies with the European Court of Justice) only groups or types of Member States will be presented, abstaining from evaluating whether one case of non-transposition is worse than the other.

- We can distinguish a group of Member States that did not transpose the interpretative provisions (Articles 5-10) correctly, or at least partly incorrect (Austria, Belgium, Bulgaria, Czech Republic, Estonia, France, Lithuania, Romania, Slovenia, Sweden).

- Provisions relating to exclusion, cessation, revocation and withdrawal of status (Articles 11-14 and 16-19) were not transposed correctly or at least partly incorrect (Belgium, Bulgaria, Czech Republic, Estonia, Germany, Italy, Lithuania, Poland, Portugal, Slovakia, Slovenia).

- Provisions relating to the definition of persons eligible for subsidiary protection (Articles 2(e) and 15) were not or not sufficiently transposed (France, Lithuania, Portugal; and as to 15(c) also Germany and the Netherlands (but not Lithuania)).

- In some Member States the procedural rules (Articles 4, 14(2) and 19(4)) are not or not sufficiently transposed (Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, France, Latvia, Lithuania, Portugal, Romania, Slovenia, Spain, United Kingdom).

Furthermore, there is a group of Member States that relied heavily on existing legislation, administrative practice and jurisprudence in transposing the directive (Austria, Belgium, Czech Republic, France, Sweden).

Finally a more detailed analysis on which provisions these Member States have not or not sufficiently transposed is given in the next chapter which provides a more specified analysis based on the types of problems.

With regard to the rights part (Chapter VII and Article 14(6) of the Directive), it could also be argued that all provisions are equally important – similarly to the approach taken on the qualification part above. Without prejudice, however, to the considerations put forward with regard the qualification part of the Directive, the following provisions have nonetheless been identified as particularly important among the rights and benefits enumerated under the Directive:

- Article 20(5) (Best interest of the child)
- Article 21(1) (Protection from *refoulement*)
- Article 23(1) and 23(2), first sentence (Maintaining family unity)
- Article 26(1) and (3), first, second and third sentence (Access to employment)
- Article 27(1) and (2) (Access to education)
- Article 28(1) (Social welfare)
- Article 29 (1)and (3) (Health care)
- Article 30(1), (2),(3),(4), (5), and (6) (Unaccompanied minors)
- Article 31 (Access to accommodation)
- Article 14(6) (Rights of those considered as "tolerated")

The rationale for this selection is that these provisions are considered particular important based on the criteria that they concern the very core of individual rights and/or affect a large segment of the beneficiaries. Also, only mandatory - and not optional or specific - provisions are generally considered as important ones, although this is not without exceptions; cf. for example conditionally optional Article 14(6).

- Article 20(5) - the best interest of the child, has not been transposed in Belgium, Ireland, the Netherlands and the United Kingdom, while problematic transposition has been identified in Slovenia, France, and Luxembourg.

- The essential protection from *refoulement* as outlined in Article 21(1) is considered to have been transposed by all Member States covered by the Study, although the means of transposition in Belgium may be challenged as insufficiently clear in its legal nature ("direct effect of principle of non-refoulement"). United Kingdom has transposed this provision in a problematic manner.

- With regard to Article 23(1) (maintaining family unity) only Estonia did not carry out transposition, while Belgium, Bulgaria, Czech Republic and Lithuania did not transpose the provision correctly. Concerning Article 23(2), first sentence ("Member States shall ensure that the family members of the beneficiary of refugee or subsidiary protection status, who do not individually qualify for such status, are entitled to claim benefits referred to in Articles 24 to 34…"), three States (Belgium, Latvia and Lithuania) did not transpose, while the Czech Republic, Luxembourg and United Kingdom did so incorrectly.

- On access to employment (Article 26), only Estonia has not transposed the obligation to authorize refugees to engage in employment (Article 26(1)), while Article 26(3), first, second and third sentence, on authorizing beneficiaries of subsidiary protection status to engage in employment, was not transposed by Cyprus, Estonia and Romania- and transposed in a problematic manner by Belgium, Greece, Czech Republic, Luxembourg, Slovakia and Spain.

- On Article 27(1) (access to education for minors), problematic transposition on part of Bulgaria, and the Czech Republic has been observed With regard to Article 27(2) on access to education for adults, Lithuania and United Kingdom did not transpose the provision while problematic transposition was observed on part of Slovenia and Spain.

- Article 28(1) on social welfare has not been transposed by Estonia and legal problems related to the transposition have been observed concerning Belgium, the Czech Republic, Lithuania and Slovakia.

- Concerning Article 29 (1) on health care, again Estonia has not transposed while Austria, Latvia, the Czech Republic, Spain, Lithuania and the United Kingdom have transposed in a problematic manner. Concerning Article 29(3) on adequate health care to beneficiaries of one or the other protection status with special needs, Bulgaria, Estonia, Czech Republic and United Kingdom have not transposed, while Latvia, Lithuania, Romania, Ireland, and Spain have transposed in a legally problematic manner.

- Concerning Article 30 on unaccompanied minors, the following observations can be made: United Kingdom has not transposed article 30(1), while Bulgaria and Lithuania have transposed the provision in a problematic manner. Bulgaria, Cyprus and Estonia have not transposed Article 30 (2), while Greece and Luxembourg are stated to have transposed in a legally problematic manner. Concerning Article 30(3), United Kingdom has failed to transpose. As regards Article 30(4), Austria, Belgium, Bulgaria, Czech Republic and United Kingdom have not transposed the provision, while Slovenia has done so in a problematic manner. Belgium, Poland, Estonia and united Kingdom have failed to transpose Article 30(5) and Austria, Bulgaria, Slovakia and Slovenia are listed to have transposed with legal problems. Concerning Article 30(6), Belgium, Bulgaria, Latvia, Hungary, Italy, Estonia and United Kingdom have not transposed the provision into national legislation. Finland has done so incorrectly.

- Latvia is the only Member State not to have transposed Article 31 (access to accommodation, while Bulgaria and Slovenia have done so incorrectly.

- Article 14(6) (rights of those considered as "tolerated") is a conditionally mandatory provision, the content of which must be transposed if the either Article 14(4) or (5) have been so. Austria, Belgium, Bulgaria, Czech Republic, Latvia, France, Poland, Greece, Italy, Finland, Lithuania and United Kingdom have not transposed Article 14(6). Of these Member States, Austria, Belgium, Bulgaria, Czech Republic, Latvia, Lithuania and United Kingdom have indeed transposed Article 14(4) and/or Article 14(5). Spain has transposed the provision incorrectly.

An overall observation would be that the same States applying existing legislation (see above) in transposing the qualification part of the Directive, generally also do so concerning the rights part. Moreover, it can be concluded that such legislation as included, for example, in the social field, may be somewhat differently worded than the Directive provisions, hence possibly displaying a need for further approximation within the rights field in order to clarify the legal certainty of the transposition.

7. TYPES OF PROBLEMS (HORIZONTAL APPROACH THROUGHOUT ALL THE MEMBER STATES)

7.1 The definition of persons eligible for subsidiary protection (Articles 2(e) and 15)

Transposition of the definition of persons eligible for subsidiary protection in Article 2(e) read in conjunction with 15 has led to a number of problems.

The meaning of Article 15(a) and (b) is relatively clear if read in the light of relevant prohibitions of expulsion (cf. Articles 2 and 3 ECHR). However, the meaning and scope of Article 15(c) are definitely unclear, especially if it is to be given a meaning distinct from Article 15(b). In particular, there is an obvious tension between the requirements of (a) an "individual threat" and (b) a situation of "indiscriminate" violence. A number of Member States solved the matter by leaving out from their transposition the term "individual" (Austria, Belgium, Czech Republic, Greece, Hungary, Lithuania). As such transposition states more favourable standards, it is in this report not considered to be at variance with the Directive (cf. par. V.1.1.1). The French and German transposition norms on the other hand seem to restrict the scope of protection (by adding the requirement "direct" and leaving out "indiscriminate violence") which is in violation of Article 15.

Spain has not transposed these provisions; its pre-existing domestic law diverges from both Articles 2(e) and 15(a), (b) and (c) to such an extent that its domestic law can not be considered as transposing with required precision and clarity the definition of eligibility for subsidiary protection. Lithuania also relies on (pre-existing) domestic law that does not render the types of harm set out in Article 15(a) and (c) with sufficient clarity, although this only seems to be problematic as regards Article 15(c), where the definition appears to exclude international conflicts. The transposition norm for Article 2(e) in Portugal is also overly vague; the French norm transposing the same provision seems to imply a heightened evidentiary standard which is also in violation of Article 2(e). The Netherlands furthermore transposed literally, although the grounds mentioned under Article 15(a) and (c) are laid down in a regulation and are –according to the Dutch government- to be read into Article 15(b), which is laid down in the (general) Aliens Act. This also appears to be problematic.

7.2 Interpretation of the definition of refugee and of person eligible for subsidiary protection (Articles 5-10)

As regards the transposition of Articles 5-10, rules on interpretation of the definitions of refugee and person eligible for subsidiary protection, two types of problems may be distinguished.

(1) First, a number of Member States did not transpose one or more of these provisions into precise and explicit provisions of domestic law. In many cases, this absence may be classified as violation of the Directive (as regards Article 7(1) and (2) – actors of protection: Romania, Slovakia, Spain; as regards Article 8 – internal protection alternative: Bulgaria, Czech Republic, Estonia, Lithuania, Portugal, Romania; as regards Article 9 – persecution: Bulgaria, Czech Republic, Slovenia, Spain and the United Kingdom; Article 10 – persecution grounds: Czech Republic, Estonia, Romania, Slovenia, Spain). However, for a number of states it is reported that domestic case-law on the definitions, at times steered by the preparatory works to the relevant legislation and/or relevant general principles of law, secures sufficiently precise and explicit transposition (cf. Belgium, Czech Republic, France and Sweden as regards Article 5; Austria and Spain as regards Article 6; Austria, Finland, France as regards Article 7; France and Sweden as regards Articles 9 and 10). Thus, there seems to be a choice as to whether states relying on jurisprudence as means of transposition act in violation or in conformity with Community law (therefore, in the tables on the relevant provisions in par. V.3.2 "not transposed, but jurisprudence in conformity" is distinguished from "not transposed" *tout court*). It should be remarked that according to our information, the level and content of protection in those cases does not fall short of the requirements by the Directive, although it could of course be argued that legal certainty in these cases falls short of the standard demanded by the European Court of Justice.

Finally, a number of Member States did not transpose the mandatory provision of Article 9(3) that requires a causal link between persecution and persecution grounds. This provision apparently requires denial of refugee status in case protection is withheld on such a ground. The transposition in the countries concerned (Bulgaria, Czech Republic, France, Greece, Luxembourg, the Netherlands, Poland, Slovakia, Spain) states more favourable standards; hence in this report their transposition is not considered to be at variance with the Directive (cf. par. V.1.1.1).

(2) In other cases, domestic law does contain a norm of transposition but this norm deviates from the Directive in a way that negatively affects the scope of the definitions of people eligible for international protection (as regards Article 5 – *refugiés sur place*: Estonia, Lithuania and the United Kingdom; Article 6 – actors of persecution or serious harm: Bulgaria, Czech Republic and Estonia; Article 7 – actors of protection: Czech Republic, Estonia and Lithuania; Article 8(2) – internal flight alternative: Belgium, Czech Republic and the United Kingdom; and Article 9 – persecution: Bulgaria, Czech republic and Estonia).

7.3 The obligation to grant status and (grounds for) exclusion, cessation, revocation and withdrawal of status (Articles 11-14 and 16-19)

Articles 13 and 18 state in mandatory terms that refugee and subsidiary protection status must be granted to persons qualifying for it. Domestic law in a number of states is not in conformity with these provisions as it does not require the grant of status in obligatory terms (as regards refugee status, Article 2(c) Estonia, Greece and Latvia; as regards subsidiary protection, Article 2(e), also Lithuania, Romania and Spain).

Articles 11 and 16 state grounds for cessation of, Articles 12, 14(3) and 17 grounds for exclusion from both statuses. Most of these grounds are stated in mandatory terms. Nevertheless, in a number of Member States domestic legislation does not require (but merely allow for) cessation or exclusion on those grounds. As such domestic standards can be read as being more favourable, they are not considered in this report as being in violation of the Directive. In other Member States domestic law states additional grounds or overly wide grounds for cessation (as regards Article 11: Bulgaria, Czech Republic, Estonia, Lithuania and Portugal; as regards Article 16: Bulgaria, Germany, Lithuania, Portugal, Slovenia) or exclusion (Article 12: Germany, Italy, Portugal, Slovakia, Slovenia; Article 14(3): Czech Republic and Poland; Article 17: Estonia, France, Lithuania, Portugal, United Kingdom). This possibility to deny status to people entitled to it under the Directive must be considered as violation.

7.4 Procedural rules (Articles 4, 14(2) and 19(4))

Three provisions address procedural issues, stating guarantees that may be decisive for the outcome of qualification procedures. A considerable number of Member States did not transpose all procedural guarantees.

According to Article 4(1), states may apply the principle that applicants submit all evidence as soon as possible; if they do so, applicants must be granted the benefit of the doubt in case of absence of evidence if the conditions stated in Article 4(5) are met. The last mentioned rule however has not, or not correctly been transposed by Estonia, France, Poland, Spain and the United Kingdom. Further, Article 4(1) second clause requires authorities to "cooperate" with applicants when assessing the application. This duty to cooperate has not been transposed by some Member States (Bulgaria, Cyprus, Czech Republic, France, Lithuania, Romania and Spain; or at least not as regards all elements mentioned in Article 4(2) and (3) - Belgium, Bulgaria, Czech Republic, Estonia, France, Lithuania, Slovenia, Spain and the United Kingdom). Article 4(4) states an important rule of evidence: previous persecution or harm is a serious indication of future persecution or harm, unless there are good reasons to suspect otherwise. Many Member States failed to transpose this rule (Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, France, Hungary, Lithuania, Poland, Spain, Sweden).

Articles 14(2) and 19(4) state that authorities must "demonstrate on an individual basis" that the person has ceased to be a refugee or a person eligible for subsidiary protection. Many Member States failed to implement this rule on the burden of proof (Bulgaria, Cyprus, Estonia, France, Latvia, Italy (only as regards Article 19(4)), Portugal, Spain, United Kingdom).

7.5 Articles 20-34

With regard to the vertical approach per Member State, see above under section IV.6 which indicates transposition issues with regard to the important provisions of the rights part of the Directive. Problems viewed from the horizontal perspective include issues such as reference to international instruments in claiming transposition (article 20(5), best interest of the child and article 21(1), protection from *refoulement*). This has led to confusion as to the legal clarity of the actual transposition; see also section III.4 (General Introduction to the Study) of this report.

As regards article 23 on maintaining family unity, the approach of the authors has been to include reference to family reunification regimes, only to the degree that such legal regimes would provide for the maintainance of unity for family members already present on the territory of the Member State concerned. Without this approach there would be no or litte independent meaning to the transposition of Member States. Where transposition has been

ensured by existing legislation, reference has, however, often mistakenly been made to the national system for family reunification.

Finally, concerning article 28 on social welfare it has proven quite challenging to define the meaning of "necessary social assistance" as regards the Member State in question. Similarly, on article 29(3) and the precise meaning of "adequate health care", a multitude of interpretations have come up in approximating what exactly needs to be in place to ensure adequate transposition.

8. IMPACT OF THE DIRECTIVE ON THE MEMBER STATES

When signalling general tendencies as regards improvement or deterioration for third country nationals by transposition of the Qualification Directive, utmost caution is due. Assessment of the impact has been made by national rapporteurs who may have not have applied the same standards. Impact of particular provisions in the Member States may furthermore very much depend on the position of the norm in the particular domestic system. Thus, as to one Directive provision, one rapporteur assessed transposition as positive because it brought more legal certainty, whereas another rapporteur assessed it as negative because it reduced flexibility (see par. V.4.1.4). For proper assessment, a quite detailed discussion of domestic circumstances would be required – which, however, is beyond the scope and objectives of this report. It should further be noted that the same Directive provision may have had positive effects in some, and negative effects in other Member States. The assessment of the legal impact below is hence most sketchy; for more detailed information, the reader should refer to the national reports.

8.1 Positive effects by transposition for third country nationals

In general, two kinds of positive effects due to transposition of the Directive have been reported. First, for a number of Member States the transposition entailed a *broadening of the scope of protection*. In addition to such broadening of the personal scope of protection in relation to the qualification part of the Directive, a broadening of the *scope and level* of protection through transposition of the Directive-rights can equally be said to taken place in a number of Member States The second positive effect reported for a considerable number of Member States is the *clarification* the Directive has brought as regards the interpretation of the refugee definition and the definition of persons eligible for subsidiary protection. With regard to the rights part of the Directive, such clarification has taken place by the mere adoption of the Directive's catalogue of rights and/or in addition to rights existing in national legislation reflecting those enumerated in the Geneva Convention. Moreover, clarification as to the nature of these rights has also been reported as a positive effect of the transposition of the Directive.

Obviously, both effects cannot always be easily be distinguished.

(1) A broadening of the scope of protection has been caused, first and foremost, by the introduction of subsidiary protection in Member States where no such protection category existed before (or only in the form of a prohibition on expulsion – Belgium, Cyprus, Czech Republic, Hungary, Ireland, Lithuania, Luxembourg, Poland, Slovakia, United Kingdom). It further concerns the introduction of the obligation to issue the statuses to persons qualifying for it in those states where no *obligation* existed before (cf. Articles 13 and 18; Czech Republic, Hungary, Italy, Luxembourg, the Netherlands, and Belgium, France, Poland, Sweden and the United Kingdom). As to the definitions

of refugees and persons eligible for subsidiary protection, it appears that broadening of the scope of protection for at least a number of Member States occurred as to the following issues: the types of harm as meant in the definition of persons eligible for subsidiary protection (Article 15; France, Germany, Ireland, Italy, Luxembourg, Poland, Portugal, Slovakia, United Kingdom, where domestic law is in line with the provision, and in Belgium, Czech Republic, Hungary and the United Kingdom, where domestic law became even more favourable (in particular because the term "individual" in Article 15(c) was not transposed)), the definition of actors of persecution or serious harm (Article 6; Italy, Belgium, Latvia, Bulgaria and Germany), the definition of persecution by accumulation of harmful acts (Article 9(1)(b); Belgium, Bulgaria, Estonia, Germany, Greece, Hungary, Ireland, Italy, Latvia, Luxembourg, Poland, Portugal, Romania), and the rule which states that change of circumstances should be sufficiently durable in order to conclude that the need for protection has ceased (Articles 11(2) and 16(2); Belgium, Czech Republic, Italy, the Netherlands, Slovakia, and France and United Kingdom). See for the lists of Member States concerned, par. V.4.1.1ff.

(2) The second positive effect reported for a considerable number of Member States is the clarification the Directive has brought as regards the interpretation of the refugee definition and the definition of persons eligible for subsidiary protection. This concerns in particular the rule that in principle previous persecution or harm yields a presumption of future persecution of harm (Article 4(4); Cyprus, Germany, Greece, Hungary, Ireland, Italy, Latvia, Luxembourg, Portugal, Romania, Slovakia), for some states, rules on refugié sur place (Article 5; Bulgaria, Cyprus, Estonia, Finland, Hungary, Italy, Lithuania, Latvia, Luxembourg, Poland, Romania, United Kingdom), the rules on grounds for persecution, in particular membership of a particular social group (Article 10; Greece, Ireland, Italy, Latvia, Luxembourg, Poland, Portugal, Romania, Slovakia) and the grounds for denial of subsidiary protection (Article 17; Estonia, Germany, Italy, Romania). See for a more comprehensive list of Member States concerned, par. 4.1.1 ff.

8.2 Negative effects by transposition for third country nationals

The negative effects that have been reported mirror the positive ones: reduction of flexibility and a reduction of the scope of protection. The latter effect has been reported for a number of Member States as to the following issues. In a number of Member States the definitions of refugee and subsidiary protection now apply only to third country nationals – EU citizens are thus excluded although the Directive does not require so (see pars. 3.1.1 and 3.2.1 under c). In some Member States denial of status in case the cessation or exclusion grounds apply was possible but has become an obligation (Articles 14 and 19 QD; Bulgaria, Lithuania, Latvia, Luxembourg, the Netherlands, Poland, Slovakia, Slovenia). Furthermore, by the transposition of the Directive new grounds for denial of status were introduced in some Member States (Articles 11-12 and 16-17; Czech Republic, Estonia, Greece, Latvia, Lithuania, the Netherlands Poland, Portugal, Slovakia, Slovenia, United Kingdom). A deteriorating effect has further been signalled for Member States that made use of the option to require in case of *refugiés sur place* that present convictions are continuations of previous convictions (Article 5(3); Bulgaria, Greece, Portugal and Slovenia) or that the internal flight alternative may apply despite obstacles to get there (Article 8(3); France, Latvia, the Netherlands, Slovakia, Slovenia, Portugal). The same effect has been reported as regards the stipulation that parties, including international organisations can provide for protection (Article 7; Bulgaria, France, Poland, Slovenia, Ireland, Greece and Slovakia). See for the lists of Member States concerned par. 4.1.1 ff.

For all provisions, negative effects for the legal position of the third country national in particular Member States were reported. These do not lend themselves for generalisation. The reader is referred to para. V.4.1.

8.3 Domestic standards that are more favourable for third country nationals than Directive standards

More favourable standards have been reported by relatively few Member States on relatively few provisions - at any rate far less, than provisions less favourable than the Directive.

More favourable domestic rules have been reported for Member States that did not transpose optional provisions that negatively affect the legal position of third country nationals, (i.e. Article 5(3); Belgium, Czech Republic, Estonia, Finland, France, Ireland, Italy, Latvia, Lithuania, the Netherlands, Slovakia, Spain, Sweden, United Kingdom, Article 8(3); Austria, Belgium, Bulgaria, Czech Republic, Estonia, Finland, France, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Poland, Romania, Slovenia, Spain, Sweden, and Article 17(3); Austria, Belgium, Cyprus, Finland, France, Germany, Greece, Hungary, Italy, Lithuania, Netherlands, Portugal, Romania.

Austrian law sets more favourable standards on denial of subsidiary protection status, as exclusion clauses do not apply. Domestic law in a number of Member States grants (forms of) subsidiary protection to broader categories of persons than the Directive requires (cf. par. 4.1.18 and 19). Particular Member States finally maintained more favourable standards than those set out in parts of a wide array of provisions; see for details par. V.4.1.

8.4 Impact on Member States of the rights and benefits included under the Directive

Overall, the transposition of the Directive has been assessed to enhance the rights of beneficiaries of refugee and subsidiary protection status in Austria, Czech Republic, Greece, Lithuania, Luxembourg, Latvia, Poland, Portugal, Slovakia and Sweden, while status quo in this regard has been maintained in Bulgaria, Finland and Germany. No Member States have experienced an overall deterioration in the rights and benefits of beneficiaries of refugee and subsidiary protection status by way of the transposition of the Directive. However, this is the

case with regard to individual rights such as family unity under article 23 (Lithuania), and protection from refoulement under article 21 (Czech Republic, Latvia, and Luxembourg). Concerning the latter this relates to the introduction in national legislation of the possibility of refoulement in line with the Directive. Reference is made to par. V.4 below for detailed information in this regard.

9. RECOMMANDATIONS TO THE EUROPEAN COMMISSION

The recommendations below are limited to what may be deduced from questionnaires and tables of correspondence of the Member States. The drafters of this report may (and do) consider other issues also recommendable, but felt that opinions based on sources outside the present study would fall outside the scope of this study.

9.1 Practice

As to practice (implementation other than transposition), it should be noted that the questionnaire on this Directive addresses, as far as rules on qualification are concerned, only questions on the transposition, not on practice. The few remarks on state practice made by individual rapporteurs, however valuable in themselves, are too isolated to serve as a basis for general conclusions. Nevertheless, one general remark on practice can safely be made. Many Member States transposed many or most of the Directive provisions on qualification literally (cf. par. V.4.2). Some rapporteurs warned that this may give a false impression as those same Member States may be defective in actually applying those transposed rules. Thus, careful and critical monitoring of (further) implementation is most desirable.

9.2 Text of the Directive

As to the text of the Directive, it appears that the meaning of several language versions diverges considerably (due to "translation errors", cf. par. V.4.3 and par. V.3.1ff; it may be noted in this respect that some rapporteurs seems more keen on textual differences than others, so that careful scrutiny may bring to light many more differences in more language versions). Some of these may have quite considerable consequences for the scope of protecttion (e.g. paras. V.3.2.6.2: the requirements for constituting a particular social group apply in some language versions alternatively, and in other ones cumulatively, and cf. par V.3.2.9.3 as regards the Czech language version of Article 15(c)).

9.3 Further approximation

In its Green Paper on the Future of the Common European Asylum System (COM(2007)301def), the Commission mentions further approximation of law as regards qualification (or even establishing uniform statuses), in accordance with relevant international law (par 2.3), as a possibility for the second stage of establishing the Common European Asylum System. In view of this, issues where domestic law appears to diverge are identified below. It concerns, first, terms in the qualification Directive which are so general or vague, that Member States (consider themselves to) comply with them in quite diverse ways (see 3.1). Second, a number of provisions, in particular the optional provisions, have led to quite diverse transposition in Member States (par. 3.2). Third, in some respects the Directive shows an odd asymmetry between rules on qualification for refugee status and for subsidiary

protection status (see par. 3.3). A fourth category consists of miscellaneous issues (see par. 3.4).

It should be noted that for several of the issues where domestic law shows disharmony, national rapporteurs indicated that national provisions are as they are in order to comply with relevant obligations under international law. Amendment of the Directive should take into account those readings of international law, as Directive provisions at odds with them would seem less likely to bring about further harmonisation.

9.3.1 Vague provisions

According to Article 4(1), applicants must submit all elements of their applications as soon as possible. Domestic law as regards the time span varies very considerably (par. V.3.2.1.1). To give the clause substantial meaning, clarification would seem necessary.

According to Article 8(1), states may determine that there is no need for protection in case there is an internal protection alternative "and the applicant can reasonably be expected to stay there". This rule is rather general; Finnish, Romanian and Swedish law contain interesting practice that may flesh out the conditions for application of this rule (cf. par. V.3.2.5.1.c).

Article 10(1)(d) addresses the persecution ground "membership of a particular social group". It mentions two requirements for constituting such a group, which according to some language versions and (hence) domestic law of some states apply alternatively, and according to other ones – cumulatively. Clarification seems desirable. The same applies to the issue whether such a group can be defined on the basis of gender related aspects alone (V.3.2.6.2).

The lack of clarity of Article 15(c) because of the tension between the terms "individual" (which has not been transposed in domestic legislation in: Austria, Belgium, Czech Republic, Greece, Hungary and Lithuania) and "indiscriminate" has led to widely diverging norms of transposition; clarification of its scope is hence desirable (which might be brought, eventually, by the European Court of Justice upon the questions for preliminary ruling submitted by the Dutch Council of State, cf. par. V.4.4). The provision also appears to be open to various readings as regards the question whether "internal armed conflicts" necessarily involve armed forces ordered by state authorities, i.e. the issue of non-state actors (compare Dutch and French case-law, par. V.4.4) – a matter not addressed in the mentioned questions for preliminary ruling. The last clause of Article 15(b) has also led to diverging interpretations. In some Member States the provision (and hence subsidiary protection) applies to medical humanitarian cases such as D v United Kingdom as well; in other ones, it does not (see par V.3.2.9.2).

9.3.2 Disharmony

Domestic law diverges as regards the question whether "parties and organisations, including international organisations" can provide for protection as stated in Article 7(1)(b) (par. V.3.2.4.1); the same holds true for the rule that states that the internal flight alternative can be applied notwithstanding technical obstacles to reach it (Article 8(3), par. V.3.2.5.3). As the reason for this disharmony may be possible tension with international law, amendment of these rules is recommendable.

The optional provision of Article 19(2), allowing Member States to refuse or terminate subsidiary protection status if the persons concerned committed a certain crime, has been implemented by only part of the Member States (par. V.3.2.7.6.2).

A number of Member States did not transpose the grounds for refusal and/or termination of status in mandatory terms in domestic law, although they are worded in mandatory terms in the Directive (cf. par. 8 above). In at least some cases this is inspired by the wish to avoid possible collision with international law obligations (cf. Austria). It may further be observed

that in many Member States, persons excluded from international protection status may qualify for other statuses (which may render obligatory exclusion rather symbolical). If further harmonisation in this particular area is aimed at not running any possible risk of collision with international law, requiring domestic law to state the grounds for denial of status in non-obligatory terms would be a possible solution (cf. par. V.3.2.7).

9.3.3 Asymmetry

There is a remarkable difference as regards the grounds for denial between refugee and subsidiary protection. To subsidiary protection, the grounds meant in Article 1C(a)-(d), 1D and 1E (Articles 11(1) and 12(1)) do not apply. If there is no justification for this asymmetry, it is recommendable to do away with it (cf. par. V.3.2.7.2 and V.3.2.7.4).

Articles 19(4) states that authorities must demonstrate on an individual basis that one of the grounds for exclusion from or cessation of subsidiary protection applies. Article 14(2) states a similar rule for refugee status, but only as regards cessation. This asymmetry leads to disharmony among Member States; extension to exclusion from refugee status is recommended (cf. pars. V.3.2.7.3.2 and V.3.2.7.6.4).

9.3.4 Miscellaneous

It turns out that in some Member States, lapse of time is not relevant for the possibility to terminate statuses; in other states, after a certain period of time the status holder may receive permanent resident status which can be terminated on less grounds (paras. V.3.2.7.3.1, V.3.2.7.3.3, V.3.2.7.6.3).

Domestic law diverges as regards the question whether status can cease because "protection" is offered by the actors meant in Article 7(1)(b) – organisations, including international organisations. Further harmonisation can be achieved by ruling out this possibility.

Article 9(2)(d) lists among other examples of persecution evasion from forced conscription if military service would include committing crimes against humanity. In some states, the danger of committing such crimes in this context is a requirement for recognition of draft evaders as refugees (cf. par. V.3.2.6.1.2). In order to further harmonisation and avoid possible collision with international law, clarification that this danger is not required is recommended.

Article 9(3) addresses the nexus between persecution and persecution grounds. In some Member States, a person can qualify only if such a link is established, in other states also if there is (only) a causal link between persecution grounds and absence of protection. The former reading may be regarded as being at odds with the refugee definition, the latter as at odds with Article 9(3) (cf. V.3.2.6.1.3.c). The tension would be solved by deleting the provision, or by adding a provision that states that a link between lack of protection and persecution grounds would also suffice.

9.3.5 Recommendations specific to rights and benefits for beneficiaries of refugee and subsidiary protection status

Some provisions in the catalogue of rights under Chapter VII of the Directive do not lend themselves to easy transposition due to the use of vague terms such as "necessary social assistance" (article 28) or "adequate health care" (article 29(3)). It would further the approximation of rights within these areas if the more accurate guidance on the actual content of such terms was to be drafted. Alternatively, more precise language could be introduced in the Directive.

It seems some Member States resort to existing legislation in stating transposition where Directive provisions are very detailed, for example as regards article 20(3) on vulnerable persons or article 29(3) on groups of individuals with special needs. This is the case as states

may not see the purpose of such detailed legislative provisions. However, while reference to existing legislation in the context of this study may constitute adequate transposition, it may lead to less, rather than more, approximation concerning the standards of the Member States. Deletion of such detailed lists in Directive provisions etc. may be the solution. Alternatively, Member States could be made explicitly aware of their specific obligation to transpose the full wording of these provisions.

V EUROPEAN SYNTHESIS OF THE NATIONAL REPORTS

1. INTRODUCTION ON THE QUALIFICATION FOR, AND THE CONTENT OF INTERNATIONAL PROTECTION

1.1 Some remarks on the report on provisions on qualification (Articles 2 – 19)

A number of legal issues that concern several or most Member States under several provisions must be addressed here.

1.1.1 More favourable provisions

First, the degree whereto the Directive allows for deviations. According to Article 3 QD, "Member States may introduce or retain more favourable standards for determining who qualifies as a refugee or as a person eligible for subsidiary protection, and for determining the content of international protection, in so far as those standards are compatible with this Directive." Thus, more favourable standards are in principle allowed for, but the last clause ("in so far as those standards are compatible with this Directive") can be read as implying that the freedom for Member States to state more favourable rules is limited. On the other hand, the concept of "minimum standards" (cf. Article 63 TEC and Preamble recital (8): "it is in the very nature of minimum standards that Member States should have the power to introduce or maintain more favourable provisions for third country nationals or stateless persons who request 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") can be read as implying that Member States are *always* free to set more favourable standards, at least if necessary in order to meet their obligations under international law. The view one takes on this matter is decisive for the qualification of certain deviations from the Directive as being in conformity, or rather at variance with the Directive. Thus, a number of Member States did not at all or not fully transpose (parts of) mandatory Directive provisions that serve to interpret the refugee definition and/or the definition of persons eligible for subsidiary protection (and hence the interpretation of a.o. Article 3 ECHR; Articles 4-10 QD) in order to issue more favourable treatment to third country nationals (cf. the Questionnaire on Finland as regards Article 4(3)(d) and (e), Q.10.C, par. 3.2.1.4 below). Furthermore, a number of Member States did not fully transpose all provisions requiring (in mandatory terms) refusal or termination of refugee or subsidiary protection status (Articles 11-12, 14, 16-17 and 19 QD): their domestic legislation allows for issuing of a status to persons who do fall within the scope of those Directive persons. Such more favourable provisions could thus be qualified as in conformity with the Directive or as at variance with it, depending on the view one takes.

In this report, the second reading of the term "minimum standards" is applied; hence, domestic law that deviates from Directive provisions, even if they are stated in mandatory

terms, are qualified as being in accordance with the Directive if it contains rules that are more favourable for the third country national. Apart from the considerations above, we base this approach on case-law of the European Court of justice as regards the term "minimum standards" in other areas.[6] Furthermore, Article 6 TEU and Article 63, point 1 TEC require conformity with relevant rules of international law, such as the Refugee Convention and Article 3 ECHR. This obligation rests not only on Community institutions adopting instruments, but also on Member States when transposing or applying it. In case literal or too strict transposition of the Directive would lead to violation of international law, the Treaty on European Union and on European Community hence require deviating domestic rules. The proposed reading of the term minimum standards hence accommodates primary Community law.

This, however, leads to a problem, in filling out the tables. According to the format which we had to use, ticking the box 'not transposed' implied that the Member State concerned had violated the directive, but in these cases, in our review, non-transposition is not a violation of the Directive. In these cases we have added a sentence to the table flagging the issue. For full information about the state of transposition, the text of the report should be consulted, as the table format does not enable us to convey the relevant information correctly.

1.1.2 Means of transposition

The second issue concerns the technique of transposition. In this report (as well as the other reports in this project), transposition of Directive provisions in circulars is qualified as in conformity with Community law requirements, even though one may argue that ECJ case-law shows otherwise (see par. III above). It further appears that a number of Member States did not transpose all mandatory Directive provisions on interpretation of the refugee definition and/or the definition of persons eligible for subsidiary protection (and hence the interpretation of a.o. Article 3 ECHR; Articles 4-10 QD) into specific and explicit domestic standards, relying instead on i.a. (established) case-law of domestic courts as regards relevant international law.

Here, two approaches are possible. (1) According to case law of the European Court of Justice, the provisions of a directive must be implemented with unquestionable legal certainty and with the requisite specificity, precision and clarity. This applies in particular to rights oriented provisions, which, to be properly implemented, should be contained in some form of national legislation. Article 4-10 of the Qualification Directive may well represent such a category. Absence of specific and explicit domestic norms as regards the rules laid down in Articles 4-10 can therefore be qualified as violation of Community law. (2) It also follows from ECJ case-law that, without prejudice to the above-stated requirements as regards clarity etc. of transposition norms, the situation in every country shall be assessed in the light of specific circumstances with due respect to national legal traditions. It follows from ECJ 13 February 2003, C-75, 01, Commission, Luxembourg that Member States may rely on provisions of international law for transposition of Directives, if those provisions are directly applicable. In some Member States, domestic law does require status recognition of a person who qualifies for refugee or subsidiary protection (i.e. correctly implemented Articles 13 and 18 QD), but some of the rules on the interpretation of (especially) the refugee definition in Articles 4 – 10 have not been transposed in specific and explicit separate domestic norms. Instead, those states rely on standing case-law –based on relevant provisions of international law- which is in conformity with the relevant Directive provisions; in a number of states, this

6 See for an analysis H. Battjes, *European asylum law and international law*, Leiden, Boston: Nijhoff 2006, pp. 160-165.

case-law is furthermore based on and steered by comments in the preparatory works to the relevant domestic legal norm (cf. Sweden). If case-law is sufficiently specific, precise and clear, and does (e.g. because of rules on precedence) sufficiently strictly prescribe application of the norms transposing Articles 13 and 18 in accordance with Articles 4-10, it is arguable that such implementation does meet the requirements on transposition. The least one can say is that case-law may -in some legal systems- provide as much, if not more, legal certainty than circulars, and can therefore be accepted as sufficient means of transposition for the purposes of this study. Legal systems in which absence of transposition was in many cases sufficiently compensated by the status jurisprudence, often in accordance with the travaux préparatoires and/or UNHCR handbook, were Austria, the Czech Republic, Finland, France, and Sweden.

It may be observed that holding otherwise (thus requiring transposition in explicit norms of all rules laid down in Articles 4-10) would inevitably lead to the conclusion that certain Member States violate certain provisions although judging from the national report, the relevant Directive norms are in practice fully complied with and legal certainty is not at stake; whereas for Member States that merely transposed provisions literally into domestic law but do not or not completely comply with it, no legal problem is being reported. This may strike one as odd or even non-sensical.

In order to solve the issue, in case of states that do rely on case-law domestic legislation we report the relevant Directive provisions as "NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY" (as opposed to simply "NO TRANSPOSITION").

Concerning the rights-part of the Directive, an alternative solution has been applied. It seems the overall difference to the qualification part of the Directive is that most States not transposed provisions literally, but, rather, assessed that pre-existing norms would be sufficient to ensure transposition with regard to a large number of the provisions under Chapter VII and Article 14(6) of the Directive. Often such norms would not even be specified further. Instead of presenting two options ("in order" or "problem") as a means of addressing the problem, here it is simply indicated whether pre-existing legislation provides the norm of transposition and whether this provides legal or practical problems from a point of view of meeting transposition requirements under EU law. Hence, here we have simply resorted to reporting the issues once identified and relied on the qualification of the national rapporteur as to whether the means of transposition be adequate unless it is obviously mistaken. This should be clear from the boxes after (almost) each of the provisions. Footnotes have been applied with a view to outline the actual scenario in each situation.

1.1.3 Assessment of importance

Assessment of importance with regard to Chapter II-V of the Directive

In some of the synthesis reports on European migration law directives, a distinction is made between more and less important provisions. As regards qualification, such a distinction is hard to make. All of the provisions in Chapters II – V of the Directive, i.e. Articles 4-19 (with one exception, see below) do directly affect qualification of third country nationals for international protection. Obviously, some provisions may affect a numerical smaller group of persons than other ones, but in absence of data on numerical impact (an issue that falls outside the scope of this study), all provisions are therefore qualified as important.

There is one exception: Article 7(3) QD that states that Member States must, when addressing the question whether or not an international organisation is an actor of protection as meant in Article 7(1) and (2) QD (see par. 3.2.1.4.1 below), take into account any guidance that may be provided in relevant Council acts. As such guidance is thus far absent, non-compliance with this rule has no impact on third country nationals rights, and may therefore be labelled as relatively unimportant.

Assessment of importance with regard to Chapter VII of the Directive

Without prejudice to the considerations put forward with regard to the qualifications part of this report, the following provisions have been identified as particular important among the rights and benefits enumerated under Chapter VII (and including also Article 14(6) under Chapter IV) of the Directive:

- Article 20(5) (Best interest of the child)
- Article 21(1) (Protection from *refoulement*)
- Article 23(1) and 23(2), first sentence (Maintaining family unity)
- Article 26(1) and (3), first, second and third sentence (Access to employment)
- Article 27(1) and (2) (Access to education)
- Article 28(1) (Social welfare)
- Article 29 (1)and (3) (Health care)
- Article 30(1), (2),(3),(4), (5), and (6) (Unaccompanied minors)
- Article 31 (Access to accommodation)
- Article 14(6) (Rights of those considered as "tolerated")

The rationale for this selection is that these provisions are considered particular important based on the criteria that they concern the very core of individual rights and/or affect a large segment of the beneficiaries. Also, only mandatory - and not optional or specific - provisions are generally considered as important ones, although this is not without exceptions; cf. for example conditionally optional Articles 14(6).

1.1.4 Mandatory, optional and conditionally mandatory provisions

In this report (as in the other reports on migration law directives), a distinction is made between mandatory and optional provisions. However, in this study some provisions are treated as "conditionally mandatory" for the following reason.

For example: Article 4(5) and 8(2) are not mandatory. However, they are mandatory for those Member States that have used the options laid down in Articles 4(1) and 8(2). In other words: if Member States use these options, Article 4(5) and 8(2) contain requirements thereto, hence these provisions are mandatory to those Member States. We have labelled such provisions conditionally mandatory, hence, the conditions set about in the optional provisions are in fact mandatory for the states that make use of those option.

1.2 The set-up of this report

The report is based on the data laid down in the questionnaires and in the tables of correspondence, and follows the structure of the questionnaire. Paras. 3.1 – 3.2.5.3 addresses the transposition of Articles 2(c), 2(e) and 4 – 19 QD (Q. 5 – 29). It contains quotes from the answers to the questionnaire questions and tables of correspondence entries on the relevant provisions; without, however, indicating them as quotes. These references are assumed to be self-evident. Furthermore, unless some issue requires otherwise, no explicit reference (in footnotes or otherwise) is made to the answers to the questionnaire (doing otherwise would have at least doubled the size of this report). The same applies to paras. 4.1 – 4.3 (Q. 48, 50 and 52).

Under the heading "Conformity of domestic law with the provision" for each provision under par. V.3 below, states whose domestic law is at variance with the relevant provision are signalled in **bold**.

1.3 Member States covered by this report

This report is based on the filled-in questionnaires and tables of correspondences by the national rapporteurs indicated above and addresses all Member States, except for Malta whereon we were not given access to the project of a national norm of transposition until too late in the process.

All Member States are bound by the Directive except for Denmark. Thus the paragraphs V.2 and V.3 concern all Member States except Denmark; par. V.4 all Member States, except Denmark, whereas paragraph V.5 is dedicated only to the situation in Denmark.

2. NATIONAL LEGAL BASIS AND COMPETENT AUTHORITIES

2.1 Norms of Transposition (Q 1, Q 4)

All Member States employ more than one instrument for transposing the Directive. Domestic rules on qualification for and termination of refugee and subsidiary protection status are to be found in national aliens acts or refugee or asylum acts (which are often accompanied by a regulation and/or circulars); rules on various aspects of the content of the status, such education, social welfare and access to the labour market are transposed in separate instruments. For details the reader is referred to the lists under Q.1 in the respective questionnaires.

The Directive had to be implemented before 10 October 2006. As to the state of transposition, four situations can be distinguished.

(1) A number of Member States adopted all instruments deemed necessary for implementing the Directive (see Table 1 below).

(2) In a number of states, all proposals instruments that serve to transpose the Directive have been published, but not all of them are yet adopted. The questionnaire, report and table of correspondence and hence this report as regards these Member States are based on the proposals (see Table 1 below).

(3) In Slovenia, some of the instruments for transposition were published (but not yet adopted); other instruments have been announced but were not yet published. As a result, part of the Slovenian report is based on previously existing legislation.

(4) No legislation has even been proposed in Spain.[7] The questionnaire, report and table of correspondence and hence this report as regards Spain are based on previously existing legislation.

7 The same holds true for Denmark which however is not bound by the Directive. See further par. 5.

State of transposition	Was (were) the main instrument(s) for transposing this Directive adopted yet?	Was (were) the secondary instrument(s) for transposing the Directive adopted yet?
Austria	Yes	No
Belgium	Yes	Yes
Bulgaria	Yes	Yes
Cyprus	Yes	No
Czech Republic	Yes	Yes
Estonia	Yes	Yes
Finland	No[8]	Not applicable
France	Yes	Yes
Germany	Yes	Yes
Greece	No	Not applicable
Hungary	No	No
Ireland	Yes	No
Italy	No	No
Latvia	No	No
Lithuania	Yes	Yes
Luxembourg	Yes	Not applicable
Malta	Not covered by this report	Not covered by this report
Netherlands	No	No
Poland	No	No
Portugal	No	No
Romania	Yes	Yes
Slovakia	Yes	Yes
Slovenia	No	No[9]
Spain	Not applicable (no new norms of transposition were adopted)	
Sweden	No	No
United Kingdom	Yes	Yes

2.2 Situation in federal or assimilated Members States (Q 2)

All competencies relevant for transposing this Directive belong to the federal level in Italy. In Germany, the competence to issue legislation and regulations on the subject matter concerned here belongs to the federal level. The *Länder* are competent for implementation, and can therefore issue circulars which however can be overruled by circulars issued by federal institutions. No problems are to be expected. In Austria, recognition of refugees and persons eligible for subsidiary protection is a federal competence; the same goes for legislation on the issuing of travel documents and access to employment. Where education, health care, social welfare and accommodation are concerned, there is a splitting of competences between the federal level and the Countries (*Länder*); both levels are hence responsible for implementation of the Directive. No problems however are reported in this context.

8 Finland employs more than one main norm of transposition. The Act amending the Aliens Act has not yet been adopted.

9 According to the International Protection Act (IPA) (the main norm of transposition) the main regulation has to be adopted within a year after enforcement of the IPA.

As to Belgium, immigration law, including asylum, is a federal matter. Aspects of social assistance and access to the labour market for foreign workers also come under federal jurisdiction. The Flemish, French and German Communities have jurisdiction over integration policy and education. The issues dealt with in Articles 20, 23 and 26 to 33 QD often need an implementation at the federal, regional and/or community level. Even within each level, the jurisdiction is often dispersed among different ministries, departments and administrations. Hence, the transposition of the directive cannot be done by one single norm. In particular with regard to the (previously unknown) status of subsidiary protection, particular legislative amendments may prove necessary. Examples of such amendments can already be found in (federal) employment legislation and some (community) education legislation.

2.3 Implementing Authorities (Q 3)

All Member States have at the federal level some sort of specialised aliens or asylum body that in most cases resorts under the ministry of the interior or of justice, responsible for recognition or termination of refugee and subsidiary protection status. In most states, Directive issues such as education, welfare or labour market issues resort under (bodies of) other ministries. In this respect, state practice diverges beyond the possibility of meaningful synthesis; the reader is referred to the answers to Q. 3.

3. ANALISYS OF THE CONTENT OF THE NORMS OF TRANSPOSITION

3.1 Definitions: Article 2 (Q 5-6)

Articles 2(c) and 2(e), the definitions of "refugee" and "person eligible for subsidiary protection", do not themselves set obligations for Member States. However, Articles 13 and 18 impose the obligation to grant status to "refugees" and "persons eligible for subsidiary protection" who qualify in accordance with the Directive. Hence, domestic transposition norms that define "refugee" or "person eligible for subsidiary protection" more narrow than Article 2(c) or (e) would be at variance with the obligation under Article 13 or 18.

3.1.1 Article 2(c) (Q 5)

a) Meaning of the provision

Article 2(c) QD defines the term refugee for the purposes of the QD. It contains all elements of Article 1 (not: 1A(2)) of the Refugee Convention.

b) Conformity of domestic law with the provision

Cyprus, Italy, Latvia, Lithuania, Romania transposed the provision literally (see however also under d as regards the term third country national). In some Member States, "refugee" is defined by reference to Article 1 (the Netherlands, Belgium) or 1A(2) (Austria, Greece, Portugal, United Kingdom) of the Refugee Convention. Domestic law of some Member States repeats the wording of Article 1 (Estonia, Finland, France, Lithuania, Romania, Sweden) or Article 1A(2) RC (Bulgaria, Germany[10], Greece, Hungary, Ireland, Luxembourg, the Netherlands). In some Member States the definition of "refugee" does not contain all

10 By way of indirect reference, see Questionnaire Q.5.

elements of Article 1A(2) (Czech Republic[11], Slovakia[12]). It appears that these deviations do not restrict the scope of the domestic refugee definition as compared to the definition in Article 2(c) (see, however, the remark on current Latvian legislation below).

c) Other issues
It appears that the limitation of the refugee definition in Article 2(c) QD to third country nationals in the Directive (in accordance with its legal basis, Article 63(1)(c) TEC) has invited a number of Member States to restrict the scope of the national refugee definition to third country nationals too (Estonia, Greece, Italy, Latvia[13], Bulgaria[14], Luxembourg, Slovenia); for some Member States, it is reported that the refugee definition in law is not, but its application in practice is restricted to third country nationals (Czech Republic[15], Hungary[16], Ireland[17], Poland[18]).

d) Conclusions
No Member State violates Article 2(c) (read in conjunction with Article 13).

3.1.2 Article 2(e) (Q 6)

a) Meaning
Article 2(e) defines "persons eligible for subsidiary protection" for the purposes of the Directive.

b) Conformity of domestic law with the provision
A number of Member States (Bulgaria, Cyprus, Estonia, Ireland, Italy, Latvia, Luxembourg, Poland, Romania, Slovenia, United Kingdom) transposed the provision literally (apart from the distinction between third country nationals and EU citizens; as to that, see below). For a number of Member States, differences are reported as regards the subject-matter covered by Articles 15 (Austria, Germany, Greece, Hungary, Lithuania, the Netherlands, Sweden) and 17 (Belgium, Czech Republic, Lithuania, the Netherlands), which will be discussed in the context of those provisions. Domestic law in a number of Member States show differences with the definition of Article 2(e) that do not or not necessarily entail violation of the Directive (Finland and Slovakia do not refer to the element "and is unable, or, owing to such

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11 Article 12(b) ASA: "Asylum shall be granted to an alien if it is established in the proceedings for the grant of international protection that a third country national b) has a well-founded fear of being persecuted for reasons of race, *gender*, religion, nationality, membership of a particular social group or political opinion in the country of which he, she is a citizen, or, in case of a stateless person, in the country of his, her last permanent residence."

12 "Article 8 of the Asylum Act: "Unless otherwise stipulated by this Act, the Ministry shall grant asylum to an applicant who a) has well-founded fear of being persecuted in his, her country of origin for reasons of race, nationality or religion, holding of a particular political opinion or membership of a particular social group, and, owing to such fear, is unable or unwilling to return to such country […]."

13 This answer refers to a not yet adopted draft bill. The current law excludes "subjects of the Law On the Status of those Former USSR Citizens who do not have the Citizenship of Latvia or That of Any Other State, or subjects of the Law On the Status of Stateless Persons in the Republic of Latvia" from its refugee definition.

14 There has reportedly been a change in the definition of the term "foreigner" in domestic legislation.

15 The applications of the EU citizens for international protection are inadmissible (Article 10a letter a) ASA).

16 Article 51 (2) of the 2007 AA a declares applications from EU nationals inadmissible.

17 It is reported that in practice E.U. citizens are excluded for applying in light of Asylum and Nationals of Member States of the European Union: Information Note which was published on January 31st 2007.

18 The Act on Protection (and the Draft '07) refers only to the third country nationals.

risk, unwilling to avail himself or herself of the protection of that country"; the – unadapted – Spanish definition is quite open[19]). In accordance with Article 2(e), domestic legislation in most Member States requires that eligibility for subsidiary protection is addressed only after eligibility for refugee protection (Austria, Belgium, Czech Republic, Estonia, Finland, France, Greece, Hungary, Ireland, Italy, Latvia, Luxembourg, the Netherlands, Poland, Slovakia, Slovenia, Poland, Portugal, Sweden, United Kingdom). In a few Member States (Bulgaria, Germany, Romania), this is not required but as no problem has been reported for these Member States it appears that in practice, eligibility for subsidiary protection is addressed only if the alien does not qualify for refugee protection.

As to **France**, it is implied that domestic legislation implies a higher evidentiary standard, which would be at variance with Article 2(e), read in conjunction with Article 18.

Portugal and **Spain** seem to be violating Article 2(e), read in conjunction with Article 18, since their implementation on the concept of subsidiary protection is formulated in a way that is too vague and general.[20]

c) Other issues

It appears that in a number of Member States, due to the wording of the definition or to admissibility requirements only third country nationals, not EU citizens can qualify for subsidiary protection (Bulgaria, Estonia, Ireland[21], Czech Republic[22], Latvia, Luxembourg, Slovenia, Poland, United Kingdom). It appears that the Hungarian definition shows fine differences as regards the threshold for qualification, which however do not warrant the conclusion of non-conformity.[23]

Translation problems have been signalled as regards the Dutch[24] language version. A practical problem has furthermore been reported for Bulgaria, which is further elaborated on in the national report (see Q. 6).

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19 Article 31(3) Asylum Implementation Rules modified by Aliens Implementation Rules 2004 establishes cases of subsidiary protection: "On the proposal of the Inter-Ministerial Commission on Asylum and Refugees, the Ministry of the Interior can authorise their stay in Spain, pursuant to articulate 17(2) of the Law on Asylum on condition that there serious, grounded reasons to determine that the return to the country of origin would involve a real risk to the life or the physical integrity of the person concerned (...)".

20 As to Portugal: there is not a formal definition of person "eligible for subsidiary protection", only the definition of the status in Article 2 number 1 (f) of the Project of Law X, 2007, which states that a person eligible for subsidiary protection is a third country national or a stateless person that is in need of a residence permit for humanitarian grounds. As to Spain: see previous footnote.

21 In practice.

22 The applications of the EU citizens for international protection are inadmissible (Article 10a letter a) ASA).

23 The 2007 AA assumes the existence of the risk, whereas the QD wants serious grounds for believing in that existence – we believe the latter is a lower evidential threshold. It begs the question whether "suffering harm" and "being exposed to harm" are the same - in that respect the Hungarian Act may incorporate a lower threshold for qualifying as beneficiary of subsidiary protection

24 The Dutch language version employs the terms "zwaarwegende gronden" instead of "gegronde redenen", the usual translation for "serious grounds", which could imply a higher burden of proof. However, the Aliens Act will not be adapted to the Directive text in this respect.

d) Conclusion

Article 2(e), Q. 6	
NO TRANSPOSITION AT ALL	
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	**France, Portugal, Spain**
PRACTICAL PROBLEM	**Bulgaria**

3.2 Assessment of applications for international protection: Articles 4-8 (Q 7-16)

3.2.1 Article 4 (Q. 7-10)

Article 4 addresses the "assessment of facts and circumstances". Its subject matter borders at, or partly covers the subject matter addressed by the Asylum Procedures Directive (Dir. 2005, 85).

3.2.1.1 Article 4(1), first clause and 4(5) (Q. 7)

Article 4(1), first clause and 4(5)	
MEMBER STATES IMPLEMENTING THIS PROVISION	**MEMBER STATES NOT IMPLEMENTING THIS PROVISION**
Austria, Bulgaria, Estonia, France, Germany, Greece, Ireland, Italy, Latvia, Luxembourg, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, United Kingdom	Belgium, Czech Republic, Cyprus, Finland, Hungary, Lithuania, Romania

a) Meaning

Article 4(1), first clause offers states the option to regard it as a duty of the applicant to submit as soon as possible all elements needed to substantiate the application. Article 4(5) states that where states apply this option, applicant' s statements that are not supported by documentary or other evidence shall not need confirmation if certain conditions are met.

A number of Member States do not apply the "principle" set out in Article 4(1) (Belgium, Cyprus, Finland, Czech Republic[25], Hungary, Lithuania, Romania). For all other Member States, Article 4(5) is therefore mandatory.

b) Conformity of domestic law

In most Member States, domestic legislation states the principle that aspects of the applicant's statements that are not supported by documentary or other evidence shall not need confirmation if certain conditions are met (cf. Article 4(5) QD) (Bulgaria, France, Germany, Greece, Ireland, Italy, Lithuania, Latvia, Luxembourg, the Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain, United Kingdom). No such rule is stated in Belgium, Cyprus, Czech Republic, Hungary, Poland, but for these states the provision is optional (as they don't apply the rule meant in Article 4(1), first clause). In a number of Member States, legislation

25 In the Czech Republic, formally the applicant may submit any elements needed to substantiate the application until the decision of the DAMP (i.e. the first instance decision) is rendered. Courts apply rules and facts ex tunc, so thereafter no new information can be brought in to the procedure.

states the same conditions as Article 4(5) (Bulgaria, Germany, Greece[26], Ireland, Italy, Luxembourg, the Netherlands, Portugal, Romania, Slovakia, Slovenia), or more lenient conditions (Latvia, Lithuania, Poland,) which is a more favourable provision and hence in accordance with the Directive (cf. par. V.1.1.1).

As to **Estonia, Spain** and **Poland** it is reported that the provision has not been transposed at for which the Directive offers no justification. **Austrian, French** and **Swedish**[27] legislation does not state the rule mentioned in Article 4(5); these Member States seem to rely on general principles, which, apart from Sweden, in this case appear to be too vague and broad, to count as transposition. As regards the 'general credibility' of the applicant, the immigration rules in the United Kingdom on the other hand refer to the detailed provisions of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004, which is inconsistent with the Directive as it appears to state more conditions than Article 4(5) QD and would thus be more restrictive, for which the Directive offers no justification.

c) Other issues

The Directive does not elaborate the term "as soon as possible"; most Member States have no rules on the matter. A few, however, have. A definite period of time is set in Spanish (one month after entry), Portuguese (15 days after entry) and French law (21 days after obtaining "admission au séjour"). The consequence of not meeting the time-limit in Spain is application of a special "inadmission" procedure. In Portugal, the application *can* be refused if no justification is given. Bulgarian law requires submission "immediately" after illegal, and "within a reasonable period of time" after legal entrance; if not complied with, the application can be declared manifestly unfounded. Germany, the Netherlands and Slovakia require submission at the first interview; elements submitted later need not be addressed by the immigration authorities. In Austria, Ireland and Sweden, being too late with the submission of elements may affect the credibility of the applicant. It appears, then, that the obligation to submit elements "as soon as possible" has very divergent meanings in the Member States, and that domestic law attaches quite diverse consequences. Both issues merit further harmonisation.

Translation problems were signalled as regards the Hungarian language version of Article 4(5)(b)[28] and the Greek language version of Article 4(5)(e).[29]

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26 For Greece a minor difference has been reported: Article 23 paragraph 5 (c) of the draft asylum decree, transposing Article 4 paragraph 5 (c) of the Directive, uses the terms 'coherent and detailed' [statements] as opposed to the terms 'coherent and plausible'. All other language remains the same as in Article 4 paragraph 5 of the directive.

27 Application of the principle of benefit of a doubt in the Swedish asylum procedure, based on the interpretation of the Geneva Convention and the UNHCR Handbook para 203-204, is actually more favourable than the Directive. However formal transposition is lacking.

28 Questionnaire Hungary, Q.52: "the applicant has made *everything* to substantiate his application" instead of "the applicant has made a genuine effort to substantiate his application".

29 Questionnaire Greece, Q.52: In article 4 (5)(e) of the Directive the word [general credibility of the applicant has been] 'established' is translated as 'proven' in the Greek text, thereby raising the standard of the required level of credibility.

d) Conclusion

Article 4(1), first clause, Q. 7	
NO TRANSPOSITION AT ALL	
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	
PRACTICAL PROBLEM	

Article 4(5), Q. 7	
NO TRANSPOSITION AT ALL	**Estonia, Poland, Spain**
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	**Sweden**
LEGAL PROBLEM	**Austria, France, United Kingdom**
PRACTICAL PROBLEM	

3.2.1.2 Article 4(1), second clause (Q. 8)

a) Meaning

Article 4(1), second clause is a mandatory provision that imposes on Member States the duty to assess all relevant elements "in cooperation with" the applicant for refugee and/or subsidiary status protection. The content of the duty to assess "in cooperation with the applicant" is not further specified in the Directive. Therefore, any form of communication on relevant elements in the context of the assessment may suffice to fulfil this obligation. Obligations in this respect are also imposed by the Asylum Procedures Directive.

b) Conformity of domestic law with the provision

It appears that Member States understand, or elaborate on this duty in quite diverse ways. The duty to assess in cooperation with the applicant is shaped in some Member States as the duty for authorities to inform the applicant about the assessment, to conduct an interview, to indicate to the applicant on which points clarification is required, to offer the applicant the opportunity to comment on a draft decision, and/or the duty of authorities to assess relevant facts *ex officio* (Austria, Belgium, Estonia, Finland, Germany, Hungary, the Netherlands, Luxembourg, Latvia, Poland, Portugal, Slovakia, Sweden). For some Member States, it is pointed out that the authorities must only assess certain (instead of relevant) elements *ex officio* (Austria, Germany, Slovakia, Slovenia). A few Member States, Greece, Ireland, Italy, Luxembourg and the United Kingdom, transposed the duty to cooperate into domestic legislation.

In some Member States, only duties for the applicant or the division of duties between applicant and authorities have been elaborated (**Cyprus, Czech Republic, France, Spain**), without any indication as regards a form of cooperation. This is not in conformity with Member State obligations under Article 4(1). In **Romania** the duty mentioned above to assess *ex officio* is not mandatory, e.g. the authorities *may* assess certain elements *ex officio*, which is not in conformity with the obligations under Article 4(1). **Bulgaria** and **Lithuania** reportedly have not transposed the provision at all, for which the Directive offers no justification.

c) Other issues

With regard to Luxembourg and Slovakia it is reported that there is a practical problem which is further elaborated on in the national report (see Q. 8.B).

d) Conclusion

Article 4(1), second clause, Q. 8	
NO TRANSPOSITION AT ALL	**Bulgaria, Lithuania**
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	**Cyprus, Czech Republic, France, Romania, Spain**
PRACTICAL PROBLEM	**Luxembourg, Slovakia**

3.2.1.3 Article 4(2) (Q.9)

a) Meaning

Article 4(2) lists the elements "referred to" in Article 4(1). Sweden (and before the issuing of a new regulation, so did Hungary) interpreted the provision as "optional", assuming it is governed by the optional clause of Article 4(1), first clause. Article 4(1), second clause however is a mandatory provision, stating the duty to assess relevant "elements". It follows that assessment of the elements mentioned in Article 4(2) is mandatory. It appears that in fact, Swedish law governing the assessment does not show substantial differences with the requirements of Article 4(2).

b) Conformity of domestic law with the provision

Some Member States transposed all elements of the provision literally (Cyprus, Greece, Italy, Romania, Luxembourg, the Netherlands, United Kingdom[30]). Other states did not, but their domestic law requires taking into account all elements listed (Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Latvia, Lithuania, Poland, Portugal, Slovakia, Slovenia). Domestic legislation in a few Member States list additional elements, such as language skills (Finland), information on family members (Latvia) circumstances of entry and stay (Lithuania), profession, military service performed (Czech Republic, Poland), any other proof elements, i.e. the availability of witnesses (Portugal) or wealth (Czech Republic, Slovakia). Stating additional elements, which need to be assessed by the authorities, may be read as a more liberal standard vis-á-vis the third country national, in line with the minimum standard character of the provision, and therefore in conformity with the Directive. **Spanish** law does not require assessment of all elements listed in the provision, **Bulgarian** legislation addresses the issue in a (too) general and vague way, whereas **Belgium** did not transpose the provision at all.

c) Conclusion

Article 4(2), Q. 9	
NO TRANSPOSITION AT ALL	**Belgium**
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	**Bulgaria, Spain**
PRACTICAL PROBLEM	

30 With only a minor difference in the terminology used.

3.2.1.4 Article 4(3) (Q.10)

a) Meaning

Article 4(3) requires that the assessment of an application is carried out "on an individual basis" and "includes taking into account" the facts, documents and circumstances listed under a – e.

b) Conformity of domestic law with the provision

Member States have adopted two methods for complying with this obligation. First, a number of them rely on relevant general principles of domestic (administrative) law, which oblige authorities to take into account all fact and elements meant (Austria, the Netherlands, Poland, Sweden). It is reported that this method in general (see below) results in compliance with Article 4(3).

Second, a number of Member States use lists of elements to be taken into account. Some of them transposed the list of Article 4(3) (Cyprus, Ireland, Italy, Latvia[31], Luxembourg, the Netherlands, Portugal,[32] Romania, United Kingdom[33]). Other Member States use lists of their own making (Belgium, Finland, Germany, Hungary, Lithuania, Slovenia, Spain). It is not clear which method applies in Slovakia, but it is reported that domestic law in these Member States is in conformity with Article 4(3).

For a number of Member States it is reported that not all elements mentioned in Article 4(3) are taken into account (Estonia, Finland, Slovenia, Spain[34], Lithuania[35]). These indicate that certain elements to be taken into account (such as "whether the applicant's activities since leaving the country of origin were engaged in for the sole or main purpose of creating the necessary conditions for applying for international protection, so as to assess whether these activities will expose the applicant to persecution or serious harm if returned to that country" (Article 4(3)(d) and "whether the applicant could reasonably be expected to avail himself of the protection of another country where he could assert citizenship" (Article 4(3)(e)) are not addressed, which, it appears, also holds true for Germany. As the Finnish government stated, it can be doubted whether assessment of the applicant's "purpose" when engaging in activities is relevant for assessment of eligibility under international law, and whether international law offers a basis for the assessment of the circumstance mentioned in Article 4(3)(e).[36] Therefore, not transposing Article 4(3)(d) and (e) may be seen as more favourable treatment as allowed for by Article 3 QD. Domestic law in **Belgium, Bulgaria, the Czech Republic**[37], **Estonia**, **France, Lithuania** and **Slovenia**[38], **United Kingdom**[39] does not require assessment of all other elements mentioned in Article 4(3), for which the Directive offers no justification.

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31 With the exception of Article 4(3)(c).

32 Although 4(3)(c) was transposed, the elaboration "such as background, gender and age" was not literally transposed, but –according to the national rapporteur- considered included.

33 As an additional rule to article 4(3) of the Directive, which refers to considering the position in the 'country of origin', the immigration rules (rule 339J) also refer to considering the position in the 'country of return' as regards 'all relevant facts' and 'laws and regulations', and also as regards the applicant's activities since leaving the 'country of return'.

34 Spanish legislation does not mention article 4(3)(d) and (e) Qualification Directive.

35 Only as regards Article 4(3)(d).

36 Cf. Finish Questionnaire, Q.10.C.

37 It is reported that the transposition of this provision is so incomplete and ambiguous that it is *de facto* non existent.

38 Incomplete transposition: Article 4(3)(d) and (e) have not been transposed. Article 23 (indent 8 and 9) introduced a notion of specific detailed and in-depth information on the country of origin, which is incorrect transposition of Article 4(3)(c).

c) Other issues

For some Member States it is reported that other issues than those mentioned in Article are assessed as well, such as eventual false statements in Ireland. It appears that in Slovakia the Intelligence Service is requested to comment on each application for asylum.

In a number of Member States, the assessment of the circumstance mentioned in Article 4(3)(e) (the possibility for the applicant to avail himself of the protection of another country where he could assert citizenship) as regards to applicants for *refugee* status is done separately from assessment of applicability of Articles 11 and 12(1)(b) QD, that is, from assessment of applicability of Article 1C and 1E of the 1951 Geneva Convention (Lithuania, Latvia, Luxembourg, the Netherlands, Czech Republic, Greece, Romania, Spain, United Kingdom). This could entail denial of refugee status at variance with the mentioned provisions of the Refugee Convention.

d) Conclusions

Article 4(3), Q. 10	
NO TRANSPOSITION AT ALL	
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	**Belgium, Bulgaria, Czech Republic, Estonia, France, Lithuania, Slovenia, United Kingdom**
PRACTICAL PROBLEM	

NB: non-transposition of article 4(3)(d) and (e) may be seen as more favourable; see above, under b.

3.2.1.5 Article 4(4) (Q.11)

a) Meaning

According to Article 4(4), previous persecution or serious harm is a serious indication of future persecution or serious harm, unless there are good reasons to suspect otherwise.

b) Conformity of national legislation

Some Member States transposed the provision (Estonia, Finland[40], Germany[41], Greece, Ireland, Italy, Latvia[42], Luxembourg, the Netherlands, Portugal, Romania, Slovakia, Slovenia, United Kingdom). A considerable number of Member States did not transpose the provision (**Austria, Belgium, Bulgaria, Hungary, Poland, Spain, Sweden**), or did not transpose the

39 As to the United Kingdom it is reported that an additional rule to 4(3), *viz*. assessing the position in the country of return poses a legal problem. This country of return concept reportedly also causes legal problems as regards other transposed provisions.

40 The provision is correctly transposed, albeit not literally.

41 By means of reference in domestic law to the provision.

42 The relevant Latvian provision speaks of "plausible" instead of "good" reasons required to counter the premise of fear or risk in case of previous persecution or harm.

provision correctly (**Cyprus**[43]**, Czech Republic**[44]**, France**[45]**, Lithuania**[46]); for most of the Member States, national rapporteurs indicate that these states rely on relevant practice.

c) Other issues

For Luxembourg, a practical problem is reported: it appears that the rule is not applied if according to the minister the persecution or harm occurred too long ago.

The Directive offers no guidance for interpretation or application of the term "good reasons". For only Germany, an elaboration of the term was reported.[47]

d) Conclusion

Article 4(4), Q. 11	
NO TRANSPOSITION AT ALL	**Austria, Belgium, Bulgaria, Hungary, Poland, Spain, Sweden**
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	**Cyprus, Czech Republic, France, Lithuania**
PRACTICAL PROBLEM	**Luxembourg**

3.2.2 Article 5 (Q.12)

3.2.2.1 Article 5(1) and (2)

a) Meaning

Article 5(1) is a mandatory provision that stipulates that protection needs may arise sur place, that is, may be based on 'events' that took place since the applicant left his country of origin.

b) Conformity of domestic law with the provision

In a number of states legislation states that protection needs may be based on events or activities by the applicant since he left his country of origin, i.e. implemented Article 5(1) and 5(2), first part (Austria, Bulgaria[48], Cyprus, Finland, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, Latvia, the Netherlands, Poland, Portugal, Romania, Slovenia, United Kingdom). **Estonia** transposed Article 5(1), but not the first part of Article 5(2). Other

43 Cypriot law contains a provision, Section 18 (4) that states that 'reasons of great important which occured due to prior persecution or serious harm can be treated as adequate reasons for granting protection.' This "can-" provision cannot be considered as adequate transposition of the rule of Article 4(4).

44 Transposition reportedly is so incomplete and ambiguous that it is *de facto* non existent.

45 Transposition appears to be too vague and general.

46 Lithuania reportedly transposed the provision only with regard to refugees and not with regard to subsidiary protection status.

47 The element "good reasons" has not been elaborated in German legislation but in German jurisdiction: Pursuant to the decision of the German Constitutional Court (Bundesverfassungsgericht; BVerfGE 54, 341, 360) in 1980, in case of previous persecution a reduced degree of probability is applied. Qualification as a refugee will be denied if the repetition of (identical or similar) persecution can be excluded by a sufficient degree of probability, i.e. it has to be more than a degree of preponderant probability that such persecution will not be repeated. On the other hand, it does not mean that the repetition of persecution has to be excluded with a degree of probability near certainty (see decision of the Federal Administrative Court (Bundesverwaltungsgericht; BVerwG 9 C 237.80). In case there has not been previous persecution, there has to be preponderant probability of the risk of persecution (BVerwGE 91, 150, decision in 1992).

48 Not literally, however, the essence of Article5 (1) and (2) has been transposed in domestic legislation.

Member States did not transpose it; as to them, it is reported that these rules are acknowledged by their courts (**Belgium, Czech Republic, France, Sweden**). In accordance with the approach set out in par. V.1.1.2, relying on jurisprudence in the absence of explicit transposition norms may or may not be regarded as being in conformity with ECJ requirements on transposition. **Slovakian** and **Spanish** legislation lacks a counterpart in domestic legislation for the articles 5(1) and 5(2) and although the wording of Slovakian legislation does not exclude the possibility of *refugié sur place*, it is reported that no administrative practice, jurisprudence or circulars exists which puts Slovakian legislation at odds with the Directive. **Lithuanian** legislation does mention the possibility of *refugié sur place,* but only for refugees and not for beneficiaries of subsidiary protection status. Legislation in the **United Kingdom** also refers to the country of return in addition to the country of origin, which reportedly puts its transposition at odds with the Directive.

c) Other issues

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d) Conclusion

Article 5(1) and 5(2), first part, Q. 12	
NO TRANSPOSITION AT ALL	**Slovakia, Spain**
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	**Belgium, Czech Republic, France, Sweden**
LEGAL PROBLEM	**Estonia, Lithuania, United Kingdom**
PRACTICAL PROBLEM	

3.2.2.2 Article 5(2)

a) Meaning

Article 5(2) is a mandatory provision that states that protection needs may be based on activities by the applicant since he left his country of origin.

b) Conformity of domestic law with the provision

Article 5(2) is a somewhat ambiguous provision, as it states that applicants may rely on their activities after having left the country of origin 'in particular' when those activities are the expression and continuation of convictions or orientations, which the applicant already held in the country of origin. The Directive hence leaves open whether or not protection needs may arise *sur place* if continuation is absent. According to domestic legislation of most Member States, well-founded fear or real risk can also be based upon activities, engaged in by the applicant since he left the country of origin, that do *not* constitute the expression and *continuation* of convictions or orientations held in the country of origin, but constitute the expression of convictions or beliefs adopted by the applicant *after* he left the country of origin (Austria, Belgium, Bulgaria, Cyprus, Finland, France[49], Germany, Greece, Hungary, Ireland, Italy, Latvia, Luxembourg, the Netherlands, Poland, Romania, Slovakia, Slovenia, Sweden[50], United Kingdom); only two Member States do require continuation: Czech Republic and

49 Although this is purely based on existing jurisprudence hence not on norms of transposition or pre-existing norms.

50 Based on the interpretation of the Geneva Convention and the UNHCR Handbook para 94-96. The assessment of protection arising *sur place* in the Swedish asylum procedure, is actually more favourable than the Directive. Even if precedent judgments is not formally binding in Swedish law, decision makers and judges would, as a rule, avoid to deviate from the content of judgments as decided by the Migration Court of Appeal. Please see the Questionnaire for further elaboration.

Portugal. Apart from the Czech Republic and Portugal, domestic law in these Member States accordingly does not contain the elements "where it is established that the activities relied upon constitute the expression and continuation of convictions or orientations held in the country of origin", which may count as a more favourable standard and hence, in accordance with the approach set out in the Introduction (par. V.1.1.1) is qualified as in accordance with the Directive.

Estonia, Lithuania, Slovakia and **Spain** failed to implement Article 5(2), i.e. their domestic legislation does not refer to the possibility of refugee status because of activities employed after leaving the country of origin. **Belgium**, the **Czech Republic**, **France** and **Sweden** did not implement Article 5(2), although their jurisprudence and practice reportedly is in accordance with the Directive. Legislation in the **United Kingdom** also refers to the country of return in addition to the country of origin, which reportedly puts its transposition at odds with the Directive.

c) Conclusion

Article 5(2), Q. 12	
NO TRANSPOSITION AT ALL	**Estonia, Lithuania, Slovakia, Spain**
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	**Belgium, Czech Republic, France, Sweden**
LEGAL PROBLEM	**United Kingdom**
PRACTICAL PROBLEM	

NB: non-transposition of the so called continuity requirement, may be seen as more favourable; see above, under b.

3.2.2.3 Article 5(3) (Q.12)

Article 5(3), Q.12	
MEMBER STATES IMPLEMENTING THIS PROVISION	**MEMBER STATES NOT IMPLEMENTING THIS PROVISION**
Austria, Bulgaria, Cyprus, Germany, Greece, Hungary, Luxembourg, Poland, Portugal, Romania, Slovenia	Belgium, Czech Republic, Estonia, Finland, France, Ireland, Italy, Latvia, Lithuania, the Netherlands, Slovakia, Spain, Sweden, United Kingdom

a) Meaning

Article 5(3) is an optional provision, stating that refugee status (NOT: subsidiary protection status) may (without prejudice tot the 1951 Geneva Convention) "normally" be denied in case of a "*subsequent* application" if the fear of persecution is due to circumstances that the applicant "created by his own decision" since he left his country of origin. This option has been made use of in a number of Member States (Austria, Cyprus, Germany, Greece, Hungary[51], Luxembourg, Poland, Portugal, Romania, Slovenia). The conditions for application are hence mandatory for these states (see introduction, par. V.1.1.4).

b) Conformity of domestic law with the provision

51 According to the commentary to the relevant Act this clause is meant to transpose Article 5(3) of the QD and only refers to bad faith behaviour in cases when refusal does not violate the Geneva Convention (Hungary Questionnaire, Q.12.B).

Bulgaria, Portugal and **Slovenia** apply this rule also to *first* applications. As a consequence, domestic law in both states allow for more deviations from the main rule in the Directive than Article 5(3) allows for. As to Portugal proof is however needed that the risk of persecution was created with the sole objective of obtaining refugee status. Furthermore, in **Greek** and **Slovenian** domestic legislation the term "normally" is omitted, which may render the transposition norm over inclusive.

c) Other issues

In both Germany and Austria, this rule does not apply to applications for subsidiary protection. Further harmonisation in accordance with international law may be indicated in this respect.

d) Conclusion

Article 5(3), Q. 12	
NO TRANSPOSITION AT ALL	
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	**Bulgaria, Greece, Portugal, Slovenia**
PRACTICAL PROBLEM	

3.2.3 Article 6 (Q. 13)

a) Meaning

Article 6 is a mandatory provision that states that actors of persecution or serious harm can include not only states and parties or organisations controlling (a substantial part of the territory of) the state, but non-State actors also, provided that it can be demonstrated that agents of protection meant in Article 7(1) are unable or unwilling to provide for protection.

b) Conformity of domestic law with the provision

The majority of Member States transposed the provision literally (Belgium, Cyprus, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Luxembourg, Poland, Portugal, Romania, Slovakia, Slovenia, United Kingdom). Hungary[52] and the Netherlands[53] adopted an alternative definition that appears to be more favourable and are hence in accordance with the Directive (cf. Article 3 QD; see par. V.1.1.1 above).

The relevant provisions in domestic law in **Bulgaria** and the **Czech Republic** seem to differ from Article 6 of the Directive to the detriment of third country nationals. Bulgarian law only provides that the persecution or the serious harm can be realized by "a state organ or an organization to which the state is unable or unwilling to counteract"[54], which on the one hand, seems to exclude the possibility that non state actors commit persecution acts in case of absence of state authorities, while on the other hand, non-state actors that are not an organization, are excluded from the scope of the actors of persecution. In Czech law the issue of actors is included in the persecution definition which speaks of "committed, condoned or tolerated" acts for Article 6(a) and (b) QD and "unable" instead of "unable or unwilling" for

52 The relevant rules are contained in Article 62 of the 2007 AA with the difference that the reference to international organisations as agents of protection is omitted.

53 Although 'if it can be demonstrated' is translated as 'if a reasonable case can be made' which seems to set the evidentiary standard a little lower.

54 Article 8(3) LAR concerning recognition of refugee status and Article 9 (2) LAR concerning recognition of subsidiary protection.

non-state actors. **Estonian**[55] law seems to mix up the issues of actors of persecution or harm and actors of protection, which is not in conformity with the Directive.

It further appears that the relevant **Czech** provision does not apply to applications for subsidiary protection status, for which the Directive offers no justification (but the national rapporteur suggests that domestic practice is in line with Strasbourg case-law and hence with the Directive).

A few Member States did not transpose it all. As to **Austria** the reason stated was that this requirement was considered to be inherent to the Refugee Convention; as to **Spain** it is reported that, although no formal norm covering the matter exists, recent case law applies the dispositions of article 6.

c) Other issues

A translation error has occurred in the Hungarian language version,[56] and as to Luxembourg it is reported that there is a practical problem which is further elaborated on in the national report (see Q. 13.A).

d) Conclusion

Article 6, Q. 13	
NO TRANSPOSITION AT ALL	
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	**Spain, Austria**
LEGAL PROBLEM	**Bulgaria, Czech Republic, Estonia,**
PRACTICAL PROBLEM	**Luxembourg**

3.2.4 Article 7 (Q. 14 and 15)

3.2.4.1 Article 7(1) and (2)

a) Meaning

According to mandatory provision Article 7(1), not only states, but also parties or (international) organisations that control (a part of the territory of) the state can qualify as providers of protection. Article 7(2) defines circumstances wherein protection is "generally" provided, that is, it gives a definition of protection.

b) Conformity of domestic law with the provision

A number of states transposed Article 7(1) and (2) literally (Belgium, Bulgaria, Cyprus, Germany[57], Greece, Hungary[58], Ireland, Italy, Latvia, Luxembourg, the Netherlands, Poland,

55 Section 19(5) states "authorities that rule the country or a part of it, or other institutions that cannot offer protection from persecution or serious threat, shall be deemed to be sources of persecution and serious threat". This does not mean exactly the same as stipulated in Article 6, but it provides a wider term "authorities", which is not defined and may not end at defining it to mean "parties, organisations, state, international organisations" and therefore, may also include upon free interpretation other bodies or groups in power – meaning that this might be seen as creating additional categories of persecutors.

56 Questionnaire Hungary, Q.52: "actors *independent* from the state" instead of "non-state actors".

57 In Germany by way of explicit reference to the provision in domestic law.

58 Although a reference to international organizations as protectors is not explicit, it can be assumed, according to the national rapporteur.

Portugal[59], Slovakia[60], Slovenia, United Kingdom). Domestic legislation in the **Czech republic** deviates from Article 7(1). According to Czech law, the requirement applies only when a third party commits the act of persecution, and not at all to applications for subsidiary protection. Article 7(2) furthermore has reportedly not been explicitly transposed at all. **Estonian**[61] law seems to mix up the issues of actors of persecution or harm and actors of protection and furthermore did not transpose Article 7(2), which is not in conformity with the Directive. It appears that domestic law diverges as regards the question whether or not "parties and organisations, including international organisations" can offer protection. They can do so according to the law in Austria, Belgium, Bulgaria, Czech Republic, Estonia, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Slovakia, Slovenia, and the United Kingdom, but not according to the law in Cyprus, Finland[62], France[63], Romania, Spain, Sweden. In the latter case, domestic law can be regarded as setting more favourable standards. In accordance with the approach set out in the Introduction (par. V.1.1.1), such deviation is regarded as in conformity with the Directive. It may be observed that in this respect, the Qualification Directive hence offers only very partly harmonisation.

Austria, **Romania** and **Spain** did not transpose Article 7(1) and (2); **France** transposed Article 7(1), but not 7(2). **Lithuania** transposed both article 7(1) and 7(2), only omitting the last phrase of Article 7(2): **"**and the applicant has access to such protection". The rapporteurs for **Austria** and **France**[64] indicate that general principles of international law and/or observance of the requirements of the refugee Convention secure conformity with the provision. In accordance with the approach set out in the introduction (par. V.1.1.2), absence of explicit transposition norms can be qualified either as conformity or as variance with the Directive.

c) Other issues

A translation error has occurred in the Hungarian language version of Article 7(2).[65]

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59 Although 7(1) was not transposed literally, no deviations from the provisions were made and according to the table of correspondence no problem exists.

60 Although Article 7(1) was not transposed literally, no differences as to the standard of the directive were reported and as a whole the transposition of the article reportedly is in order.

61 Section 19(5) states "authorities that rule the country or a part of it, or other institutions that cannot offer protection from persecution or serious threat, shall be deemed to be sources of persecution and serious threat". This does not mean exactly the same as stipulated in Article 6, but it provides a wider term "authorities", which is not defined and may not end at defining it to mean "parties, organisations, state, international organisations" and therefore, may also include upon free interpretation other bodies or groups in power – meaning that this might be seen as creating additional categories of persecutors.

62 The Draft Proposal proposes to the Aliens Act new section 88 d according to which: "Protection can be provided by 1)state; or 2)international organisations controlling the state or a substantial part of the territory of the state." The domestic provision would not recognise national parties or organisations as actors of protection because that is regarded as problematic in light of the Refugee Convention.

63 La définition des agents de protection, selon l'Article L. 713-2 du Ceseda, les autorités de protection sont « les autorités de l'Etat et des organisations internationales et régionales. », mais ni les partis, ni les « organisations » autres qu'internationales ou régionales.

64 As regards Article 7(2).

65 Hungary Questionnaire, Q.52: "the applicant *may have* access to such protection" instead of "has" access.

d) Conclusion

Article 7(1), Q. 14	
NO TRANSPOSITION AT ALL	**Romania, Spain**
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	**Austria**
LEGAL PROBLEM	**Czech Republic, Estonia**
PRACTICAL PROBLEM	

NB: non-transposition of Article 7(1)(b) may be seen as more favourable; see above, under b.

Article 7(2), Q. 15	
NO TRANSPOSITION AT ALL	**Czech Republic, Estonia, Romania, Spain,**
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	**Austria, France**
LEGAL PROBLEM	**Lithuania**
PRACTICAL PROBLEM	

3.2.4.2 Article 7(3) (Q. 15)

a) Meaning

Article 7(3) requires that Member States take into account guidance provided by the Council as regards the assessment whether an international organisation controls (a substantial part of the territory of) a state and provides for protection as meant in Article 7(2).

b) Conformity of domestic law with the provision

Domestic law in Belgium, Cyprus, Czech Republic[66], Germany, Greece, Hungary, Ireland, Italy, Latvia, Luxembourg and Poland requires that Council guidance is taken account of. **Austria, Bulgaria, Estonia, Finland, France, Lithuania, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden,** have not transposed Article 7(3) and as to the **United Kingdom**[67] it is reported that the transposition was problematic; for some of these Member States it is reported that either because of general principles, constitutional law or references in legislative proposals conformity is secured or it is contended that the duty to take guidance already ensues from Council decisions itself. As long as the Council does not issue guidance (which it has not, so far) there is no threat of non-conformity. Nevertheless, in accordance with the general approach set out in the introduction (par. V.1.1.2), absence of explicit transposition norms can be qualified either as conformity or as variance with the Directive.

66 Although Article 7(3) QD has not been explicitly transposed, it seems to be ensured by Article 10a § 1 of Act No. 1/1993 Coll., the Constitution of the Czech Republic that transfers certain powers of the Czech Republic to an international organisation, i.e. in this case to the European Communities. Since this judgment is closely related to the Czech legal system, which is of course best known by the national rapporteur, this evaluation is followed by the drafters of this report.

67 The national rule refers to an assessment by the national administration, not by the Council.

c) Conclusions

Article 7(3), Q. 15	
NO TRANSPOSITION AT ALL	**Austria, Bulgaria, Estonia, France, Lithuania, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden**
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	**Finland**[68]
LEGAL PROBLEM	**United Kingdom**
PRACTICAL PROBLEM	

3.2.5 Article 8 (Q. 16)

3.2.5.1 Article 8(1)

Article 8(1), Q.16	
MEMBER STATES IMPLEMENTING THIS PROVISION	**MEMBER STATES NOT IMPLEMENTING THIS PROVISION**
Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Sweden, United Kingdom	Italy, Spain[69]

a) Meaning

According to Article 8(1), Member States may (NOT: must) apply the internal protection alternative, that is, they may determine that the applicant is not in need of international protection.

b) Conformity of domestic law with the provision

Only Italy and Spain did not make use of the option, all other Member States made use of this option (Austria, Belgium, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Latvia, Luxembourg, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Sweden, United Kingdom). As a consequence, the requirements on application of the internal flight alternative stated in Article 8(1) and (2) are mandatory for all these Member States.

Article 8(1) states the requirement that the applicant can 'reasonably' be expected to stay in the relevant part of the country. In the **Czech Republic, Estonia**, and **Lithuania**, that requirement has not been transposed at all for which the Directive offers no justification. **Sweden** made use of the option without formally transposing the provision, but their

68 The explanatory note to the law reportedly provides that guidance by the Council is taken into account; the binding power of these explanatory notes to domestic legislation are particularly strong and will be taken into account by the judiciary.

69 Although reportedly there is some case law that acknowledges the possibility of an internal flight alternative.

jurisprudence in accordance with the *travaux préparatoire* to relevant domestic legislation reportedly secures conformity with the provision. Furthermore a problem is reported for **Portugal**, because domestic legislation does not state that the applicant must be expected to stay in the part of the country where he or she is safe.

c) Other issues
Law in only few Member States elaborates on the requirement: the Finnish draft proposal mentions a number of circumstances to be taken into account;[70] as does the Hungarian proposal.[71] Romanian law requires that the possibility of internal flight is recognised by UNHCR, Swedish law that the applicant has an actual possibility to live a life without unnecessary suffering or hardship in that part of the country. Consequently, state practice may diverge on the matter.

d) Other issues
A translation error occurs in the Hungarian language version.[72]

e) Conclusion

Article 8(1), Q. 16	
NO TRANSPOSITION AT ALL	
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	**Sweden**
LEGAL PROBLEM	**Czech Republic, Estonia, Lithuania, Portugal**
PRACTICAL PROBLEM	

3.2.5.2 Article 8(2)

a) Meaning
According to Article 8(2), Member States must take into account both the general circumstances in that part of the country, as well as the personal situation of the applicant, at the time of taking the decision.

b) Conformity of domestic law with the provision
These requirements have not been transposed by **Bulgaria**, **Estonia**[73]**, Lithuania, Romania** and **Sweden**[74]. The **Czech Republic** transposed only the "individual circumstances" requirement and not the "general circumstances prevailing in that part of the territory" requirement.

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70 See Finnish Questionnaire Q. 16.G.
71 See Hungarian Questionnaire Q. 16.G.
72 Questionnaire Hungary, Q.52: "can reasonably be expected to *remain* in that part of the country" instead of "stay"; this problem however has reportedly been resolved by a recent Decree by making clear that the applicant does not remain there, but "can access that part of the country".
73 Section 21 (1) point 6 states that "persecution and serious threat … threatening the applicant is limited to a particular geographical area, and sufficient protection can be accorded to the applicant in another area of his or her country of origin". There is no guidance about the assessment of the circumstances – personal or general.
74 Based on the interpretation of the Geneva Convention and the UNHCR Handbook para. 91. Neither jurisprudence nor *travaux préparatoires* are formally binding in Swedish law. Nonetheless, decision makers and judges would, as a rule, avoid to deviate from the content of judgments as decided by the Migration Court of Appeal.

This omission affects the legal position of the applicant for international protection to the detriment for which the Directive offers no justification. Domestic law in **Belgium** deviates from the text of the provision: the general situation in the country, not "that part of" the country must be assessed. Legislation in the **United Kingdom** also refers to the country of return in addition to the country of origin, which reportedly puts its transposition at odds with the Directive.

c) Conclusion

Article 8(2), Q.16	
NO TRANSPOSITION AT ALL	**Bulgaria, Estonia, Lithuania, Romania**
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	**Sweden**
LEGAL PROBLEM	**Belgium, Czech Republic, United Kingdom**
PRACTICAL PROBLEM	

3.2.5.3 Article 8(3)

Article 8(3), Q.16	
MEMBER STATES IMPLEMENTING THIS PROVISION	**MEMBER STATES NOT IMPLEMENTING THIS PROVISION**
Cyprus, Germany, Luxembourg, Netherlands, Portugal, Slovakia, United Kingdom	Austria, Belgium, Bulgaria, Czech Republic, Estonia, Finland, France, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Poland, Romania, Slovenia, Spain, Sweden

a) Meaning
According to Article 8(3), Member States may (NOT : must) apply the internal protection alternative included in Article 8(1), even though there may be technical obstacles to return to the country of origin.

b) Conformity of domestic law with the provision
Only few Member States made use of this option: Cyprus, Germany, Luxembourg, the Netherlands, Portugal, Slovakia, United Kingdom. In Spain there is a practice in accordance with this provision. However, there is no legislation on the subject matter.

c) Conclusion
None of the Member States that made use of the option violate Article 8(3).

3.2.6 Rules that address qualification for refugee status only: Articles 9 – 10 (Q 17-19)

3.2.6.1 Article 9 (Q. 17-18)

3.2.6.1.1 Article 9(1) (Q.17)

a) Meaning

Article 9(1) is a mandatory provision that defines acts of persecution by means of two different definitions (under (a) and (b)).

b) Conformity of domestic law with the provision

A number of Member States transposed the provision literally (Austria, Belgium, Finland, Germany[75], Greece, Hungary, Ireland, Italy, Lithuania, Latvia, Luxembourg, the Netherlands, Poland, Portugal, Romania, Slovenia, United Kingdom). **Bulgaria** transposed article 9(1)(a) QD as defining "persecution instead of "acts of persecution". **Estonia** did not transpose article 9(1)(b), which appears to entail that certain acts covered by the provision do not necessarily qualify as persecution acts under domestic law. It does not include the regulation provided in article 9(1)(b). The **Czech Republic**[76] employs a different definition of acts of persecution. **Spain** did not transpose the provision at all, whereas **France** and **Sweden** did not transpose the provision, yet they rely on application of the refugee definition in accordance with relevant sources of international law. In accordance with the approach set out in the introduction (par. V.1.1.2), relying on application in accordance with the Directive in the absence of explicit transposition norms can be qualified either as conformity or as variance with the Directive.

c) Other issues

A translation error occurs in the Hungarian language version of Article 9(1)(b).[77]

d) Conclusion

Article 9(1), Q. 17	
NO TRANSPOSITION AT ALL	**Spain**
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	**France, Sweden**
LEGAL PROBLEM	**Bulgaria, Czech Republic, Estonia**
PRACTICAL PROBLEM	

75 By means of reference to the provision in domestic law.

76 Part I, Article I s. 7 of the A165 (Article 2 § 8 ASA, first sentence): "For the purposes of this Act, persecution means serious violation of human rights as well as measures which result in psychological pressure or any other similar treatment...".

77 Questionnaire Hungary, Q.52: "be an accumulation of various measures, sufficiently severely violating human rights" ("including" omitted – only human rights violations matter).

3.2.6.1.2 Article 9(2) (Q.17)

Article 9(2), Q.17	
MEMBER STATES IMPLEMENTING THIS PROVISION	**MEMBER STATES NOT IMPLEMENTING THIS PROVISION**
Austria, Belgium, Bulgaria, Cyprus, Estonia, Finland, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Luxembourg, Latvia, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, United Kingdom	Czech Republic, France, Spain, Sweden

a) Meaning
Article 9(2) is an optional provision that offers some guidance for the interpretation of the term "persecution", listing examples of acts of persecution. This list is not exhaustive ("acts of persecution … can *inter alia* take the form of").

b) Conformity of domestic law with the provision
Most states transposed the provision literally (Austria, Belgium, Cyprus, Estonia, Finland, Germany[78], Greece, Hungary, Ireland, Italy, Lithuania, Luxembourg, Latvia, the Netherlands, Poland, Portugal, Romania, Slovakia). Other states did not transpose it all (Bulgaria and the United Kingdom[79]), partly because they rely on references to relevant norms of international law (cf. par. V.1.1.2). Partial transposition however does not affect the legal position of the refugee to the detriment since the list of examples of persecution is not exhaustive. Therefore partial transposition of an optional provision cannot be seen as at variance with the Directive.
In **Slovenia**, the list has been transposed, but as an exhaustive one. This limits the concept of persecution in a way which violates the Directive. **Romanian** law furthermore transposes Article 9(2)(d) QD (denial of judicial redress resulting in a disproportionate or discriminatory punishment) as the "impossibility of a new trial due to a discriminatory or disproportionate punishment". This also appears to limit concept of persecution in a way that appears to be at variance with the Directive.

c) Other issues
Domestic law in only few states elaborates on the acts mentioned in Article 9(2).[80] In only a few Member States domestic legislation *requires* that in order to qualify as an act of persecution, performing military service must include committing acts as mentioned in Article 12(2) (as suggested in Article 9(2)(e)): Bulgaria, Finland, Germany, Hungary, Portugal, Romania.

Translation problems were reported for Article 9(2)(d) in the Romanian language version[81] and as to Luxembourg it is reported that there is a practical problem which is further elaborated on in the national report (see Q. 17.B).

78 By means of reference to the provision in domestic law.
79 Although the United Kingdom rapporteur mentions this article to be transposed literally, article 9(2)(f) appears not to be transposed (see report: Q.17.H).
80 According to an interpretation suggested by the German government, "formal worship in public" applies only if it is prevented completely or prevention interferes with the indispensable fundament of belief.
81 An inappropriate translation of Article 9 par. 2 letter d) of the directive in Article 9 par. 3 letter d) of the Government Decision no. 1251, 2006.

d) Conclusion

Article 9(2), Q. 17	
NO TRANSPOSITION AT ALL	
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	**Bulgaria, Romania, Slovenia, United Kingdom**
PRACTICAL PROBLEM	**Luxembourg**

3.2.6.1.3 Article 9(3) (Q.18)

a) Meaning

Article 9(3) is a mandatory provision requiring a connection ("causal nexus") between the act of persecution and the so-called Convention grounds ("reasons for persecution", i.e. race, religion, and the other grounds listed in Article 10(1)). In some jurisdictions, courts have ruled that in the absence of such a nexus, a person may nevertheless qualify for refugee protection in case of a nexus between absence of protection and a Convention ground.

b) Conformity of domestic law with the provision

Most Member States transposed the provision literally or with minor differences (Austria, Belgium, Cyprus, Estonia, Finland, Hungary, Ireland, Italy, Latvia, Lithuania, Portugal, Romania, Slovenia, Sweden, United Kingdom), whereas German law refers to the requirement. Other Member States did not transpose the provision (Bulgaria, Czech Republic, France, Greece, Luxembourg, the Netherlands, Poland, Slovakia, Spain); some of these states relying on relevant practice. Absence of a transposition norm can be understood as more favourable treatment, which is therefore not at variance with the Directive (cf. Introduction, par. V.1.1.1).

c) Other issues

As to the content of state practice, in some Member States a person would not qualify for refugee status if the act of persecution was not committed for reasons of a Convention ground, even though protection is withheld on such a ground (Italy, Latvia, Luxembourg, Portugal, Romania, Slovakia, United Kingdom). According to other Member States, such a person could qualify for refugee status (Austria, Belgium, Bulgaria, Estonia, Germany, Hungary, Lithuania, the Netherlands, Slovenia, Sweden). The former practice is in line with the text of Article 9(3), but there are grounds to argue that the latter practice, although possibly at odds with the text of Article 9(3), follows from the Refugee Convention and is therefore required by Article 63 of the TEC. Which Member States act in accordance with Community law can therefore be assessed in two ways.

d) Conclusion
No Member State violates the provision.

Article 9(3), Q. 18	
NO TRANSPOSITION AT ALL	
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	
PRACTICAL PROBLEM	

NB: non-transposition of this provision may be seen as more favourable; see above, under b.

3.2.6.2 Article 10 (Q. 19)

a) Meaning
Article 10(1) is a mandatory provision that gives (non-exhaustive, cf. "in particular") interpretations of the Convention grounds ("reasons for persecution"). Most elaborate is article 10(1)(d), on membership of a particular social group; this interpretation addresses specifically particular social groups based on gender or sexuality. Article 10(2) states that a person may qualify for refugee status not only if the characteristics meant in article 10(1) (the Convention grounds) do apply to him, but also, if the actor of persecution attributes them to the applicant.

b) Conformity of domestic law with the provision
A number of Member States transposed both Article 10(1) and 10(2) literally (Austria, Bulgaria, Cyprus, Finland, Germany[82], Greece, Ireland, Italy, Lithuania, Latvia, Luxembourg, the Netherlands, Poland, Portugal, Romania, Slovakia, United Kingdom[83]). Belgium, Hungary and Slovenia did not transpose the last clause of Article 10(1)(d). As the relevant phrase mentions circumstances that "might" be relevant, it is not considered to be mandatory for present purposes. The **Czech Republic**, **Estonia** and **Spain** simply did not transpose Article 10, **Slovenia** did not transpose article 10(2).

Some Member States rely on application of the nexus requirements in conformity with relevant international law (**France** and **Sweden**). In accordance with the approach set out in the introduction (par. V.1.1.2), relying on application in accordance with the Directive and/or international law in the absence of explicit transposition norms can be qualified either as conformity or as variance with the Directive.

c) Other issues
Article 10(1)(d) mentions two requirements for forming a particular social group. According to domestic law in some Member States, these requirements apply cumulatively (Austria, Belgium[84], Bulgaria, Finland, France, Germany, Ireland, Italy, Luxembourg, Poland, Portugal, Slovenia, United Kingdom). In other states they don't (Estonia, Greece, Hungary, Latvia, Slovakia, Romania, Spain, Sweden). It is not self-evident which reading is correct, as the various language versions of the Directive appear to diverge in this respect (the requirements do apply cumulatively according to the language versions operative in Austria,

82 By means of reference in domestic legislation to the provision.
83 Although the last sentence of article 10(1)(d) concerning gender-related aspects is omitted in domestic legislation.
84 Although Belgium has not transposed article 10(1)(d), it still ensues from national legislation.

Belgium, Bulgaria, Cyprus, Czech Republic, Finland, Germany, Greece, Ireland, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Slovakia, United Kingdom, but they do not according to the versions operative in Estonia, France, Hungary, Italy, Romania, Spain, Sweden).

Domestic law also differs as regards the question whether a particular social group could be defined on gender related aspects alone (yes it can: Belgium, Bulgaria, Czech Republic, Finland, France, Germany, Hungary, Ireland, Luxembourg, Spain, Sweden; no it cannot: Austria, Cyprus, Estonia, Greece, Italy, Latvia, Lithuania, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, United Kingdom). Again, the text of the Directive seems to be inconclusive.

Translation problems have further been reported as to the Dutch and French language versions of Article 10(1)(b) and (d) (other than the issue discussed above),[85] the Czech language version of Article 10(1)(d),[86] the Hungarian language version,[87] and the Greek language version of Article 10(1)(a).[88] Luxembourg reported a practical problem which is further elaborated on in the national report, (see Q. 19.H).

d) Conclusion

Article 10, Q. 19	
NO TRANSPOSITION AT ALL	**Czech Republic, Estonia, Spain**
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	**France, Sweden**
LEGAL PROBLEM	**Slovenia**[89]
PRACTICAL PROBLEM	**Luxembourg**

85 See Questionnaire Belgium, Q.52: In the Dutch and French versions of the Aliens Act, the concept of religion comprises "among more" ("onder meer", "entre autres") the holding of theistic, non theistic and atheistic beliefs (Article 48, 3, § 4, b) whereas the directive indicates that the concept shall include "in particular" ("met name") these beliefs (Article 10(1)(b) QD). As for the social group notion, the Dutch version of the text sticks to the Dutch version of the directive, stating that it refers to members sharing "a common background that cannot be changed" ("gemeenschappelijke achtergrond", "histoire commune" in Article 10(1)(d) QD). The French version of the Aliens Act uses the terms "racines communes" which seem to require stronger common roots, rather than a shared background or history (Article 48, 3, § 4, d Aliens Act).

86 Questionnaire Czech Republic, Q.52: Translation of the term "membership of a particular social group" ("určitá společenská vrstva" instead of "určitá sociální skupina") follows the wrong translation of this term in the incorporation act of the 1951 Geneva Convention and differs from the wording in the ASA before the transposition of the QD. In fact, the translation used in the Czech mutation of the QD refers rather to a "particular social class" instead of a "particular social group".

87 Questionnaire Hungary, Q.52: "share a characteristic or belief that is so fundamental to identity or conscience that a person *could* not be forced to renounce it" instead of "should".

88 See Questionnaire Greece, Q.52: In article 10(1) (a) of the Directive the words 'in particular' are missing, giving the impression in the Greek text that the concept of race is defined exclusively by reference to colour, descent or membership in a particular ethnic group.

89 Article 10(2) has not been transposed; the last clause of Article 10(1)(d) has not been transposed either but is not considered mandatory for present purposes.

3.2.7 Grounds of cessation and exclusion from refugee and subsidiary protection status: Articles 11, 12, 16, 17 (Q 20-21)

Introductory remark

The issues of cessation of (Articles 11, 16) and exclusion from (Articles 12, 17) refugee and subsidiary protection status are closely connected to the issue of revocation, ending, refusal to renew those statuses (Articles 14, 19), in which context cessation and exclusion grounds reappear. It appears that often the system of domestic law as regards refusal and termination of status does not well fit in within the Directive's system. As a consequence, answers to certain questions (e.g. 20 or 21, on Articles 11 and 12) may be dealt with under a different heading (e.g. Article 14). For example, some Member States do not distinguish between applicability of a cessation or exclusion ground and denial of status because of that applicability, as the Directive does. As absence of this distinction does not in itself have legal effects, it is not necessarily at variance with the Directive.

This is different where the grounds for denial or termination of refugee status set out in Article 14(4) are concerned. The person to whom this clause applies, may be denied the "status" as meant in Article 13 and 18, and hence the rights set out in Chapter VII. However, he continues to be a "refugee" for the purpose of Article 14(6), and should be able to invoke the rights set out in that provision. Hence, transposition of Article 14(4) as a ground for cessation of or exclusion from refugee status at large would entail infringement on Article 14(6).

3.2.7.1 Article 11 (Q. 20)

a) Meaning

Article 11 addresses cessation of refugee status. Article 11(1) states all six grounds for cessation in article 1C 1951 Geneva Convention. Articles 11(2) offers guidance as regards application of the cessation clause. The subject matter of these provisions is narrowly connected to the rules on termination of status (set in article 14).

b) Conformity of domestic law with the provision

A number of Member States transposed Article 11 literally (Cyprus, Greece, Hungary, Italy, Luxembourg, Latvia, Romania, Slovenia, Sweden). Domestic law in a number of Member States does not contain the text of article 11(1), but instead refers to the very same words by means of reference to article 1 of the Refugee Convention (Austria, Belgium, France, the Netherlands, Poland, United Kingdom) which does not entail non-conformity with the Directive.

In some Member States, the grounds for cessation of refugee status do not have the same wording as article 11(1), which in some Member States does not have non-conformity with the Directive as a consequence (Finland, Germany, Slovakia, Spain). However, in **Bulgaria**[90], **the Czech Republic**[91]**, Estonia**[92] and **Portugal**[93] domestic law contains one or more

90 Draft Article17 LAR, 30 March 2007, but existing also in previous LAR from 31 May 2002: "when the foreigner declares that he does not want to have that status anymore; and when the foreigner is granted asylum by the President of the Republic"

91 Article 17 § 1 ASA: "(1) Asylum granted for a reason under Art 12 [ASA] shall be withdrawn if ... d) the refugee has acquired a new nationality and, therefore, has the option to avail himself or herself of the protection of that country [instead of: enjoys the protection of that country]; e) the refugee voluntarily remains in the country which he or she left for reasons referred to in Article 12 [ASA] ….".

92 Section 48 (1) of the Act provides a list of cessation grounds that differs from the grounds provided in Article 11 as follows: (1) Article 11 section 1(c) applies if the refugee "has acquired" a new nationality and "enjoys" the protection, whereas section 48 (1) point 3 of the Act states that the protections ceases in

cessation grounds that do not correspond to article 11, which affects the legal position of the refugee to the detriment. In **Lithuanian** law, article 14(4) was transposed as a cessation clause. This is not in conformity with the Directive: if a cessation clause applies, the person concerned ceases to be a refugee, whereas in case Article 14(4) applies, merely the "status granted to a refugee" terminates (but the person continues to be a refugee – and is still entitled to protection of the Refugee Convention, and of Article 14(6) QD).[94]

c) Other issues

According to domestic law in most Member States, cessation of refugee status is not possible if protection is offered by an entity as meant in Article 7(1)(b) and/or 8(1) QD (Austria, Belgium, Cyprus, Czech Republic, France, Greece, Ireland, Latvia, the Netherlands, Poland, Romania, Slovakia, Slovenia, Spain); a few however hold the opposite (Estonia, Finland[95], Germany, Hungary, Italy, Lithuania, Luxembourg, Portugal, Sweden, United Kingdom[96]). Consequently, harmonisation as regards cessation has been achieved only partly.

d) Conclusion

Article 11, Q. 20	
NO TRANSPOSITION AT ALL	
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	**Bulgaria, Czech Republic, Estonia, Lithuania, Portugal**
PRACTICAL PROBLEM	

3.2.7.2 Article 12 (Q. 21)

3.2.7.2.1 Article 12(1) (Q.21)

a) Meaning

Article 12(1) and (2) requires exclusion from refugee status. Article 12(1) reproduces the exclusion clauses Articles 1D and 1E of the 1951 Geneva Convention.

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case the alien has "applied for" a new nationality and "shall receive protection". (2) Article 11 section 1 (d) provides for a much wider definition of the country where the refugee re-established. Section 48 (1) point 4 of the Act merely refers to "country of origin", which is defined as "country of nationality or the country of previous residence". (3) Article 11 section 1 (e) and (f) are comparable to section 48 (1) point 6 of the Act "the alien has refused without good reason to return to his, her country of origin where he, she is no longer threatened by persecution". (4) Additionally, there is a general ground represented in section 48 (1) point 5 of the Act as follows: "the circumstances which resulted in the issue of a refugee status have ceased to exist".

93 Article 41 number 1 (a), (i) and (j) of the Project of Law X/2007 states three additional grounds for losing the refugee status: express waiver; expulsion decision by the competent court or abandonment by the refugee of the Portuguese territory, establishing him or herself in another country.

94 Czech legislation also combines cessation grounds and the grounds meant in Article 14(4) QD, but the provision concerns withdrawal of "asylum", i.e. of "refugee status". The same applies to Ireland.

95 However the issue is not addressed in national legislation and there is also no established practice, so it remains to be seen whether cessation in these cases is actually possible.

96 Although the author of the national report argues that the interpretation allowing cessation on these grounds could be debated.

b) Conformity of domestic law with the provision

As to some states, it is reported that domestic law shows no differences with Article 12 (Cyprus, Estonia, France, Greece, Latvia, Sweden). For other Member States, it is reported that domestic law refers to or reproduces the text of the exclusion clauses of the Refugee Convention rather than the deviating wording of the Qualification Directive (Austria, Belgium, Bulgaria, Czech Republic, Hungary, Ireland, the Netherlands, Poland, Spain, United Kingdom).[97] This in itself does not entail non-conformity with the Directive. This may be otherwise where the Directive states additional conditions (e.g. the second and third clause of Article 12(2)(b), which will be discussed in the next paragraph) which may have the effect that persons must be excluded from refugee status, whereas the Refugee Convention (and hence domestic legislation of states that refer to that Convention) does not require so in so many words. Thus, Domestic law in some Member States do not contain grounds similar to Article 12(1), i.e. Article 1D and 1E RC – which seems to run counter to the mandatory wording of the provision even more (Germany,[98] Finland,[99], Italy[100] and Romania.[101]). In accordance with the approach set out in the Introduction (par. V.1.1.1), such rules can be regarded as more favourable treatment of third country nationals and are therefore not considered to be at variance with the Directive.

Slovakian[102] and **Slovenian**[103] domestic law deviates from Article 12 in the opposite respect – domestic law entails stricter standards for applying the exclusion clause of Article 12(1)(a), i.e. Article 1D RC (as it does not refer to the phrase that if assistance from UNWRA or similar agencies ceases, the protected persons ipso facto become refugees in the sense of the Directive). **Portugal** has stretched the grounds for exclusion under 12(1).[104] **Germany** only partly transposed Article 12 (1)(a) QD (1D RC).[105] In accordance with the approach set out in the introduction (par. V.1.1.2), relying on application in accordance with the Directive and/or international law in the absence of explicit transposition norms can be qualified either as conformity or as variance with the Directive.

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97 Other differences concern exclusion because of threats to national security or public order, or fraud, which is addressed in the context of Article 14 below.

98 Article 12 (1)(b) QD is not transposed in domestic law.

99 Domestic law does not contain an equivalent to Article 12(1)(a).

100 The grounds are almost identical except for: Article 12(1)(b) that is not reproduced.

101 Article 12 par. 1 letter b) of the directive is not transposed.

102 Article 12 (1) (a) of the Directive – when transposing this provision, Slovak text in the Asylum Act was modified in a way, which gives room to a different interpretation (or the text itself is an interpretation) than Article 1D of the Geneva Convention. Article 13 (4) (a) of the Asylum Act provides that the Ministry shall deny granting of asylum, when "the applicant can avail himself, herself of protection or assistance from organs or agencies of the United Nations Organisation other than the United Nations High Commissioner for Refugees (hereinafter the "UNHCR") and can return to an area where such protection or assistance is provided."

103 Reference to the Geneva Convention and second sentence of Article 12(1)(a) are in the IPA omitted.

104 Article 9 number 1 (g) is also broader than Article 12 number 1 (b) of the Directive. There is a ground for exclusion not only if the person concerned is recognized in the country where he or she has taken residence as having the rights and obligations which are attached to the possession of the nationality but also if he or she benefits in that country of the refugee or subsidiary protection status.

105 Article 12 (1)(a) QD is transposed by Sec. 3 para. 3 Asylum Procedure Act (draft bill) which does not transpose the wording "shall ipso facto be entitled to the benefits" but declares Sec. 3 para. 1 (referring to Sec. 60 para. 1 Residence Act) and para. 2 (corresponding to Article 12 (2) QD) Asylum Procedure Act (draft bill) applicable. However, this can be considered as in line with the directive if the reference is interpreted as an automatic application of the refugee status. Such an interpretation is probable as the Federal Administrative Court previously ruled in its decision on June 4, 1991 (BVerwGE, 88, 254, 257) that the conditions of the refugee definition in Article 1 A Geneva Convention shall not apply in case of the application of Article 1 D Geneva Convention.

c) Conclusion

Article 12(1), Q. 21	
NO TRANSPOSITION AT ALL	**Spain**
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	**Germany, Slovakia, Slovenia, Portugal**
PRACTICAL PROBLEM	

NB: non-transposition of this provision may be seen as more favourable; see above, under b.

3.2.7.2.2 Article 12(2) (Q.21)

a) Meaning

Article 12(2) requires exclusion on grounds that are similar to (although somewhat broader than) those listed in Article 1F of the 1951 Geneva Convention.

b) Conformity of domestic law with the provision

As regards the conformity of domestic law with article 12(2) some states have –as already mentioned above in par. 3.2.7.2.1- transposed literally (Cyprus, Estonia, France, Greece, Latvia, Sweden) or refer to or reproduce the text of the exclusion clauses of the Refugee Convention rather than the deviating wording of the Qualification Directive (Austria, Belgium, Bulgaria, Czech Republic, Hungary, Ireland, the Netherlands, Poland). In Italy article 12(2) was transposed literally albeit that one extra element was added to assess the gravity of the crime; the minimum and maximum sentence (with a minimum of 4 and a maximum of 10 years) can be taken into account when assessing the gravity of the crime. Since this extra criterion is optional and does not state in mandatory terms (as happens for example in Portugal; see below) that every crime punishable with a sentence of over 4 years is to be considered a serious non-political crime, no violation with the standard of the Directive is reported.

Germany, Finland[106] and the United Kingdom[107] transposed Article 12 (2)(c) QD without the wording "as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations", thus broadening the scope of the exclusion ground. The **Lithuanian** definition of crimes as meant in Article 1F(a), as stated in Article 12(2)(a), includes, next to crimes defined in international law, crimes defined in domestic instruments[108] which broadens the scope of this exclusion ground; it did not transpose Article 12(3); and it transposed Article 14(4) as an exclusion ground (cf. comment on Article 11, par. 3.2.7.1 above). **Portugal** did transpose Article 12 –albeit applying for both refugee status and subsidiary status- but also broadened the scope of the exclusion ground under article 12(2)(b) considerably by leaving the word 'serious' out of the definition and by stating that every crime punishable with a

106 Although it could be argued here that the domestic formulation does correspond with the Directive in substance as was put forward by the Finnish rapporteur.

107 Apart from the additional rules, they have transposed by reference to the RC with the additional rules laid down in domestic legislation.

108 "It should be stressed that Article 99 of the [Lithuanian] Criminal Code defines the crime of genocide broader than international instruments as it also includes social and political groups as possible victims of genocide" (questionnaire Lithuania, Q.21.G).

sentence of over 3 years imprisonment –even though committed with a political objective- can serve as a ground for exclusion.[109]

c) Other issues
Romania and the United Kingdom have explicitly added participation in terrorist acts as an exclusion ground and Romania and Finland furthermore did not transpose article 12(2)(b) *in fine*. As this interpretation is provided for in Preamble recital (28), it is not at variance with the Directive.

d) Conclusions

Article 12(2), Q. 21	
NO TRANSPOSITION AT ALL	
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	**Finland, Germany, Lithuania, Portugal, United Kingdom**
PRACTICAL PROBLEM	

3.2.7.2.3 Article 12(3) (Q.21)

a) Meaning
Articles 12(3) offers a rule of interpretation stating that the exclusion clause of Article 12(2) applies to persons who instigate or participate in the commission of the crimes.

b) Conformity of domestic law with the provision
The rule that if one instigates or otherwise participates in one of the crimes that lead to exclusion as mentioned in Article 12 is widely accepted as following from Article 1F Refugee Convention. Not many Member States reported the adoption of explicit rules. Those that do, usually state that they have transposed the obligation (Cyprus, Greece, France, Italy, Latvia, Luxembourg, the Netherlands, Poland, Romania, Sweden, United Kingdom[110]) or refer to general principles of criminal law (Finland[111], Lithuania). Therefore, reportedly, all Member States secure conformity with the provision.

c) Conclusions
No Member State violates the provision

110 Although it is reported that there is an additional rule, excluding a person who has 'encouraged or induced others' to commit war crimes, etc. in addition to the rule concerning 'instigation' of such acts (rule 339D in the immigration rules).

111 Although in Finnish legislation instigation is equated with the act, which would be sufficient for transposing that part of the provision, the other elements however, would then not be transposed; something which is allowed by article three, hence setting a more favourable standard for the third-country national.

3.2.7.3 Article 14 (Q.23-27)

3.2.7.3.1 Article 14(1) (Q.23)

a) Meaning of the provision

Articles 14(1) requires revocation of, ending of or refusal to renew (in short: terminate) refugee status in case the cessation clauses (Article 11 QD, Article 1C RC) apply.

b) Conformity of domestic law with the provision

In most Member States, termination is mandatory and bears no exceptions (Austria, Bulgaria, Cyprus, Czech Republic, Estonia, Finland, France, Greece, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Romania, Slovenia, Sweden). In a number of Member States however termination does not take place in case the applicant can invoke strong grounds resulting from previous persecution not to return to the country of origin or in case of a stateless person to the country of former habitual residence (Germany, Hungary, Slovakia). Withdrawal is not mandatory at all in Belgium, Spain, Ireland and the United Kingdom. As this legislation allows for more favourable treatment, it cannot be concluded that it is not in conformity with the Directive (cf. Introduction, par. V.1.1.1). Legislation in some Member States does not provide for a separate ground for termination of refugee status, next to a (mandatory) cessation clause (France, Slovenia). As this does not have legal consequences for termination of refugee status, this absence of a transposition norm should not be considered as non conformity with the Directive.

c) Other issues

Lapse of time since the grant of refugee status is not relevant for termination in most Member States (Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, Finland, France, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom). In some of them, it is: after a number of years the alien is entitled to a permanent residence permit which restricts or takes away the possibility to terminate the status because of cessation of refugee status (Austria, Germany, the Netherlands, Poland).

After termination, usually no alternative status is issued in many Member States (Bulgaria, Czech Republic, Estonia, Greece, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Romania). In other Member States, an alternative status such as a sort of (exceptional) leave to remain can be issued, or is usually issued in certain circumstances (e.g. bad health, danger of refoulement and so on; Belgium, Cyprus, Finland, Germany, Hungary, Ireland, Portugal, Slovenia, Spain, Sweden).[112] As regards the United Kingdom, it is reported that this issue is not addressed in national legislation.

Rules for withdrawal of refugee and of subsidiary protection status because of cessation do not differ in most Member States (Belgium, Bulgaria, Czech Republic, Estonia, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Romania, Slovakia, Slovenia). In France, the ex-refugee has a stronger legal position as the residence permit is in principle not revoked when the status ceases. In Austria, the subsidiary protection beneficiary has the stronger position as grounds for withdrawal are stricter, and in the United Kingdom there are two distinctions, but only a) to the extent that the Directive sets out different cessation rules; and b) the mandatory termination due to cessation

112 The situation for Slovakia is unclear; it appears that termination of refugee status never took place in this Member State.

as regards refugees only applies where the application was made after 21 October 2004, but there is no such time limit as regards termination of subsidiary protection status.[113]

d) Conclusion
In no Member State domestic law violates Article 14(1). In some Member States withdrawal is not mandatory, but this may be seen as more favourable; see above, under b.

3.2.7.3.2 Article 14(2) (Q.24)

a) Meaning of the provision
Articles 14(2) states a procedural rule as regards termination of status: states must "demonstrate on an individual basis" that the person has *ceased* to be a refugee. Such a rule as regards exclusion is absent from the Directive. In many Member States, domestic legislation does indeed not require that exclusion is demonstrated on an individual basis (Austria, Belgium, Bulgaria, Czech Republic, France, Latvia, the Netherlands, Portugal, Spain, United Kingdom); many others however do require individual demonstration (Finland, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Luxembourg, Poland, Romania, Slovakia, Slovenia, Sweden).

b) Conformity of domestic law with the provision
A number of Member States did not transpose Article 14(2): **Bulgaria, Cyprus, Estonia, France, Latvia, Portugal, Spain** and the **United Kingdom**. This means that the procedural guarantee that applicability of the cessation ground must be demonstrated individually is not provided for, an omission for which the Directive offers no justification.

Article 14(2) further state that this obligation is "without prejudice to the duty of the status beneficiary in accordance with Article 4(1) to disclose all relevant facts and provide all relevant documentation at his disposal". A few Member States transposed this part of the provision (Germany[114], Italy, Luxembourg, Poland, Romania), most Member States did not (Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Finland, France, Greece, Hungary, Ireland, Latvia, Lithuania, the Netherlands, Portugal, Slovakia, Slovenia, Spain, Sweden, United Kingdom). Absence of this norm could not affect the legal position of the applicant in a negative sense. Therefore, absence of a transposition norm can be labelled as more favourable treatment, in accordance with the Directive.

c) Other issues
Unlike Article 19(4) (as regards subsidiary protection), Article 14(2) does not apply to exclusion as meant in Article 14(3) – (5). In many Member States, domestic legislation does indeed not require that exclusion is demonstrated on an individual basis (Austria, Bulgaria, Cyprus, Czech Republic, France, Latvia, the Netherlands, Portugal, Spain, United Kingdom); many others however do require individual demonstration (Belgium[115], Finland, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Luxembourg, Poland, Romania, Slovakia, Slovenia, Sweden).

113 See report Q.23.H.
114 With reference to transposition of Article 4(1) and the duty of the applicant to submit elements.
115 Although this is not stated in refugee specific legislation, the requirement to individualise ensues from general administrative law.

d) Conclusion

Article 14(2), Q. 24	
NO TRANSPOSITION AT ALL	**Bulgaria, Cyprus, Estonia, France, Latvia, Portugal, Spain, United Kingdom**
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	
PRACTICAL PROBLEM	

NB: non-transposition of the requirement to disclose all relevant facts and provide all relevant documentation may be seen as more favourable; see above, under b.

3.2.7.3.3 Article 14(3) (Q.25)

a) Meaning of the provision

Article 14(3) requires revocation of, ending of, refusal to renew (in short: termination) of status if (Article 14(3)(a)) Article 12 (1) and (2) apply (that is, Article 1F 1951 Geneva Convention and related exclusion grounds) and in case (Article 14(3)(b)) misrepresentation or omission of facts were decisive for granting the status. The latter rule does not appear in the 1951 Geneva Convention.

b) Conformity of domestic law with the provision

In most Member States, domestic legislation states that termination of status is obligatory for all grounds meant in Article 14(3) (Bulgaria, Cyprus, Czech Republic, Estonia, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Portugal, Poland, Romania, Slovakia, Sweden, United Kingdom). In Belgium and Poland, termination is not mandatory but optional, whereas in Slovenia termination is only mandatory if Article 14(3) applies. In Austria, termination on the ground meant in Article 14(3)(b) is not possible at all; the same appears to be the case in France and Spain. These deviations do not affect the legal position to his detriment, and may therefore count as more favourable provisions that are in accordance with the Directive. As to **the Czech Republic** it is reported that domestic law requires termination in case of misrepresentation or omission of facts that were "important" (instead of "decisive") for granting the status, which is at variance with Article 14(3)(b). **Polish** legislation does not state any such standard (so each misrepresentation or omission of facts could provide for grounds to terminate the status).

c) Other issues

Lapse of time since the grant of refugee status is not relevant for termination in most Member States (Austria, Belgium, Bulgaria, Czech Republic, Estonia, Finland, France, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Portugal, Romania, Slovenia, Spain, Sweden, United Kingdom). In some of them, it is: after a number of years the alien is entitled to a permanent residence permit which restricts or takes away the possibility to terminate the status because of cessation of refugee status (Germany, the Netherlands, Poland).

After termination, usually no alternative status is issued in many Member States (Bulgaria, Greece, Latvia, Lithuania, Luxembourg, the Netherlands[116], Poland, Romania). In other Member States, an alternative status such as a sort of (exceptional) leave to remain can be issued, or is usually issued in certain circumstances (e.g. bad health, danger of refoulement and so on (Austria, Belgium, Cyprus, Czech Republic, Finland, Germany[117], Hungary, Ireland, Portugal, Slovakia, Slovenia, Spain, Sweden, United Kingdom[118])).

d) Conclusion

Legislation in the Czech Republic and Poland is not in accordance with Article 14(3), as it allows for termination of status in case of misrepresentation or omission of facts that were not "decisive" for granting the status.

Article 14(3), Q. 25	
NO TRANSPOSITION AT ALL	
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	**Czech Republic, Poland**
PRACTICAL PROBLEM	

NB: less stringent transposition, or non/transposition, of this provision may be seen as more favourable; see above, under b.

3.2.7.3.4 Article 14(4) and (5) (Q.26)

Article 14(4), Q.26	
MEMBER STATES IMPLEMENTING THIS PROVISION	**MEMBER STATES NOT IMPLEMENTING THIS PROVISION**
Austria, Bulgaria, Cyprus, Czech Republic, Estonia, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain, United Kingdom	Belgium, Finland, France, Greece, Poland, Sweden

Article 14(5), Q.26	
MEMBER STATES IMPLEMENTING THIS PROVISION	**MEMBER STATES NOT IMPLEMENTING THIS PROVISION**
Belgium, Bulgaria, Cyprus, Estonia, Germany, Latvia, Lithuania, Luxembourg, the Netherlands, Portugal, Slovakia, Slovenia, Sweden, United Kingdom	Austria, Czech Republic, Finland, France, Greece, Hungary, Ireland, Italy, Poland, Romania, Spain

116 A permanent residence permit (issued after 5 years of legal stay) cannot be revoked on the grounds meant in Article 14(3)(a) or 19(3)(a). But if the alien had withheld information relevant for application of the exclusion clause, the status can be revoked on that ground.

117 I.e. a "Duldung" (toleration permit), not a status *stricto sensu*.

118 In the United Kingdom one could file a so-called human rights claim, which according to national legislation is seen as distinct from the claims to refugee and subsidiary protection status, but furthermore not really elaborated on in domestic law (see national report: Q.25.F).

a) Meaning of the provisions

These optional provisions state that Member States have the option to revoke, end or refuse to renew (in short: to terminate) (Article 14(4)) or not to grant (Article 14(5)) refugee status in case the grounds of Article 33(2) 1951 Geneva Convention apply.

b) Conformity of domestic law with the provisions

As mentioned already under Article 11, in **Lithuanian** law, article 14(4) was transposed as a cessation and exclusion clause. This is not in conformity with the Directive: if a cessation clause applies, the person concerned ceases to be a refugee, whereas in case Article 14(4) applies, merely the "status granted to a refugee" terminates (but the person continues to be a refugee – and is still entitled to protection of the Refugee Convention, and of Article 14(6) QD).[119] As to **Portugal** a problem has been reported, since is not required that the person has been convicted by a final judgement of a particularly serious crime to exclude him or her as a danger to the community.

c) Other issues

The great majority of Member States makes use of the option to terminate refugee status as provided for in Article 14(4) (Austria, Bulgaria, Cyprus, Estonia, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain, United Kingdom), but a small number does not (Belgium, Finland, France, Greece, Poland, Sweden). In most states, the authorities can decide not to grant refugee status as provided for in Article 14(5) (Belgium, Bulgaria, Cyprus, Estonia, Germany, Latvia, Lithuania, Luxembourg, the Netherlands, Portugal, Slovakia, Slovenia, Sweden, United Kingdom), but in other states this is not possible (Austria, Czech Republic, Finland, France, Greece, Hungary, Ireland, Italy, Poland, Romania, Spain).

After termination, usually no alternative status is issued in many Member States (Austria, Bulgaria, Greece, Latvia, Lithuania, Luxembourg, the Netherlands[120], Portugal, Poland, Romania). In other Member States, an alternative status such as a sort of (exceptional) leave to remain can be issued, or is usually issued in certain circumstances (e.g. bad health, danger of refoulement and so on (Belgium, Cyprus, Czech Republic, Estonia, France, Hungary, Ireland, Slovakia, Slovenia, Spain, Sweden, United Kingdom[121])).

Lapse of time since the grant of refugee status is not relevant for termination in most Member States (Austria, Belgium, Bulgaria, Czech Republic, Estonia, France, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Portugal, Romania, Slovenia, Spain, Sweden, United Kingdom). In some of them, it is: after a number of years the alien is entitled to a permanent residence permit which restricts or takes away the possibility to terminate the status on grounds as meant in Article 14(4) (Germany, the Netherlands).

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119 Czech legislation also combines cessation grounds and the grounds meant in Article 14(4) QD, but the provision concerns withdrawal of "asylum", i.e. of "refugee status". The same applies to Ireland.

120 A permanent residence permit (issued after 5 years of legal stay) cannot be revoked on the grounds meant in Article 14(3)(a) or 19(3)(a). But if the alien had withheld information relevant for application of the exclusion clause, the status can be revoked on that ground.

121 See footnote 105.

d) Conclusion

Article 14(4) and (5), Q. 26	
NO TRANSPOSITION AT ALL	
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	**Lithuania, Portugal**
PRACTICAL PROBLEM	

3.2.7.3.5 Rights granted to refugees whose status has been revoked, ended or not renewed for the reasons mentioned in Article 14(4) or (5): Article 14(6) – (Q 27)

See below, section 3.3.17.

3.2.7.4 Article 16 (Q.20)

a) Meaning

Article 16 addresses cessation of subsidiary protection status. Article 16(1) states merely two grounds for cessation (i.e. less than the six grounds for cessation of refugee status, article 11(1)). Article 16(2) offers guidance as regards application of the cessation clause (and is identical to article 11(2)). The subject matter of these provisions is narrowly connected to the rules on termination of status (set in article 19).

b) Conformity of domestic law with the provision

A number of Member States transposed Article 16 literally (Belgium, Estonia, Finland, Greece, Hungary, Latvia, Romania, Slovakia, Sweden). In a number of Member States there are differences, mostly due to combining cessation rules with termination of status as set out in article 19 (Austria, Czech Republic, France, Italy, Luxembourg, the Netherlands, Poland, United Kingdom), which does not affect the legal position of the third country national to the detriment. Problems are reported as regards Member States that did not transpose article 16(2) (**Bulgaria, Germany**), and/or added grounds for cessation (**Bulgaria**[122], **France**[123], **Lithuania**[124], **Portugal**[125], **Slovenia**[126]); **Spain** simply did not transpose the whole provision. As for **Cyprus**, the issue is to be addressed by a regulation that has not yet been issued, even though this is required by the domestic Refugee Act.

c) Other issues

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122 The grounds for cessation of refugee and subsidiary protection status are the same. There are additional cessation grounds to the ones addressed in the QD.

123 La loi française (article L. 712-3 du Ceseda) a adopté une rédaction différente de l'article 16 de la directive et ajoute la cause de cessation suivante : « Il peut être mis fin à tout moment au bénéfice de la protection subsidiaire pour les motifs énumérés aux a, b, c et d de l'article L. 712-2 », c'est-à-dire dans les cas justifiant l'exclusion de la protection subsidiaire.

124 In addition to the grounds for cessation in Article 16 of the QD, Article 90 of the Aliens' Law foresees also a ground of departure for taking up residence abroad.

125 Article 41 number 1 of the Project of Law X/2007 does not distinguish between refugee and subsidiary protection statuses, so it is more restrictive than article 16 of the Directive, as it transposes all grounds for cessation provided by article 11 of the Directive plus 3 additional grounds, which are addressed under Article 11.

126 The subsidiary protection status can cease also for reason of lapse of time for which the status was granted.

Article 16 does not contain the grounds for cessation mentioned in Article 11(1)(a)-(d). A number of states nevertheless require or allow cessation of subsidiary protection status on the last-mentioned grounds (Bulgaria, Finland[127], Germany (allows), Hungary, Ireland, Luxembourg[128], the Netherlands, Portugal, Romania, Spain), whereas other Member States do not (Austria, Belgium, Czech Republic, Estonia, France, Greece, Latvia, the Netherlands, Poland, Slovakia, Slovenia, Sweden, United Kingdom). It could be argued that cessation of subsidiary protection on the grounds meant in Article 11(1)(a)-(d) is at variance with Article 16; however, if national law does not allow for exclusion from subsidiary protection on those grounds, this leads to a situation in which subsidiary protection in this one respect is stronger than refugee status, which would be odd. This therefore provides for insufficient grounds to conclude that those Member States act in breach of the Directive.

d) Conclusion

Article 16, Q. 20	
NO TRANSPOSITION AT ALL	**Spain, Cyprus**
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	**Bulgaria, Germany[129], Lithuania, Portugal, Slovenia**
PRACTICAL PROBLEM	

3.2.7.5 Article 17 (Q.21)

3.2.7.5.1 Article 17(1) and 17(2) (Q.21)

a) Meaning

Article 17(1) requires exclusion from subsidiary protection status on grounds that are similar to (although broader than) those listed in Article 1F of the 1951 Geneva Convention, and in case the grounds mentioned in Article 33(2) Geneva Convention apply (cf. Article 17(1)(d)). Article 17 does not make reference to the categories addressed in Article 1D and 1E 1951 Geneva Convention. Article 17(2) offers a rule of interpretation as regards Article 17(1).

b) Conformity of domestic law with the provision

A number of Member States transposed Articles 17(1) and (2) literally or with irrelevant differences (Belgium, Cyprus, Czech Republic, Estonia, Greece, Ireland, Latvia, Luxembourg, the Netherlands, Poland, Romania, Sweden). Domestic legislation in a number of states differs in the sense that exclusion is not required in all cases covered by Article 17(1). Thus, under Austrian law, also persons who have committed one of the crimes mentioned in article 1 F of the Geneva Convention or another serious crime are not excluded from the granting of subsidiary protection (because the protection offered by Articles 2 and 3 ECHR is absolute). Bulgarian, Finish, Hungarian and Slovenian laws do not have, or have limited the ground for exclusion mentioned in Article 17(1)(d), Spanish law limited its scope.[130] In Hungarian law the "serious crime" of Article 17(1)(b) was substituted by "a

127 Supposedly.
128 As regards Article 11(1)(c).
129 Article 16(2) is not transposed.
130 Spanish Asylum Law does not include the "commission of a serious crime" (Article 17(1)(b) of QD), but the commission of "a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee" (Article 1(F)(b) Geneva Convention of 1951.

crime which is punishable by imprisonment for five years or more under the relevant Hungarian rules of law".[131] These standards seem more favourable for subsidiary protection beneficiaries. Therefore, in accordance with the approach set out in the introduction (par. V.1.1.2), relying on application in accordance with the Directive and/or international law in the absence of explicit transposition norms can be qualified as in conformity with the Directive.

In other Member States, exclusion seems possible on more grounds than those mentioned in the Directive. **French** law lacks the terms "instruments internationaux élaborés pour prévoir des dispositions relatives à ces crimes" in Article 17(1)(a) and "le préambule et [les] Articles 1 et 2 de la charte des Nations unies" in Article 17(1)(c); instead of the exclusion grounds mentioned in Article 17(1)(d) it employs the exclusion ground "que son activité sur le territoire constitue une menace grave pour l'ordre public, la sécurité publique ou la sûreté de l'Etat". Therefore the grounds for exclusion in French law are wider than those in the Directive (although differences in practice may turn out to be minimal). Legislation in the **United Kingdom** also does not contain a reference to the preamble and Articles 1 and 2 of the UN Charter, and there is an additional rule excluding a person who has 'encouraged or induced others' to commit war crimes, etc. *in addition* to the rule concerning 'instigation' of such acts (rule 339D in the immigration rules). **Lithuanian** law contains exclusion clauses similar to Article 12(1) QD (Articles 1D and 1E RC), for which the Directive offers no basis as regards exclusion from subsidiary protection. [132] On the other hand, a conclusion would be at odds with the set-up of the Directive: subsidiary protection would in this one respect be stronger than refugee status. Whether one considers refusal on these grounds as non-conformity with the Directive therefore depends on one's reading of the instrument. The same applies for **Portugal**, although they have seriously broadened the scope of the clauses. Since their transposition of Article 12 already was at variance with the Directive, so is their transposition of Article 17, which is identical.

A number of Member States did not transpose Article 17(2) (Bulgaria, Finland[133], Germany, Hungary, Lithuania, Spain). Absence of the provision may be read as a more liberal standard vis-á-vis the asylum seeker, in line with the minimum standard character of the provision, and therefore in conformity with the Directive (cf. par. V.1.1.1).

c) Other issues

Translation problems have been signalled as to the French language version.[134]

d) Conclusion

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131 Article 15 2007 AA ; Italian law contains a similar clause - the gravity of the crime can be evaluated also taking in account the fine (minimum 4 and maximum years).

132 In addition to the grounds for refusal in Article 19 of the QD, Paragraph 2 of Article 90(2) of the Aliens Law foresees an additional one, i.e. if the foreigner departs from the territory in order to take up residence abroad (as a ground to withdraw subsidiary protection status).

133 What comes to Article17 (2), there is no specific provision on instigation in the Aliens Act and such provision is not proposed to be added to it. Instigation is equated in the Finnish Criminal Code with the actual act, and therefore no specific provision on this in the Aliens Act is regarded as necessary.

134 Questionnaire Belgium, Q.52. A person is excluded where there are serious reasons for considering that he has committed a serious crime (article 17, 1, (c) QD). Unlike the exclusion ground for refugees in article 1, F, b of the Refugee Convention and Article 12, 2, b QD, where explicit reference is made to serious non-political crimes, exclusion of subsidiary protection is also possible in the event of political crimes. This is at least, according to the Dutch and English versions of the directive, where the term "crime" or "misdrijf" is used. The French version of the directive, however, refers to a non-political crime: "un crime grave de droit commun". Nevertheless, the French version of the Belgian Act, like the Dutch version of the act and the QD allows for exclusion for any serious crime ("crime grave").

Article 17(1), Q. 21	
NO TRANSPOSITION AT ALL	
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	France, Lithuania, Portugal, United Kingdom
PRACTICAL PROBLEM	

NB: less stringent transposition of this provision may be seen as more favourable; see above, under b.

Article 17(2), Q. 21	
NO TRANSPOSITION AT ALL	
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	United Kingdom
PRACTICAL PROBLEM	

NB: non-transposition of this provisions may be seen as more favourable; see above, under b.

3.2.7.5.2 Article 17(3) (Q.21)

Article 17(3) , Q.21	
MEMBER STATES IMPLEMENTING THIS PROVISION	**MEMBER STATES NOT IMPLEMENTING THIS PROVISION**
Bulgaria, Czech Republic, Estonia, Ireland, Luxembourg, Latvia, Poland, Slovakia, Slovenia, Spain, Sweden, United Kingdom	Austria, Belgium, Cyprus, Finland, France, Germany, Greece, Hungary, Italy, Lithuania, Netherlands, Portugal, Romania

a) Meaning
Article 17(3) offers Member States the option to exclude from subsidiary protection a person who prior to admission to the Member State committed a crime that is punishable with imprisonment according to domestic legislation and fled in order to avoid sanctions.

b) Conformity of domestic law with the provision
Some Member States did not make use of this option (Austria, Belgium, Finland, France, Germany, Greece, Hungary, Italy, Lithuania, the Netherlands, Portugal, Romania), many other Member States did (Bulgaria, Cyprus, Czech Republic, Estonia, Ireland, Luxembourg, Latvia, Poland, Slovakia, Slovenia, Spain, Sweden, United Kingdom). In **Slovakia**, the scope of the domestic exclusion ground is considerably wider than Article 17(3), which is at variance with the Directive: "a reasonable suspicion" already suffices (whereas "has committed" is demanded by the Directive). In **Estonia**, domestic legislation (section 22(3) point 5) does not state that the act should be punishable under the laws of Estonia, but rather it can be concluded (although not directly said), that under the acts of the respective state where the act was committed which also widens the scope of Article 17(3). In Slovenia the clause "outside the scope of paragraph 1" is omitted, which also appears to widen the scope of Article 17(3).

c) Conclusions

Article 17(3), Q. 21	
NO TRANSPOSITION AT ALL	
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	**Estonia, Slovakia, Slovenia**
PRACTICAL PROBLEM	

3.2.7.6 Article 19 (Q.23-26)

3.2.7.6.1 Article 19(1) (Q.23)

a) Meaning of the provision

Article 19(1) requires revocation of, ending of or refusal to renew (in short: terminate) subsidiary protection status in case the cessation clauses apply. The mandatory nature of the provisions begs questions, as well as the potential relevance of lapse of time since status recognition.

b) Conformity of domestic law with the provision

In most Member States, termination is mandatory and bears no exceptions (Austria, Belgium[135], Bulgaria, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Romania, Slovenia, Slovakia, Sweden, United Kingdom). In Hungary and Spain however, termination does not take place in case the applicant can invoke strong grounds resulting from previous persecution not to return to the country of origin or in case of a stateless person to the country of former habitual residence. This may be qualified as more favourable treatment and is therefore not at variance with the Directive (cf. Introduction, par. V.1.1).

c) Other issues

Lapse of time since the grant of refugee status is not relevant for termination in most Member States (Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom). In some of them, it is: after a number of years the alien is entitled to a permanent residence permit which restricts or takes away the possibility to terminate the status because of cessation of refugee status (the Netherlands, Poland).

After termination, usually no alternative status is issued in many Member States (Bulgaria, Czech Republic, Greece, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Romania). In the United Kingdom this issue is not explicitly addressed in domestic legislation. In other Member States, an alternative status such as a sort of (exceptional) leave to remain can be issued, or is usually issued in certain circumstances (e.g. bad health, danger of refoulement and so on; Belgium, Cyprus, Finland, Germany, Hungary, Ireland, Portugal Slovenia, Spain, Sweden).[136]

135 It appears that Belgian law is somewhat ambivalent on the obligatory nature of withdrawal.

136 The situation for Slovakia is unclear; it appears that termination of refugee status never took place in this Member State.

d) Conclusion
Legislation in no Member State violates Article 19(1). Less stringent transposition of this provision may be seen as more favourable; see above, under b.

3.2.7.6.2 Article 19(2) (Q.26)

ARTICLE 19(2), Q.26	
MEMBER STATES IMPLEMENTING THIS PROVISION	**MEMBER STATES NOT IMPLEMENTING THIS PROVISION**
Bulgaria, Cyprus, Estonia, Ireland, Latvia, Luxembourg, Poland, Romania, Slovakia, Slovenia, United Kingdom	Austria, Belgium, Czech Republic, Finland, France, Germany, Greece, Hungary, Italy, Lithuania, Netherlands, Portugal, Spain, Sweden

a) Meaning of the provision
According to Article 19(2), Member States have the option to terminate subsidiary protection status in case the ground mentioned in Article 17(3) applies (i.e., the person had committed a crime punishable with imprisonment before admission to the Member State).

b) Conformity of domestic law with the provision
All Member States that have implemented the optional provision reportedly transposed the provision correctly.

c) Conclusion
Legislation in no Member State violates Article 19(2)

3.2.7.6.3 Article 19(3) (Q.25)
a) Meaning of the provision
Article 19(3) requires revocation of, ending of, refusal to renew (in short: termination) of subsidiary protection status if (Article 19(3)(a)) the exclusion grounds meant in Article 17(1) and (2) apply and in case (Article 19(3)(b)) misrepresentation or omission of facts were decisive for granting the status. The rule is therefore similar to Article 14(3) as regards refugee status.

b) Conformity of domestic law with the provision
In most Member States, domestic legislation states that termination of status is obligatory for all grounds meant in Article 19(3) (Bulgaria, Cyprus, Czech Republic, Estonia, Finland, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Sweden, United Kingdom). In Belgium, Germany and Poland, termination is not mandatory but optional. In Austria, termination on the grounds meant in Article 19(3) is not possible at all, whereas in Germany, Slovenia and Spain Article 19(3)(b) has not been transposed. These deviations do not affect the legal position to the third country national's detriment, and may therefore count as more favourable provisions that are in accordance with the Directive. **Polish** legislation does not state any such standard (so each misrepresentation or omission of facts could provide for grounds to terminate the status). In **Belgium** the grounds for termination of status are reportedly wider than those mentioned in article 19(3)(b) for which the Directive offers no justification.

c) Other issues
Lapse of time since the grant of refugee status is not relevant for termination in most Member States (Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, Finland, France,

Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Romania, Portugal, Slovenia, Spain, Sweden, United Kingdom). In some of them, it is: after a number of years the alien is entitled to a permanent residence permit which restricts or takes away the possibility to terminate the status because of cessation of refugee status (Germany, the Netherlands, Poland).

After termination, usually no alternative status is issued in many Member States (Bulgaria, Greece, Latvia, Lithuania, Luxembourg, the Netherlands[137], Poland, Romania). In other Member States, an alternative status such as a sort of (exceptional) leave to remain can be issued, or is usually issued in certain circumstances (e.g. bad health, danger of refoulement and so on (Austria, Belgium, Cyprus, Czech Republic, Estonia, Finland, Germany[138], Hungary, Ireland, Portugal, Slovakia, Slovenia, Spain, Sweden, United Kingdom[139]).

d) Conclusion

Article 19(3), Q. 25	
NO TRANSPOSITION AT ALL	
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	**Belgium, Poland**
PRACTICAL PROBLEM	

NB: less stringent transposition of this provisions may be seen as more favourable; see above, under b.

3.2.7.6.4 Article 19(4) (Q.24)

a) Meaning of the provision

Articles 19(4) states a procedural rule as regards termination of status: states must "demonstrate on an individual basis" that the person has ceased to be or is not eligible for subsidiary protection in accordance with Article 19(1)- (3) QD, that is, if cessation or exclusion grounds apply.

b) Conformity of domestic law with the provision

A number of Member States did not transpose Article 19(4). This means that the procedural guarantee that applicability of the cessation ground must be demonstrated individually is not provided for, an omission for which the Directive offers no justification (**Bulgaria, Cyprus, Estonia, Italy, Latvia, Portugal, Spain, United Kingdom)**. **France** did not transpose the provision but relies on relevant unwritten rules that are reported to have the same effect. In accordance with the approach set out in the Introduction (par. V.1.1), this can be qualified as either conformity or as non-conformity with the Directive.

Article 19(4) further state that this obligation is "without prejudice to the duty of the status beneficiary in accordance with Article 4(1) to disclose all relevant facts and provide all relevant documentation at his disposal". A few Member States transposed this part of the provision (Germany[140], Luxembourg, Poland, Romania), most Member States did not

137 A permanent residence permit (issued after 5 years of legal stay) cannot be revoked on the grounds meant in Article 14(3)(a) or 19(3)(a). But if the alien had withheld information relevant for application of the exclusion clause, the status can be revoked on that ground.

138 I.e. a "Duldung" (toleration permit), not a status stricto sensu.

139 See footnote 105 on the possibility of a so-called human rights claim after termination of status.

140 With reference to transposition of Article 4(1) and the duty of the applicant to submit elements.

(Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, Finland, France, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, the Netherlands, Portugal, Slovakia, Slovenia, Spain, Sweden, United Kingdom). Absence of this norm could not affect the legal position of the applicant in a negative sense. Therefore, absence of a transposition norm can be labelled as more favourable treatment, in accordance with the Directive.

c) Conclusions

Article 19(4), Q. 25	
NO TRANSPOSITION AT ALL	**Bulgaria, Cyprus, Estonia, Italy, Latvia, Portugal, Spain, United Kingdom**
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	**France**
PRACTICAL PROBLEM	

NB: non-transposition of the requirement to disclose all relevant facts and provide all relevant documentation may be seen as more favourable; see above, under b.

3.2.8 Article 13 (Q. 22)

Article 13 is a mandatory provision that requires that Member States grant refugee status, in case the applicant qualifies as a refugee in accordance with Chapters II and III. In all Member States the grant of refugee status to a person who qualifies for it is obligatory, except for **Estonia,** where the obligation, according to their aliens act, sees to persons who *are recognised* as refugees, instead of persons that *qualify* as refugees. Once a person is recognised as a refugee, the obligation to give international protection and to issue a residence permit arises. This is problematic, since the act remains silent on how to be recognised as a refugee. The grant of refugee status to a person who qualifies for it is furthermore not obligatory in **Greece** and **Latvia.** In all three countries the provision is therefore reported as not transposed, although one might argue that as to Estonia the situation merely adds up to the existence of a legal problem.

Article 13, Q. 22	
NO TRANSPOSITION AT ALL	**Estonia, Greece, Latvia**
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	
PRACTICAL PROBLEM	

3.2.9 Article 15 (Q. 28)

Article 15 defines the element "serious harm" in the definition of persons eligible for subsidiary protection (cf. Article 2(e)).

3.2.9.1 Article 15(a) (Q. 28)

a) Meaning

Article 15(a) defines serious harm as consisting of: "death penalty or execution".

b) Conformity of domestic law with the provision

The provision has been transposed literally in Belgium, Bulgaria, Cyprus, Estonia, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands[141], Portugal, Poland, Portugal, Romania, Slovakia, Slovenia, United Kingdom[142]. The transposition norm in Finish law merges Article 15(a), (b) and (c), employing all elements of Article 15(a). In five Member States (France, Hungary, Latvia, Sweden), domestic law differs from Article 15(a) in that the term "execution" is left out but this is not considered as reducing the scope of protection. Austrian law refers in this context to Article 2 ECHR and protocols No 6 and 13 ECHR.

Spain[143] employs a (pre-existing) definition which wordings considerably diverge from Article 15(a). So does Lithuania[144], but this reportedly is in line with Article 15, as Lithuanian legislation provides for more favourable standards by covering the human rights violations in broader manner than Article 15(a) does. The domestic norm transposing Article 15(a) from the **Czech Republic** states that serious harm shall mean: "imposition or execution of death penalty", which is at variance with the Directive since it seems to exclude execution conducted by non-state agents. On the other hand, this translation stays close to the German text version of the QD, which speaks of "*die Verhängung oder Vollstreckung der Todesstrafe"*. So even though the Czech translation is classified here as a legal problem, this might very well be caused by differences between the different language versions of the QD, instead of a problematic transposition. As to the **Netherlands**, the Dutch government contends that the grounds mentioned under 15(a) and 15(c), which are laid down in a regulation, are to be included in the ground mentioned in article 15(b), which is laid down in article 29(1)(b) Aliens Act 2000. This appears to violate the standard demanded by the Directive.

c) Conclusions

Article 15(a), Q. 28	
NO TRANSPOSITION AT ALL	
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	**Czech Republic, the Netherlands, Spain**
PRACTICAL PROBLEM	

141 Although the grounds mentioned in Article 15(a) and (c) are to be read in the ground mentioned in Article 15(b) and thus cannot exceed the limits thereof.

142 It is reported that all three elements of article 15 were literally transposed, but apart from those element an additional ground, *viz*. 'unlawful killing' is added.

143 Article 31(3) Asylum Implementation Rules 1995: "On the proposal of the Inter-Ministerial Commission on Asylum and Refugees, the Ministry of the Interior can authorise their stay in Spain, pursuant to articulate 17(2) of the Law on Asylum on condition that there serious, grounded reasons to determine that the return to the country of origin would involve a real risk to the life or the physical integrity of the person concerned (...)"; - Article 2(3)(c) Asylum Implementation Rules 1995; authorisations of stay «(…) which are based on humanitarian reasons which are linked to the application of international instruments which determine non-return return or which do not constitute any of the cases for the application of the 1951 Geneva Convention on the recognition of the status of refugee but have certain links with the reasons listed in the Convention".

144 According to Article 87 of the Aliens Law subsidiary protection may be granted to an asylum applicant who is outside his, her country of origin and is unable to return to it owing to a well-founded fear that: 1) he, she will be tortured, subjected to cruel, inhuman or degrading treatment or punishment; 2) there is a threat that his, her human rights and fundamental freedoms will be violated; 3) his, her life, health, safety or freedom is under threat as a result of endemic violence in an armed conflict or which has placed him, her at serious risk of systematic violation of human rights.

3.2.9.2 Article 15(b) (Q. 28)

a) Meaning

Article 15(b) defines serious harm as consisting of: "torture or inhuman or degrading treatment or punishment of an applicant in the country of origin". Read in conjunction with Article 2(e), the provision would seem to cover all cases covered by Article 3 ECHR (apart from the reference to the exclusion clause in Article 2(e)), but for the final words "in the country of origin" which do not figure in relevant Strasbourg case-law.

b) Conformity of domestic law with the provision

Most Member States transposed the provision literally, or in a way that all elements of Article 15(b) are included (Belgium, Bulgaria, Czech Republic, Estonia, Germany, Greece, Ireland, Italy, Lithuania, Latvia, Luxembourg, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, United Kingdom). Austrian legislation refers in this context to Article 3 ECHR; legislation in Cyprus, Finland, France, Hungary, Sweden does not contain the words "in the country of origin", which does not restrict the protective scope of the provision and therefore, in accordance with the approach set out in the Introduction (par. V.1.1), is not at variance with the Directive.

Spain employs (pre-existing) definitions whose wordings considerably diverge from Article 15(b). They may but do not necessarily cover all cases covered by Article 15(b). In accordance with the approach set out in the introduction (par. V.1.1), relying on application in accordance with the Directive and/or international law in the absence of explicit transposition norms can be qualified either as conformity or as variance with the Directive.

c) Other issues

Due to the terms "in the country of origin" in Article 15(b), it is possible to read the provision as not applying to so-called humanitarian cases (as ECtHR 7 May 1997, D v United Kingdom) from the scope of the provision. It appears however that according to domestic legislation of only six Member States, Article 15(b) does not apply to humanitarian cases within the scope of Article 3 ECHR (Belgium[145], Finland, Greece, Italy, Slovenia, United Kingdom[146]); according to domestic legislation of a vast majority of Member States, the provision can apply to such cases (Austria, Bulgaria, Cyprus, France, Germany, Hungary, Ireland, Lithuania, Luxembourg, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Romania, Slovakia, Spain, Sweden); a few respondents indicated that it is too early or impossible for other reasons to answer the question (Czech Republic, Estonia, Latvia).

d) Conclusions

Article 15(b), Q. 28	
NO TRANSPOSITION AT ALL	
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	**Spain**
PRACTICAL PROBLEM	

145 Although the humanitarian cases are recognised in Belgium law, a different national protection status covers these cases.

146 Albeit that it–according to the national rapporteur- only implicitly follows from domestic legislation that article 15(b) does not apply to humanitarian cases as described in this paragraph.

3.2.9.3 Article 15(c) (Q. 28)

a) Meaning

Article 15(c) defines serious harm as consisting of: "serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict". It begs questions, in particular as regards the meaning of the term "individual", the way "individual" relates to "indiscriminate" (violence) and as regards the meaning of the term "threat to life or person".

b) Conformity of domestic law with the provision

A number of Member States transposed the provision literally (or with irrelevant deviations; Bulgaria, Cyprus, Estonia, Ireland, Italy, Latvia, Luxembourg, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Sweden, United Kingdom). A number of Member States transposed the provision literally, except for the term "individual" (Austria, Belgium, Czech Republic, Greece, Hungary, Lithuania) or for the words "to a civilian's life or person" (Finland). All these deviations do not restrict the scope of the provision; if anything, they seem to broaden it and hence may be regarded as more favourable provisions which, in accordance with the approach set out in the Introduction (par. V.1.1), are therefore in conformity with the Directive. The Czech transposition norm[147] deviates in three more (i.e. next to omission of the term "individual") respects from Article 15(c) in the English language version: it refers to threat to "human dignity" instead of "threat to a person" (i.e. physical integrity); it employs the term "arbitrary" instead of "indiscriminate"; it fails to mention the term "civilian". It is reported that these deviations are (at least partly) due to the Czech translation of the provision.[148] Therefore, and because of the terms used, there is no ground to assume that Czech law restricts the scope of protection as compared to Article 15(c) in the English language version. The **French** transposition norm speaks of "une menace grave, directe et individuelle" ("a serious, direct and individual threat").[149] Hence, the element "direct" has been added, wherefore the Directive offers no justification. The **German** transposition norm leaves out the words "by reason of indiscriminate violence" which also may unduly restrict the personal scope of the provision. As was mentioned under Article 15(a), in the **Netherlands** the Articles 15(a) and (c) are to be read in the ground mentioned in Article 15(b), which appears to be problematic.

Lithuanian and **Spanish** legislation employ definitions that differ very much from Article 15(c) as they, inter alia, do not make reference to the "generalised" character of the violence, nor to "internal war". Therefore, the scope of these provisions may be stricter than Article 15(c). Consequently, legislation in both Member States is not in conformity with the Directive.

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147 Article 14a § 2 ASA: "… c) serious threat to life or human dignity by reason of arbitrary violence in situations of international or internal armed conflict …"

148 Cf. Czech Questionnaire, Q.52: "The translation of Article 15(c) QD is very misleading since it inter alia (1) translates the term "indiscriminate" (nerozlišující) rather as "arbitrary" (svévolné); (2) translates the term "threat to ... a person" as "ohrožení nedotknutelnosti" instead of "ohrožení tělesné integrity"; which not only makes the terminology very ambiguous but also fails to apply the terminology of the Common Article 3 of the 1949 Conventions."

149 Ceseda, Article L. 712-1 : "La protection subsidiaire est accordé à toute personne qui ne remplit pas les conditions pour se voir reconnaître la qualité de réfugié […] et qui établit qu'elle est exposée dans son pays à l'une des menaces graves suivantes : … S'agissant d'un civil, une menace grave, directe et individuelle contre sa vie ou sa personne en raison d'une violence généralisée résultant d'une situation de conflit armé interne ou international". Nor do the other deviations seem to influence the scope of the provision as compared to Article 15(c).

c) Other issues

From the text of the provision it is not self-evident which meaning Article 15(c) could have next to Article 15(b) and (a). Swedish law suggests that "threat to life and person" covers other acts than those meant in Article 15(a) and (b).[150] As to Hungarian and Polish law it is reported that it is held possible that the provision requires a lesser degree of individualisation than Article 15(a) and (b); as to other Member States, this has not been reported.

Legislation in a number of Member States issues subsidiary protection to other – and quite diversely defined - categories of third country nationals than those defined in Article 15 (Cyprus, Czech Republic, Finland[151], France, Lithuania, the Netherlands, Spain, Sweden). Such rules can be regarded as more favourable rules that therefore are not at variance with the Directive (see par. V.1.1).

In some Member States, the element "international or internal armed conflict" has been elaborated. German law applies a rather wide definition;[152] according to the Finish proposal for legislation, the concept is broader than conflicts as defined in the 1949 Geneva Convention.[153] The Dutch Council of State on the other hand has ruled that the provision should be interpreted in accordance with the mentioned Conventions, and that involvement of armed forces of national authorities is required (it would follow from this reading that in the absence of national authorities, Article 15(c) could not apply; see par. 4.4).

d) Conclusions

Article 15(c), Q. 28	
NO TRANSPOSITION AT ALL	
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	**France, Germany, Lithuania, the Netherlands, Spain**
PRACTICAL PROBLEM	

3.2.10 Article 18 (Q. 29)

According to Article 18, Member States must grant subsidiary protection status, in case the applicant qualifies for subsidiary protection in accordance with Chapters II and V. In a number of Member States, the grant of this form of protection however is not obligatory:

150 Cf. the Swedish Questionnaire, Q.28: Article 15(c) covers not only threat of execution, torture etc as covered by 15(a) and (b), but all kinds of serious and individual threats to a person's physical or mental well- being. This comprises psychological problems, diseases, disablement and other personal suffering due to trauma. This can be concluded from the travaux préparatoires to the Aliens Act (Government proposal 1996, 97:25).

151 Although the domestic definition on subsidiary protection is proposed to be amended in this respect to correspond to the definition of the QD. A new national category on humanitarian protection shall be added to cover the cases that will be left outside the narrower subsidiary protection status.

152 The preamble of the draft bill of the Federal Ministry of the Interior (BT-Drs. 16, 5065, p. 345) defines a situation of international armed conflict as an armed conflict between two or more states, and an internal armed conflict as an armed conflict within one state. The conflict has to exceed a certain dimension. Regarding internal armed conflicts, a certain degree of intensity and persistence is required. As typical examples the preamble mentions civil war situations or situations of guerrilla war. The preamble, however is only one means of interpretation of the law and is not law itself.

153 The Draft Proposal, however, states that the expression 'international or internal armed conflict' is wider and covers also other armed conflicts and situations of generalised violence than those referred to in the Geneva Conventions on international humanitarian law.

Estonia, **Greece**, **Lithuania**[154], **Latvia**, **Romania**, **Spain**. For all but Romania it is reported that this provision has not been transposed at all. Romania did transpose the provision, but according to their norm of transposition, granting subsidiary protection to applicants who qualify for it, is not obligatory either.

Article 18, Q. 23	
NO TRANSPOSITION AT ALL	**Estonia, Greece, Latvia, Lithuania, Spain**
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	**Romania**
PRACTICAL PROBLEM	

3.3 Content of the Status

3.3.1 Introduction concerning the content of international protection

Chapter VII of the Qualification Directive sets out a catalogue of fifteen provisions (articles 20-34) concerning rights and benefits of beneficiaries of refugee and subsidiary protection status. When determining the level of transposition of these provisions in different Member States, one overarching problem seems to be related to the use of general legislation, as this does not necessarily provide for the requisite legal certainty in transposing the Directive. Such situations have been ascertained below on a case-by-case basis in order to determine whether proper transposition has taken place. On a similar note, references in national legislation to international instruments ratified by the Member State in question have proven problematic in determining whether transposition has been carried out. This relates, for example, to article 20(5) on the best interest of the child, and article 21(1) on protection from *refoulement*. Again, the question is one of legal certainty of the transposition.

A number of QD provisions seem to have constituted conceptual challenges for Member States in their efforts to transpose such provisions into national legislation, in particular when reference has been made to existing general legislation. Detailed information on these matters is included below under each of the provisions. Suffice it here to mention a few examples:

- As regards article 23 on maintaining family unity, reference has often mistakenly been made by national rapporteurs to the national system for family reunification. The approach of the authors of this report has, conversely, been to include reference to family reunification regimes, only to the degree that such legal regimes would provide for the maintaining of unity for family members already present on the territory of the Member State concerned. Without this approach, there would be no or little independent meaning to the transposition of the QD provision.
- Concerning article 28 on social welfare it has proven quite challenging to define the meaning of "necessary social assistance" and of "core benefits" as regards the Member State in question.
- Similarly, with regard to article 29(3) and the issue of the precise meaning of "adequate health care", a multitude of interpretations have come up in approximating what exactly needs to be in place to ensure adequate transposition.

154 The wording in the legislation is "may be granted", while there are no other reasons to refuse except exclusion clauses.

Based on these examples, it may be said that a need for further approximation within the rights field of the QD is called for in order to clarify the parameters of proper transposition.

Another problem to be flagged in this introduction is the issue of the residence permits provided to refugees and beneficiaries of subsidiary protection status respectively. Here the problem seems to be that some Member States provide beneficiaries of subsidiary protection status with temporary residence permits only, which may not always be enough to fully access important segments of QD rights, e.g. the social welfare system.

Finally, is should be mentioned, that article 14(6) is included under the analysis relating to rights and benefits under QD chapter VII, although this provisions is located in chapter IV on revocation etc. Article 14(6) obliges Member States having opted for transposition of Article 14(4) and (5) to provide refugees whose status has been terminated or not granted for the reasons mentioned in the provisions themselves with certain basic rights as included under the Geneva Convention. This group of persons includes refugees who for one or the other reason cannot be returned to their country of origin or former habitual residence. Article 14(6) can be said, therefore, to establish a regime of so-called "tolerated status". While persons belonging to this group logically do not have access to the rights included under the QD Chapter VII (as they no longer hold a legal status as a refugee under the Directive), the above considerations provide, nonetheless, a rationale for reviewing the transposition of this provisions in relation to provisions of QD chapter VII.

3.3.2 General Rules: Article 20 (Q. 30)

3.3.2.1 Article 20(1). Mandatory. Q. 30.A

a) Meaning

The provision stipulates that Chapter VII of the Directive "shall be without prejudice to the rights laid down in the Geneva Convention". It lies beyond the scope of this report to fully map out the content of each Member States' (previous) legislation in this regard. It has, however, been surveyed whether the Geneva Convention rights were incorporated into the national legislation of Member States prior to the adoption of the Qualification Directive.

b) Conformity of domestic legislation with the provision

Cyprus, Greece, Italy, Latvia and Poland have transposed the provision formally, i.e. trough legislation (including draft legislation) or other norms adopted subsequent to the date of the adoption of the QD. It seems that most States (Belgium, Bulgaria, Czech Republic[155], Estonia, France, Germany, Hungary, Lithuania, Netherlands, Poland, Slovakia, Spain, Sweden) have relied on pre-existing norms codifying the refugee rights enumerated in the Geneva Convention for the purpose of transposing Article 20(1) of the Directive. Ireland and the United Kingdom apply both formal norms of transposition and pre-existing norms. Finland has used both means of transposition, but notes that the existing draft law, does not include a proposal to transpose Article 20(1) of the Directive literally as it is considered sufficiently codified as the legislation stands. In stating that transposition is met, it is reported that France, Netherlands, Romania refer to a general principle of internal law as included in the Constitution, according to which international treaties are given superiority over national legislation.[156] On a similar note, Germany reports that the Geneva Convention rights are

155 While the national report refers to both formal transposition and pre-existing norms, the vast majority of the transposing norms are pre-existing.

156 In the Netherlands, reference is also made to the pre-existing Aliens Law. In Romania, the existence of a constitutional provision to this end is described as existence of pre-existing law, rather than a general principle of internal law.

considered self-executing to the degree that their wording, content and purpose are finite. Hence, the rights of the Geneva Convention apply regardless of whether they have been specifically incporporated into national legislation or not.

From the national report on Italy, it is clear that refugee rights enumerated in the Geneva Convention were not implemented into the domestic legal framework prior to the transposition of the Directive. The transposition of Article 20(1), however, is stated to be in order.

A number of States are reported to have implemented the Geneva Convention rights in full (Austria, Bulgaria, Czech Republic[157], Estonia, Finland, France, Germany, Hungary, Ireland, Latvia, Netherlands, Poland, Portugal, Romania, Slovakia[158], Slovenia, Spain, Sweden) or partly (Belgium, Greece[159], Lithuania, Luxembourg) into their national legislation prior to the transposition of the QD. The rights of the Geneva Convention previously laid down in domestic legislation can be found in general social legislation (Austria, Belgium, Bulgaria, Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Latvia, Luxembourg, Netherlands, Poland, Romania, Slovakia, Slovenia, Spain, Sweden), specific refugee/ aliens/immigration law (Austria, Bulgaria, Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Greece, Latvia, Luxembourg Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain), regulations (Bulgaria, Estonia, France, Greece, Hungary, Latvia, Lithuania, Netherlands, Poland, Romania, Slovenia), publicised circular or instruction (Latvia, Romania, Spain), and practice (Estonia, France, Greece, Hungary, Latvia, Netherlands, Poland, Romania). No Member States have implemented the Geneva Convention-rights by way of internal administrative rules alone, nor in conjunction with other norms.

Concerning France, it is generally noted, that French legislation provides the same rights to refugees as to nationals with the exception of the right to stand for election and be elected (this concerns all types of elections), and the right of residence.

In the national report of Slovenia, non-transpositionis reported while mentioning at the same time that refugee rights enumerated in the Geneva Convention were incorporated into national legislation prior to the transposition of the Qualifications Directive. It seems, therefore, that transposition can be said to be adequate

c) Conclusion on Article 20(1), Relation to Geneva Convention

Only few States have formally transposed this provision (and then not literally). In order to assess whether the application of Chapter VII of the Directive would be "without prejudice" to the Geneva Convention, it has been ascertained whether Geneva Convention rights formed part and parcel of domestic legislation in Member States prior to the adoption of the Directive. If this has found to be the case, the transposition requirement has been seen to have been met with regard to this provision of the Directive. No cases have been identified of non-transposition as such, nor of legal (or practical) problems with regard to the transposition.

Article 20(1): Relation to Geneva Convention	
NO TRANSPOSITION AT ALL	

157 It is indicated in the national report, however, that implementation of several refugee rights of the Geneva Convention was incomplete or imprecise before the adoption of the Directive, and were only rectified through the law transposing the Directive.

158 With the exception of Article 31 of the Geneva Convention.

159 Greece has retained a reservation to the Geneva Convention on the freedom of movement for refugees throughout its territory, although this reservation is rarely invoked. Also, certain rights as to social assistance have not been adequately implemented into national legislation.

NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	**United Kingdom[160]**
PRACTICAL PROBLEM	

3.3.2.2 Article 20(2). Mandatory. Q. 30.B

a) Meaning

This provision sets out the important principle of equality between the beneficiaries of refugee and subsidiary protection status. Unless deviation form this principle is specifically indicated, it is applicable throughout Chapter VII.

b) Conformity of domestic legislation with the provision

Cyprus, Estonia, Greece[161], Hungary, Italy, Luxembourg, Latvia, Poland, Poland, Romania[162], Slovenia have according to the national reports transposed this provision formally. Pre-existing norms have been applied in Bulgaria, Germany, Netherlands and Lithuania, and both means of transposition have been adopted in Finland, Ireland, Slovakia , Spain and the United Kingdom. In Sweden, the provision is reportedly transposed by way of a general principle of internal law stipulating equal treatment between refugees and beneficiaries of subsidiary protection, and between these groups and Swedish nationals as regards social rights and benefits. Estonia, Finland, Germany, Netherlands, and Poland are explicitly reported to treat refugees and recipients of subsidiary protection essentially equal.

Austria[163] is reported to apply a differential treatment between the two groups depending on the issue. It should be noted that the inclusion of the two separate protection-groups in the Directive has lead to Portugal, Romania, Slovakia, Slovenia, and Spain adopting a similar differentiation, not present in legislative norms in existence prior to the adoption of the Directive.

Of the states listed in the table below, **Belgium** and **Latvia** seem to be directly in violation of the content of the provision, while, arguably, there are mitigating circumstances with regard to the remainder of the Member States mentioned in the table, see accompanying footnotes.

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160 Not all of the specific provisions of the Geneva Convention are transposed into national law.

161 Draft qualification decree.

162 This results from an assessment of the entire legislative basis, not a single norm of transposition. In other words, the finding by the national rapportuer that the provision has been transposed is based on an evaluation of the entire catalogue of rights ensured for both groups in national legislation. It can be argued whether this means of transposition provides for the requisite legal certainty, but for the purposes of this rerpot this is assumed to be the case.

163 However, according to the national report, the national legislator acknowledges that Chapter VII of the QD is applicable to both statuses and lays down their specific rights in the different acts.

Article 20(2): Equality in application of rights for both refugees and persons eligible for subsidiary protection unless otherwise indicated	
NO TRANSPOSITION AT ALL	**Austria, Belgium, France[164]**
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	**Czech Republic[165], Bulgaria[166],**
PRACTICAL PROBLEM	**Latvia[167], Lithuania[168]**

3.3.2.3 Article 20(3). Mandatory. Q. 30.C and Q. 30.D

a) Meaning

This provision sets out the obligation to take the specific situation of certain vulnerable groups (delineated in a non-exhaustive list) into account when implementing Chapter VII (para.3).

b) Conformity of domestic legislation with the provision

Bulgaria, Cyprus, Greece[169], Hungary, Ireland[170], Italy[171], Poland, Portugal, Slovenia, and Spain have transposed Article 20(3) formally, while other States (Germany and Sweden) apply pre-existing norms, thereby applying the existing national system for addressing the special needs of particular vulnerable groups on issues included in Chapter VII of the Directive, while not necessarily mentioning all of these groups specifically in relevant legislation and/or related norms. In Germany, Netherlands, and Poland the situation for vulnerable groups is regulated by way of administrative rules and practise in addition to overall legislation. In Slovakia, it is stated that in some fields, especially health care, the situation of vulnerable groups is regulated solely by way of practice, thereby constituting a legal problem of transposition.

Austria, Finland, and Lithuania are reported to have carried out transposition formally as well as through pre-existing legislation, while not including all groups mentioned in the provision. As regards Lithuania, it is, however, mentioned that vulnerable groups are

164 While no general provision has ensured transposition of Article 20(2), equality in enjoyment of rights between the two groups may, however, result on a case by case basis through the application of the respective domestic laws.

165 No explicit transposition, but the provision is to a large extend included in the application of general laws. It is indicated that, in practice, inequality exists to the detriment of beneficiaries of subsidiary protection status. In the table of correspondence this situation is described as non-trnsposition, while it may more correctely be categorised as a legal – and even practical –problem of transposition

166 While the Law on Asylum and Refugees underlines the difference in the content of rights recognized to refugees and subsidiary protection holders, there is no explicit provision transposing Article 20(2) of the Directive as to the equality unless otherwise indicated.

167 Equal treatment is transposed formally, but in practice, equal treatment applies only during the social integration period, while beneficiaries of subsidiary protection do not have access to the certain rights following the expiry of this period, as many general legislative acts grant such access only to permanent residents (which beneficiaries of subsidiary protection are not).

168 Even though the Aliens Law mentions equal treatment of both categories, in practice, equal treatment applies only during social integration period, while afterwards persons with subsidiary protection do not have access to certain rights as many general legislative acts grant such access only to permanent residents.

169 Draft qualification decree.

170 The transposing measure only takes account of vulnerable persons entitled to subsidiary protection and not those entitled refugee status. The 2007 Bill, however, transposes Article 20(3) correctly.

171 A general guideline only, to take into account the situation of vulnerable groups after an individual evaluation. However, all groups are indicated to be taken into account.

mentioned only for the purpose of the social integrating period[172], while general social legislation applicable subsequently does not (with some exceptions) contain such provisions concerning beneficiaries of refugee and subsidiary protection status. France applies a general principle of internal law, the content of which is explained as including the inclusion of beneficiaries of refugee and subsidiary protection status under general legislation.

In Spain, vulnerability will only be taken into account with regard to refugees without economic means. In Portugal, rules on vulnerability are reportedly vague, stipulating only the obligation to take into consideration the situation of vulnerable persons in an adequate manner. The exception is that of unaccompanied minors.

Vulnerable groups expressly mentioned as such in national legislation[173]

1. Minors	Austria, Bulgaria, Finland, Germany, Greece, Hungary, Ireland, Italy, Poland[174], Portugal, Slovenia, Spain, Sweden
2. Unaccompanied minors	Austria, Bulgaria, Estonia, Finland, Hungary, Ireland, Italy, Germany, Greece, Latvia. Lithuania, Netherlands, Poland, Portugal, Slovenia, Spain
3. Disabled people	Austria, Bulgaria, Finland, Germany, Greece, Hungary, Ireland, Italy, Sweden, Lithuania, Poland, Portugal, Slovenia
4. Elderly people	Bulgaria, Finland, Germany, Greece, Hungary, Ireland, Italy, Sweden, Lithuania, Portugal, Slovenia, Spain
5. Single parents with minor children	Bulgaria, Finland, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Portugal, Slovenia, Spain
6. Persons having been subjected to torture, rape or other serious forms of psychological, physical or sexual violence	Austria, Bulgaria, Finland, Greece, Hungary, Ireland, Italy, Lithuania, Portugal, Slovenia, Spain
7. Other: Persons having been subjected to other cruel, inhuman, or degrading treatment or punishment	Bulgaria, Greece, Hungary
8. Other: Persons having been subjected to gender related persecution or serious harm	Bulgaria, Greece

172 This is the integration period and efforts which are applicable specifically to refugees and beneficiaries of subsidiary protection.

173 The scope of this table is possibly limited where the mentioning of particular groups relate to issue-specific legislation and do not, as such, recognize a general need to take the situation of these specific vulnerable groups into account in implementing the rights included under Chapter VII of the Directive. Moreover, in the table, names of MS reportedly not having transposed the provision are also included, as mention is made of some of the vulnerable groups in national legislation.

174 The Polish concept of the persons in need is based on a general concept. Only victims of torture and minors are explicitly mentioned in national legislation, while pregnant women and disabled persons are mentioned indirectly in the Act on Social Assistance.

9. Other: Victims of crime, in particular gender related crime	Sweden
10. Other: Pregnant women	Bulgaria, Germany, Greece, Hungary, Ireland, Lithuania, Portugal, Spain
11. Other	Lithuania[175], Netherlands[176]

A few States have not transposed Article 20(3) and reportedly do not take into account the specific situation of vulnerable person in granting rights and benefits under the QD in their national legislation nor by way of administrative norms or practice. These States, which count **Belgium, Czech Republic, Estonia, Luxembourg, Netherlands,** and **Romania** seemingly are at odds with the QD in this regard.

Article 20(3): Specific situation of vulnerable groups	
NO TRANSPOSITION AT ALL	**Belgium, Czech Republic[177], Estonia[178], Luxembourg[179], Netherlands[180], Romania, United Kingdom**

175 Families with 3 and more minor children and families with one or two children under 18.

176 Persons with psychological problems.

177 Application of general laws does not always in practice suffice to ensure the rights under this provision.

178 Special regulation in the norm of transposition only as regards unaccompanied minors. While provisions exist which may generally apply, these vulnerable groups do not receive any special consideration under the law.

179 In practice, the vulnerability criteria are considered in the course of the asylum procedure and as an integral part of the legislation on reception conditions. Their applicability is extended beyond the provision of either protection status.

180 Special guidance (supervision or counselling) can be given to person in a vulnerable situation such as unaccompanied minors or persons with serious psychological problems. The possibility for other vulnerable groups getting special guidance exists, it is reportedly possible that Dutch practise complies with many or all of the requirements set out in Article 20(3) of the Directive.

NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	**Bulgaria[181], France[182], Latvia, Slovakia[183], Slovenia, Spain**
PRACTICAL PROBLEM	

3.3.2.4 Article 20(4). Mandatory. Q. 30.D

a) Meaning

This provision implies an obligation on part of the Member States to individually evaluate the situation of the categories of vulnerable persons mentioned in para. 3. Such an implied obligation may be seen as a precondition for effectively taking into account the specific situation of vulnerable persons as set out in para. 3. Alternatively, one could consider that para. 4 does not require transposition, as such requirement may carry with it the assumption that Member States need only to take into account the specific situation of vulnerable groups once individually evaluated. For the purposes of this report, the first option (implied obligation to evaluate) is, however, applied.

As such, there is no express requirement of establishing a single body for the purpose of undertaking such evaluation, although it may be understood that authorities within the social field and/or the field of protection would be best situated to determine such issues.

b) Conformity of domestic legislation with the provision

Cyprus, Greece[184], Italy, Portugal, Slovenia, Spain[185] have transposed this provision formally, Poland both formally and in reference to pre-existing norms. A number of countries have transposed this requirement through pre-existing law only, and in some of these States (Finland, Germany, Slovakia, Sweden) multiple bodies exist which are competent to perform such an evaluation. A single body for such evaluation does not, in other words, necessarily exist (and is also not specifically required under Article 20(4)). With regard to Austria, it is noted that this requirement is transposed through a general principle of internal law (the rule of law as inherent in the Austrian Constitution), setting out that the rights of vulnerable groups can be claimed in a formal, individual administrative procedure according to the General Administrative Procedures Act, under which a formal decision can be appealed. Similarly, France applies a principle of internal law (see also under Article 20(3) above), the content of which is explained as including the assimilation of beneficiaries of refugee and subsidiary protection status under general legislation.

In Spain, the evaluation is carried out during the asylum procedure.

Belgium, Bulgaria, Czech Republic, Estonia, Hungary, Ireland, Lithuania, Luxembourg, Netherlands, and Romania have not transposed the provision in Article 20(4) setting out a requirement to recognise the special needs of vulnerable persons only after an individual evaluation of their situation.

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181 The norms have a rather declaratory character without elaboration of the rights affected which would have made the implementation of this principle more feasible

182 Addressing the specific situation of vulnerable groups hinges on general legislation, which may question whether adequate legal certainty of the transposition is ensured.

183 Within some fields, especially health care, the situation of vulnerable groups is reportedly regulated solely by way of practice

184 Draft qualification decree. It is not specified how the determination of individual needs and vulnerabilities is supposed to be undertaken.

185 Regulation.

Article 20(4): Individual evaluation of vulnerability	
NO TRANSPOSITION AT ALL	**Belgium, Bulgaria, Czech Republic[186], Estonia, Hungary[187], Ireland, Latvia[188], Lithuania. Luxembourg, Netherlands, Romania, United Kingdom**
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	**France[189]**
PRACTICAL PROBLEM	

3.3.2.5 Article 20(5). Mandatory. Q.30.E.

a) Meaning

This provision sets out the paramount principle on the best interest of the child as included under international human rights law.

b) Conformity of domestic legislation with the provision

The best interest of the child as a primary consideration in applying the provisions of chapter VII of the QD has been transposed formally by Cyprus, Greece[190], Hungary, Lithuania, Romania, Slovenia, and Portugal. It has been transposed through pre-existing norms in Austria, Bulgaria, Italy, Estonia, Czech Republic, Luxembourg[191], Netherlands, Spain, Slovakia, and Sweden not necessarily related exclusively to the field of refugee or subsidiary protection status. Some States have transposed the provision by way of pre-existing norms and transposing legislation (Latvia, Finland). In Finland, the best interest of the child is comprehensively covered between the Constitution and refugee/immigration specific legislation. The Czech Republic and Germany cite a general principle of internal law as the basis for transposition.

In France, Lithuania, Luxembourg and Poland, reference is made to the 1989 UN Convention on the Right of the Child being part of the legal system with priority over internal law. Based on the information available concerning France and Poland, this indicates an adequate level of legal certainty, and it is, therefore, ascertained to constitute a sufficient means of transposition. According to the national report on Lithuania, the opposite conclusion must be reached with regard to this particular Member State. In Luxembourg, it seems slightly unclear to what degree the Convention on the rights of the Child in effect forms part of the legislation or has merely been ratified without providing the adequate legal certainty concerning the applicability of the principle of the best interest of the child in applying Chapter VII of the Directive. In the Netherlands, the government reportedly relies on Article 3 of the Convention on the Rights of the Child as a means of transposition (in reference to the Constitution stating supremacy of international law over national law), but individuals are

186 Simple practice.

187 The national rapporteur states non-transposition due to the fact that a body not having been codified/established to carry out the evaluation of vulnerability. As mentioned, establishing a body is not an express requirement under the Directive.

188 An asylum seekers reception centre undertakes the practical evaluation before the granting of any status, but no formal transposition.

189 Addressing the specific situation of vulnerable groups hinges on general legislation.

190 Draft qualification decree. Other than literal transposition, however, no specific measures are provided for, nor any detailed procedures have been adopted to ensure implementation of the principle in practice.

191 Transposition is reportedly based on a 1993 law ratifying the Convention of the Rights of the Child and certain subsequent modifications to the civil code.

stated no to be able to rely on this provision in courts, which leads to the conclusion that Article 20(5) of the Directive may be considered as non-transposed.

Specifically with regard to Germany, the application of the provisions of the Residence Act and general social legislation is assumed to be based on the best interest of the child as a general public obligatory interest due to Germany's ratification of the Convention on the Rights of the Child. The Convention has become domestic law and has the same status as a law adopted by the German Parliament, thereby ensuring legal certainty. In Latvia, general law (the Law on the Protection of the Rights of the Child) specifically refers to the protection of all children and their best interest without distinction as to the legal status of the child. This arguably ensures the best interest of children who are beneficiaries of refugee or subsidiary protection status. Reference is further made specifically to these two legal categories in certain provisions of the law. Moreover, there is an informative reference to the QD at the end of the law. In conclusion, this may lead to the consideration that the requisite legal certainty of the transposition is met, and for the purposes of this report, this is assumed to be the case.

Belgium, **Ireland**, **Netherlands** and the **United Kingdom** have not transposed this important provision.

Article 20(5): Best interest of the child	
NO TRANSPOSITION AT ALL	**Belgium, Ireland, Netherlands, United Kingdom**
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	**Slovenia[192],France, Luxembourg**
PRACTICAL PROBLEM	**Sweden[193]**

3.3.2.6 Article 20(6). Optional. Q. 30.F and Q. 30.H. Article 20(7). Optional. Q. 30.G and Q.30.H

a) Meaning

Under Article 20(6), Member States may reduce benefits provided under Chapter VII of the Directive to refugees having obtained their refugee status on the basis of activities engaged in for the sole or main purpose of creating the necessary conditions for being recognised as a refugee. According to Article 20(7), Member States may reduce benefits provided under Chapter VII of the Directive to persons eligible for subsidiary protection status who has obtained their status on the basis of activities engaged in for the sole or main purpose of creating the necessary conditions for being recognised as a person eligible for subsidiary protection.

Articles 20(6) and 20(7)[194]	
MEMBER STATES IMPLEMENTING THESE PROVISIONS	**MEMBER STATES NOT IMPLEMENTING THESE PROVISIONS**

192 Only unaccompanied minors are mentioned in the law as affected by the principle of the best interest of the child.

193 Swedish NGOs have criticised national legislation for not including an established method or generally accepted doctrine in the matter, and called for more precise statements in law, basically ensuring the best interest of the (refugee) child.

194 No information available on Cyprus.

	Austria, Belgium, Bulgaria[195], Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Sweden, United Kingdom

3.3.3. Protection from refoulement: Article 21 (Q. 31)

3.3.3.1 Article 21(1). Mandatory. Q. 31.A

a) Meaning.

This provision confirms that MS must respect the principle of *non-refoulement* in accordance with their international obligations, i.e. as deriving form international refugee law (Geneva Convention Arts.32 and (principally) 33 and arguably international customary law on *non-refoulement*) as well as international and regional human rights instruments, relevant provisions of international treaty law and obligations on State responsibility. It should be noted that the mandatory Article 21(1) includes persons eligible for subsidiary protection status (cf. Art .20(2) of the Directive) as opposed to the optional Article 21(2) and (3) which specifically mentions only refugees and are inspired by Article 33(2) of the Geneva Convention.

b) Conformity of domestic legislation with the provision

The vast majority of Member States have transposed this mandatory provision, either formally (Austria, Cyprus, Czech Republic, Estonia, Hungary, Italy, Lithuania, Luxembourg, Portugal, Romania), through pre-existing norms (Bulgaria, Germany, Spain, Sweden), or through both these means of transposition (Greece, Latvia, Poland, Finland, Slovakia, Slovenia, United Kingdom). Belgium is reported to have transposed the provision through general principles of internal law recognising a "direct effect" of the principle of *non-refoulement*. As it is not clear to what degree such a direct effect is can be claimed by an individual before national courts, the legal certainty of the transposition may be challenged. Moreover, it is unclear whether such principle would include the protection from refoulement under human rights instruments, thereby protecting also persons eligible for subsidiary protection status.

c) Conclusion on Article 21(1), protection from refoulement.

No instances of non transposition or problematic transposition have been reported on.

Article 21(1): Protection from refoulement	
NO TRANSPOSITION AT ALL	
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	**United Kingdom[196]**
PRACTICAL PROBLEM	

3.3.3.2 Article 21(2). Optional. Q. 31.B

195 According to national legislation of Bulgaria, protection is not given at all in such cases.

196 Aspects of the pre-existing law arguably conflict with the Directive/Geneva Convention.

a) Meaning.

Article 21(2) of the Directive reflect the exceptions to the principle of *non*-refoulement as set out by Article 33(2) of the Geneva Convention. Hence, this optional Directive provision relates only to refugees (and not beneficiaries of subsidiary protection). With regard to refugees, it is paramount to stress, however, that the Directive allows for the application of the exceptions enumerated in Article 21(2) (a) and (b) only in so far as this would not be prohibited by any of the international obligations mentioned in Article 21(1). This means that in addition, international and regional human rights instruments need also be considered with regard to refugees ("whether formally recognised or not") in determining the possibility of *refouling* someone. In other words, the applicability of these human rights instruments is not restricted to beneficiaries of subsidiary protection or others in need of protection who are determined not to be refugees.

b) Conformity of domestic legislation with the provision

A number of States (Finland, France, Hungary, Ireland, Poland, Slovakia, Slovenia) have not transposed the optional provisions listed in Article 21(2), i.e. these exceptions to the prohibition on *refoulement* do not apply in the Member States outlined. Conversely, a number of States (Austria, Bulgaria, Estonia, Italy, Lithuania, Luxembourg, Latvia, Spain, and Romania are reported to have transposed both exceptions mentioned in Article 21(2) (a) and (b) into national legislation

Belgium has only transposed the optional exception listed in Article 21(2)(a) (reasonable grounds for considering the individual as a danger to the security of the MS) The exception is applied only where no formal decision on refugee status has been reached, while refugees whose status has been confirmed "may never be expelled".

Sweden is indicated to have transposed the optional Article 21(2) through pre-existing law, and the national report cites passages of Swedish law including exception to the principle of -*non-refoulement* which are similar to those comprised in Article 21(2)(a) of the Directive. From the national report, it seems clear, though, that Swedish legislation constitutes more favourable standards compared to this optional Directive provision.[197] In accordance with the approach set out in the Introduction at para. V.1.(1), this situation is, for the purposes of this report, not considered to be at variance with the Directive (even more so, as Article 21(2) is optional).

c) Other issues

A number of states (Belgium, Germany[198], Italy, Slovenia) confirm that efforts are made to establish the refugee character for reasons of proportionally considerations related to the situation of possible *refoulement*, where no formal decision of refugee status has been reached yet, and the application of exceptions to the principle of *non-refoulement* is envisaged (see Q. 31B.I and II). In Estonia, the option does not exist under the legislation to suspend or terminate the protection seeking procedure on any of the grounds stated in Article 21 of the Directive. In Belgium, the responsible Minister must seek advice from the first instance body responsible for asylum determination as to whether the decision to expel an individual is compatible with the Geneva Convention. With regard to Slovakia it is stated that refugees cannot be expelled[199] before reaching a decision in at least the first instance. Expulsion of a person having been granted refugee status would reportedly not be effective without prior

197 Swedish law introduces less restrictive standards compared to Article 21(2) of the Directive.

198 In Germany, however, considerations on state security and risks to the general public take priority over proportionality issues concerning the protection interests of the individual.

199 Expulsion seems here to be used interchangeably with *refoulement* although they are separate concepts.

cessation of refugee status.[200] In Luxembourg, it is prohibited to *refoule* a non-recognised refugee, including those currently in the determination procedure. According to the national report, no decisions have been reached on this issue yet, as the relevant provision has been introduced recently.[201] Hungary does not apply any exceptions to the principle of *non-refoulement* and hence the issue need not to be addressed in this Member State.

In Bulgaria, on the other hand, national legislation is unequivocal in stating that the principle of *non-refoulement* does not apply when the grounds for exception exist. No rules for proportionality considerations have been included in national legislation.

A number of States (Austria, Bulgaria, Germany, Hungary, Italy, Luxembourg, Lithuania, Latvia[202], Slovakia, Slovenia[203], Sweden, and Romania) confirm the existence of procedural safeguards (Q. 31.B.II and IV) related to the operation of any *refoulement* provisions contained in the legislation. Details are included in the table below. According to the national report on Luxembourg, the situation has changed towards the negative from the point of view of the refugee following the transposition of the Directive, as the procedural safeguards offered in connection with expulsion (possibly amounting to *refoulement*) are lesser than previously although no jurisprudential case law has yet confirmed this. In Lithuania, not all procedural safeguards are included in the legal framework, and where the decision to expel a refugee or asylum seeker (possibly amounting to *refoulement*) is based on national security, the individual in question is not provided with the possibility of presenting evidence to clear him/herself. In Austria, the refugee in question is not allowed a reasonable period within which to seek legal admission into another country.

Procedural safeguards concerning decisions on *refoulement* of refugees in Member States having implemented Article 21(2).

1. Decision to *refoule* reached in accordance with due process of law	Austria, Bulgaria, Estonia, Germany, Greece, Italy, Latvia, Lithuania[204], Luxembourg, Romania, Sweden
2. Refugee in question allowed to submit evidence to clear him or herself, unless compelling reasons of national security require otherwise.	Austria, Bulgaria, Germany, Italy, Luxembourg, Romania
3. Refugee in question allowed to appeal and to be represented before competent authority or person(s) specially designated by competent authority	Austria, Bulgaria, Germany, Greece, Estonia, Italy, Lithuania, Luxembourg, Romania
4. Refugee in question allowed reasonable time within which to seek legal admission into another country	Italy, Luxembourg

d) Conclusion[205]

200 It is beyond the scope of this report to discuss whether this approach accords with the Geneva Convention.

201 13 may 2006.

202 Only to a limited degree, see table on procedural safeguards above.

203 Procedural safeguards do not form part of the draft International Protection Act but is reportedly ensured by way of constitutional provision stating direct application of international treaties (Geneva Convention)

204 Does not apply where national security is claimed by the State.

205 No information available on Cyprus and United Kingdom.

Articles 21(2)	
MEMBER STATES IMPLEMENTING THIS PROVISION	**MEMBER STATES NOT IMPLEMENTING THIS PROVISION**
Austria, Belgium[206], Bulgaria , Estonia, Germany, Greece, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Romania, Sweden	Czech Republic, Finland, France, Hungary, Ireland, Slovakia, Slovenia

3.3.3.3 Article 21(3). Optional. Q. 31.C

a) Meaning

The provision offers an optional access for MS to revoke, end or refuse to renew or to grant a residence permit with regard to a refugee to whom the exceptions to the principle of *non-refoulement* enumerated in Article 21(2) apply. The termination or refusal of a residence permit does not in principle affect the refugee status of the individual in question, and consequently, s/he may still be entitled to the rights and benefits mentioned in the QD, Chapter VII.[207] This is different from Article 14(6), which delineates the rights of refugees whose status has been terminated or refused for reasons equal to those listed in Article 21(2)(a) and (b). Article 14(6) can, in other words, be said to stipulate a legal regime of a so-called "tolerated status" for those individuals who cannot effectively be *refouled* despite of the termination or refusal of their refugee status.[208] Persons belonging to this group logically do not have access to the rights included under the QD Chapter VII.

b) Conformity of domestic legislation with the optional provision

Czech Republic, Estonia, Romania, Lithuania, Luxembourg[209], Latvia and the United Kingdom have transposed this provision formally. Bulgaria, Germany, Spain and Sweden have transposed the provision by way of pre-existing norms. In Lithuania, for example, the national provisions transposing Article 21(3) mention state security, public order and health of the population or engagement in certain crimes as legitimate reasons for terminating or not granting residence permits for aliens. This seems to go beyond the content of Article 21(2). In the Czech Republic, a refugee is allowed to apply for toleration visa, if s/he is not able to seek admission to another State within 60 days of the termination or other (under Article 21(3)) of his residence permit.

c) Other issues (Q. 31.C. III)

The regulation of revocation, ending or refusal to renew or to grant a residence permit may be different where international human rights provisions on *non-refoulement* apply to refugees (in addition to the protection provided by the Geneva Convention and the Qualification Directive), as these are absolute, meaning that they do not allow for exceptions as opposed to the Geneva Convention and the Directive. A few Member States are reported take this issue into consideration with regard to the application of Article 21(3): In Czech republic, Finland, Germany and Sweden, the prohibition on *refoulement* is reportedly absolute where a person could be subject to death penalty, torture or other inhuman or degrading treatment violating

206 Only Article 21(2)(a), but not (b), has been implemented.

207 Reference is made to report nos. 3 and 1 of the Contact Committee concerning Article 21 and Article 24 of the Directive.

208 Article 14(6) is mandatory if Article 14(4) or (5) have been transposed, i.e. it is a conditionally mandatory provision. It is dealt with separately below under section 3.3.17.

209 The possibility to end the residence permit is not transposed into the legislation of Luxembourg. Otherwise, Article 21(3) is transposed literally.

human dignity. In Germany, subsidiary protection would, then, apply. In Bulgaria, the possible regulation of revocation, ending or refusing to renew or grant residence permits of (or to) a refugee in similar circumstances to those mentioned in Article 21(2) of the QD are not different where human rights standards apply. According to the national report, however, international norms would in these situations have primacy over national legislation as stipulated in the constitution.

d) Conclusion

Articles 21(3)	
MEMBER STATES IMPLEMENTING THIS PROVISION	**MEMBER STATES NOT IMPLEMENTING THIS PROVISION**
Estonia[210], Finland , Latvia, Lithuania[211], United Kingdom	Austria, Belgium, Finland, France, Hungary, Italy, Ireland, Greece, Portugal, Slovakia, Slovenia

3.3.4 Information: Article 22. Mandatory. (Q. 32)

a) Meaning

This provision obliges Member States to provide access to information to beneficiaries of either protection status on the rights and obligations relating to the respective status. This must happen as soon as possible after the status has been granted and in a language likely to be understood by the individual in question.

b) Conformity of domestic legislation with the provision

A number of states have transposed this provision formally (Cyprus, Czech Republic, Germany, Greece, Hungary, Italy, Luxembourg, Latvia, Portugal, Slovakia, Sweden, United Kingdom). Luxembourg has transposed the provision literally. Finland has transposed the provision by way of pre-existing norms, while Bulgaria, and Ireland have transposed it formally (regulation) and by way of pre-existing norms.

Some States have transposed this provision by way of legislation (Bulgaria, Czech republic, Estonia, Finland, Germany, Greece[212], Hungary, Italy, Ireland, Luxembourg, Latvia[213], Poland, Slovakia, Slovenia), regulations (Estonia, Ireland, Slovenia, Sweden), publicised circular or instruction (Luxembourg, Ireland), and/or internal administrative rules (Bulgaria, Ireland). A number of states are reported to provide information to beneficiaries of international protection by way of administrative practice only or in addition to other legal norms (Bulgaria, Belgium, Finland, Ireland, Lithuania, Luxembourg). Such practices include the distribution of a brochures or leaflets with basic rights etc[214]. In Finland, the information or part of it is provided in the course of elaborating the personal integration plan of the beneficiary of either protection status.

France and **Romania** have reportedly not transposed the provision.

c) Other issues

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210 Only the possibility to revoke exists (not to otherwise end or refuse to renew or grant a residence permit for refugees. Moreover, revocation can take place before a final judgement has been passed as regards the situation described in Article 21(2) (b), which seems to be a contravention of the optional Article 21(3).

211 Implemented as additional cessation and exclusion clause.

212 Draft qualification decree.

213 Almost literal transposition.

214 In Estonia, the transposing legislation is very general in nature as regards the distribution measures, and in practice based on ad-hoc approaches.

The information provided is reflective of the rights delineated in the QD (see Q 32.C.) in a number of States (Hungary, Ireland, Slovakia, Slovenia), while in others (Czech Republic, Belgium, Slovenia) only selected rights or other types of rights are included in the information material. In Slovenia, the provision of information on rights and obligations is applied with a view to facilitate integration of persons, thus deviating slightly from the Directive. The table below is reflective of the rights provided in the respective Member State. Information is not, however, available for all States.

Information provided on rights of beneficiaries of either protection status

1. Protection from *non-refoulement*	Luxembourg,
2. Maintaining family unity	Finland, Luxembourg, , Slovakia[215]
3. Residence permits	Czech Republic, Finland, Germany, Ireland, Luxembourg, Slovakia
4. Travel document	Ireland, Luxembourg, Slovakia
5. Access to employment	Bulgaria, Czech Republic, Finland, Germany, Ireland, Luxembourg, Slovakia, Slovenia
6. Access to education	Czech Republic, Finland, Ireland, Luxembourg, Slovakia
7. Social welfare	Bulgaria, Finland, Germany, Ireland, Luxembourg, Slovakia, Slovenia
8. Health care	Bulgaria, Finland[216], Ireland, Luxembourg, Slovakia, Slovenia
9. Unaccompanied minors	Luxembourg[217]
10. Access to accommodation	Bulgaria, Czech Republic, Finland, Ireland, Luxembourg, Slovakia, Slovenia
11. Freedom of movement with the MS	Germany, Ireland, Luxembourg
12. Access to integration facilities	Czech Republic, Finland, Germany, Ireland, Luxembourg, Slovakia
13. Repatriation	Ireland
14. Other	Bulgaria, Finland, Germany, Slovakia, Slovenia

Some States (Austria, Belgium, Czech Republic, Estonia, Finland, Germany, Hungary, Ireland, Lithuania, Luxembourg, Slovenia) provide information – in some states as a matter of practice - on the governmental or non-governmental organisations operating in the particular State within the field of international protection and related rights (Q.32. D). In some instances, however, such information is of a general nature simply stating that NGOs working within this field exist (Czech republic, Slovakia). Also, references to UNHCR and IOM are included, but in some States without addresses and telephone numbers included (Slovakia). Latvia reportedly does not have any NGOs of such a profile (asylum and migration), but information concerning IOM and the Red Cross is provided.

Only a few States report that a complaints mechanism is available with regard to the obligation on the part of State to provide information on rights and obligations. In this regard,

215 Family reunification.
216 Including maternal care and services for pregnant women.
217 With the exception of the right of the unaccompanied minor to have a legal guardian or representative appointed.

Czech republic and Slovakia are reported to have in place a general complaints mechanism concerning unlawful behaviour of authorities, which is placed under the asylum/migration authorities (Czech Republic), Ministry of the Interior (Latvia, Slovakia) and/or the courts (Slovakia, Latvia).

Article 22: Information	
NO TRANSPOSITION AT ALL	Austria[218], Belgium[219], France, Romania, Lithuania[220]
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	Bulgaria[221], Estonia, Finland[222], Slovenia,
PRACTICAL PROBLEM	

3.3.5. Maintaining family unity: Article 23 (Q. 33)

3.3.5.1 Article 23(1). Mandatory. Q. 33.A

a) Meaning

According to this provision, Member States shall ensure that family unity can be maintained. It is important to stress that the provision is not about family *reunification* (an issue principally regulated within the EU context by the Directive on Family Reunification[223]), but, rather about maintaining family unity for beneficiaries of refugee or subsidiary protection status whose family members are already present in the territory of a given Member State. However, where the family reunification procedure ensures a status for family members of the beneficiary of refugee or subsidiary protection status, who are present in the Member State in question, such procedure may be seen as facilitating family unity as required under Article 23(1) of the Directive.

b) Conformity of domestic legislation with the provision

Some States are reported to have transposed the overall provision in Article 23(1), which sets out - as mentioned - to ensure the general principle of family unity. Austria, Bulgaria, Cyprus, Italy, Finland, Hungary, Luxembourg, Lithuania[224], Poland, Portugal, and Romania have done so formally while Belgium, Ireland, and Spain have done so through pre-existing norms[225]. The Czech Republic, Germany, Latvia, Slovenia, Slovakia, Sweden and the United Kingdom have transposed the provision both by way of transposing legislation and pre-existing norms.

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218 Administrative practice exists which reportedly, however, only applies to refugees and not beneficiaries of subsidiary protection status.

219 Administrative practice exists.

220 Implemented in practice.

221 The national norm transposing Article 22 QD makes no reference to "as soon as possible" after the respective protection status has been granted.

222 Pre-existing legislation does not define when the information should be provided and what exactly the information should include. In practice, however, information in a variety of issues is given already during the asylum procedure and right after the granting of the status.

223 Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ L 251 of 3.10.2003, p. 12.

224 Circular.

225 Ireland through a general principle of internal law. In general there will be non-interference with family members who have refugee or subsidiary status. This is a general principle of law which is supported by the family unit having protection under The Irish Constitution.

In the case of Belgium, it is stated that the transposition is effected through pre-existing legislation as well as administrative practice stipulating a joint status determination of family members.[226]

A some States (Latvia, Poland, United Kingdom, Sweden) the general principle of family unity as an integral part of asylum recognition criteria (Q.33.A.II) is reportedly applied. In some States this means, that spouses and (minor) children are granted the same (refugee or subsidiary protection) status as the principal asylum seeker, and also afforded the same rights (so-called derivative status). This situation is in Belgium conditioned on the family members having arrived in the MS simultaneously with the asylum seeker. Ireland is stated no to apply a general principle of family unity in connection with the asylum recognition process, but simply as right for the beneficiary of refugee or subsidiary protection status to have family reunification. In Austria, derivative status is provided, where it is not possible to continue an existing family life, within the meaning of Article 8 of the European Convention on Human Rights, with the family member in another country.

In replying to the question of "which family members are taken into account in terms of maintaining family unity" (Q.33.A.III), a number of rapporteurs have outlined the situation as regards the refugee status determination procedure as well as concerning the family reunification procedure.[227] In Belgium, the definition of family members in Article 2(h) of the Directive reportedly provides guidance on the scope of Article 23(1) and the actual content of the term 'family member' as applied throughout Article 23. With the exception of Slovenia, no States have seemingly transposed the definition contained in Article 2(h) literally, which may in and of it-self be seen as a problem of legal nature. However, in most cases, States include some or all of the categories mentioned in Article 2(h), although as regards Belgium, absence of transposition is indicated.

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226 While administrative practice according to the *Guidelines for National Rapporteurs on the Table of Correspondence for the Qualification Directive* are normally not enough to constitute full transposition, it has, for the purposes of drafting this report, been ascertained to be adequate that the transposition of this provision has been carried out in part by legislation and in part by administrative practice. (See Belgium TOC p. 9 at fn. 26, indicating transposition by pre-existing legislation and noting this as "yes otherwise" and as being "in order").

227 In this regard, see above on the meaning of Article 23(1) for an explanation of the interface between the asylum and family reunification regimes.

Application of the definition of family members in QD Article 2(h)

Category	**Member State**
Spouse	Austria, Bulgaria, Belgium[228], Estonia, Finland, Germany, Hungary, Ireland, Latvia, Luxembourg, Poland, Portugal, Romania, Slovenia, Spain, Sweden, United Kingdom
Unmarried partner in a stable relationship	Finland, Portugal, Slovenia, Sweden[229], Greece, United Kingdom
Unmarried and dependent minor children of couple	Austria, Bulgaria, Belgium, Estonia, Finland, Germany, Hungary, Ireland, Latvia, Luxembourg, Poland, Portugal, Romania, Greece, Slovenia, Spain, Sweden, United Kingdom
Unmarried and dependent minor children of beneficiary of refugee or subsidiary protection status (single parent)	Austria, Belgium[230], Bulgaria[231], Finland, Germany, Hungary, Ireland, Luxembourg, Poland[232], Portugal, Slovenia, Spain, Sweden, United Kingdom
Family already existed in country of origin	Austria[233], Belgium[234], Bulgaria, Estonia, Germany, Portugal, Romania, Slovenia, Sweden, Latvia, Luxembourg, United Kingdom
Family members present in MS	Belgium
Other	Austria, Bulgaria, Estonia, Germany, Hungary, Ireland, Romania, United Kingdom

Some States include additional categories with regard to the maintaining of family unity, such as registered partnerships ("same-sex marriages" or "same-sex cohabitation"), including Sweden, Finland, Germany and United Kingdom. Sweden further includes close relatives such as adult unmarried children and grandparents, under the condition that they lived together immediately before leaving the country of origin and there exist a special relationship of dependence (i.e. the relatives cannot for some reason, like disease, age or support abilities, live apart). Germany also includes cases of particular hardship. Greece includes parents and adult children who are financially dependent, suffer from physical or psychological handicap and cannot apply individually for asylum. Ireland provides for discretionary access to allow family reunification for other dependent members of the family, defined in legislation as meaning grandparents, parent, brother, sister, child, grandchild, ward or guardian of the status holder, how is dependent or suffering from a mental or physical disability to the extent that

228 Under the family reunification procedure, the requirement is that both spouses are 21 years of age or more, or 18 or more if the relationship existed in the country of origin.

229 The requirement of a stable relationship is not included explicitly in the legislation but to b e developed in case law as all situations cannot be foreseen in a law.

230 Condition that parent holds custodial right.

231 National legislation seems, reportedly, to include this category.

232 A child born in Poland (to couple or single parent) is expanded of a child born in Poland after the submission of the application.

233 This requirement only applies to the spouse.

234 While not an overall criterion in Belgium legislation, the fact that the family tie already existed in the country of origin eases the conditions for family reunification in a number of situations, for example on age requirements related to marriage, registered partnership or as a means of lifting the general conditions of appropriate housing and health insurance (and reunification "occurs within a year following the recognition of refugee status".)

s/he cannot be maintained fully. Hungary includes parent(s) if the person seeking recognition is a minor.

Article 23(1): Maintaining family unity	
NO TRANSPOSITION AT ALL	**Estonia**
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	**Belgium, Bulgaria[235], Czech Republic[236], Lithuania[237]**
PRACTICAL PROBLEM	

3.3.5.2 Article 23(2) Mandatory and optional. Q. 33.B

3.3.5.2.1 Article 23(2), first clause. Mandatory. Q. 33.B

a) Meaning

b) Conformity of domestic legislation with the provision.

A number of States reportedly ensure that the benefits referred to in QD Arts. 24-34 can be claimed by family members of the refugee or subsidiary protection status beneficiary. Austria, Bulgaria, Cyprus, Estonia, Italy, Greece[238], Poland, Luxembourg, Hungary, Portugal, Romania, Slovakia, Slovenia and United Kingdom have ensured this by way of formal transposition; Spain and Sweden by way of pre-existing legislation; and Czech Republic, Finland, Germany and Ireland by applying both formal transposition and referring to pre-existing norms.

In other States, the provision is stated not to have been transposed, while some of the rights and benefits reportedly are available to family members (family members are said to be partially entitled to claim the same benefits as beneficiaries of refugee and subsidiary protection status). In Belgium, this latter situation is depicted by indicating no transposition concerning Article 23(2), first clause, while in the report it is stated that a partial entitlement is ensured, depending on the legislation applicable to the issue at hand.

c) Other issues

On the procedures applicable in order to grant family members these benefits (Q.33.B.II), Ireland reportedly follow the same procedure as in granting these rights to a national. In Austria, family members generally have been granted the same status as the principal beneficiary of protection, thereby being entitled to the same rights. Several legislative norms, however, foresee different allowances for family members. In Sweden, the general criterion is registration in the national register which happens automatically for beneficiaries of refugee and subsidiary protection status once they have obtained their residence permit (of a duration of minimum a year). It is the responsibility of the municipality in which the beneficiary of protection and his/her family chooses to live or are placed to address claims for benefits.

235 The national asylum law is not clear as to what is meant by the term "as long as it is compatible with their *individual status*" as included in the relevant provision transposing Article 23(1) of the Directive. There is also contradiction in the scope of family members between various national provisions.

236 The possibility of granting asylum or subsidiary protection for the purpose of family reunification (and hence maintaining family unity) exists but on a discretionary basis only.

237 Family unity is stated only for refugees.

238 Regulation.

Slovenia provides for benefits to family members through granting them an equal status to that of the principal beneficiary of protection. This can be done upon family reunification or directly.

On the question how the personal legal status of family members impact the claim for benefits, Austria, reportedly cease benefits where the relation no longer exist, e.g. marriage breaks up or a minor moves out or becomes of majority age. Independent allowances may, then, subsequently be provided for the individual.

Article 23(2), first clause: family members	
NO TRANSPOSITION AT ALL	**Belgium[239], Latvia, Lithuania**
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	**Czech Republic[240], Luxembourg[241], United Kingdom[242]**
PRACTICAL PROBLEM	

3.3.5.2.2 Article 23(2), second clause. Optional. Q. 33.B.V and VI.

a) Meaning

According to this clause, Member States may opt for defining conditions for granting benefits for family member of beneficiaries of subsidiary protection. If Member States have transposed the optional second clause of Article 23(2), they must ensure that any benefits provided guarantee an adequate standard of living.

b) Conformity of domestic legislation with the QD

The Czech Republic has transposed this provision by formally and by way of pre-existing norms. No other States apparently apply specific conditions for providing benefits (under Arts. 24-34) to family members of beneficiaries of subsidiary protection status.

3.3.5.3 Article 23(3). Mandatory. Q. 33.C

a) Meaning

Family members of the beneficiary of refugee or subsidiary protection status, who would be entitled to the rights under Article 24-34 of the Directive under Article 23(1) and (2), cannot exercise such rights if they have been or would be excluded from either protection status pursuant to Chapters III and V of the Directive.

b) Conformity of domestic legislation with the QD

The following States have transposed Article 23(3) formally: Bulgaria, Cyprus, Czech Republic, Estonia, Hungary, Portugal, and Sweden. Both means of transposition have been applied in Ireland and Slovakia.

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239 Partial entitlement to claim same benefits as beneficiaries of refugee or subsidiary protection status is reported to be ensured depending on the legislation applicable

240 The possibility of granting asylum or subsidiary protection for the purpose of family reunification (and hence maintaining family unity) exists but on a discretionary basis only.

241 Family members not mentioned in transposing law as regards Article 24

242 The immigration rules provide for equal treatment as regards travel documents and residence permits, but not as regards employment. National legislation does not expressly regulate family members' access to other benefits referred to in the Directive

In Sweden, where a family member of the principal protected person has been excluded under an individual determination procedure, s/he can have an application for a residence permit refused meaning that no other rights or benefits are available, as the permit constitutes a pre-condition for accessing such rights.

A number of other States have abstained from transposing para.3 in full or in part. This may strictly be seen as an infringement of the QD. However, in accordance with the approach set out in the Introduction, such non-transposition can here be regarded as constituting a more favourable treatment of third country nationals, and is, for the purposes of this report, not considered to be at variance with the Directive.

Article 23(3): excludable family members	
NO TRANSPOSITION AT ALL (but more favourable standard)	**Austria, Belgium, Lithuania, Slovenia, Spain, United Kingdom**
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	**Ireland**
PRACTICAL PROBLEM	

3.3.5.4 Article 23(4). Optional. Q. 33.D

a) Meaning

Benefits provided to family members of the beneficiaries of refugee or subsidiary protection status under Article 21(1) and (2) may be refused, reduced or withdrawn for reasons of national security or public order.

b) Conformity of domestic legislation with the QD

Austria, Bulgaria, Czech Republic, Estonia, Greece[243], Lithuania and United Kingdom have transposed this optional provision formally. Ireland[244] has transposed the provision by way of pre-existing norms, and Sweden by way of both means of transposition.

From the national report on Ireland it seems that the rights mentioned in Article 23(2), first clause can be refused (i.e. declared non-applicable on a discretionary basis by the relevant Minister). This seems only to be the case for family members of refugees (see footnote 77). In Austria, the basic welfare support Acts of the respective Länder, provides for different rules relating to the refusal, reduction or withdrawal of benefits for persons having been granted subsidiary protection status. This may impact allowances, housing, and food (in kind or financial), while emergency health care is guaranteed under all circumstances. Reasons for refusing, reducing or withdrawing benefits relate, *inter alia*, to severe violation of house rules (accommodation), conviction of exceptionally serious crime, resorting to serious violence, and in some Länder refusing to take up employment. For Sweden, see above under Article 23(3). In Lithuania, benefits can be refused, suspended or reduced during the period of social integration not explicitly on the ground of public order, but on the ground that the person committed administrative offences and was punished with administrative punishment, charged with criminal offence, serves imprisonment sentence or is kept in the pre-trial detention, which in fact serves for public order purposes. There is no specification in the

243 Literal transposition.

244 While benefits could be withdrawn from a family member of a refuge, it appears that this is not the case with regard to family members of individuals with subsidiary protection status. In considering the non-discrimination clause in Article 20(2) this may be seen as a legal problem in the transposition of this Directive provision.

administrative rules as to *which benefits* can be reduced. These sanctions are not applied to vulnerable individuals. The reduction of benefits is reportedly applied in the same manner for the family members and the main applicant.

Which rights are refused, reduced or withdrawn based on national security or public order? (Information in this regard is not provided for all Member States)

1. Article 24 Residence permits	Greece, Estonia, Ireland, Sweden,
2. Article 25 Travel document	Greece, Ireland, Sweden
3. Article 26 Access to employment	Greece, Ireland, Sweden
4. Article 27 Access to education	Greece, Ireland, Sweden
5. Article 28 Social welfare	Greece, Austria, Ireland, Sweden
6. Article 29 Health care	Greece, Ireland, Sweden
7. Article 30 Unaccompanied minors	Greece, Ireland, Sweden
8. Article 31 Access to accommodation	Greece, Austria, Sweden
9. Article 32 Freedom of movement with the MS	Greece, Ireland, Sweden
10. Article 33 Access to integration facilities	Greece, Sweden
11. Article 34 Repatriation	Greece, Sweden

c) Other issues

With regard to the procedures followed in Member States concerning decision on refusal, reduction or withdrawal of benefits (Q.23.D.III), Austria applies general administrative rules for the granting and refusal of benefits, which can be appealed. In Vienna, such access to appeal exists before the civil courts. Similarly, in Bulgaria, general administrative law procedures under the Administrative Code of Procedure apply. As regards Sweden, the Migration Board would initiate an investigation and make a decision on refusal, reduction or withdrawal, which can be appealed.

3.3.5.5 Article 23(5). Optional. Q. 33.E

a) Meaning

While Article 23(4) provides a means of restricting the provision of benefits to family members of beneficiaries of refugee or subsidiary protection status who do not individually qualify for such status (and who have not been or would be excluded under Article 23(3) of the Directive), Article 23(5) provides for the option of expanding the circle of family members (as defined in Article 2(h) of the Directive) to include also "close relatives who lived together as part of the family at the time of leaving the country of origin, an who were wholly or mainly dependent on the beneficiary of refugee or subsidiary protection status at that time". Hence, such family members may also be eligible for rights and benefits under Article 24-34, see Article 23(2).

b) Conformity of domestic legislation with the QD

Bulgaria, Finland, Greece, Portugal have transposed formally. Austria, Belgium, Czech Republic and Ireland have transposed this provision formally and by way of pre-existing norms. Sweden has transposed this provision by way of pre-existing norms.

c) Other issues (Q. 33.E.II)

Finland and Ireland would provide the same benefits to these family members as those provided to the primary beneficiary (refugee of beneficiary of subsidiary protection status). In Austria, the Social Welfare Acts of the Länder provides for a higher allowance to a beneficiary of refugee or subsidiary protection who is responsible for the maintaining (in the

legal sense) of, for example, children of majority age under education, parents or grand parents living with the beneficiary. Sweden includes potentially close relatives having lived with the protected person before he person left the country of origin if a special relationship of dependence exists (e.g. disease, age or support abilities).

3.3.6 Residence permits: Article 24 (Q. 34)

3.3.6.1 Article 24(1). Q.

3.3.6.1.1 Article 24(1), first clause. Mandatory .Q.34.A.I and II.

a) Meaning

This provision establishes a link between refugee status and a residence permit, stating that the latter shall be issues "as soon as possible" after the granting of the former. It is requirement to provide a validity of at least three years and the residence permit must be renewable unless compelling reasons of national security and public order otherwise require. Finally, the obligation to issue residence permits to refugees must be read in conjunction with Article 21(3) which allows Member States the option of revoking, ending or refusing to renew or grant a residence permit of (or to) a refugee to whom Article 21(2) (the exceptions to the *refoulement* principle) apply.

b) Conformity of domestic legislation with the QD

Austria, Cyprus, Czech Republic, Estonia, Finland, Greece, Portugal, Spain[245] and United Kingdom have incorporated this provision formally. Other States are reported to have transposed the provision by way of pre-existing norms (Belgium, Bulgaria, Lithuania, Slovenia, Sweden) and yet others through both methods of transposition (Germany, Ireland, Latvia, Slovakia,).

A number of States provide for residence permits with a validity of three years (Sweden) and/or more than three years (Austria, Belgium[246], Bulgaria, Finland, Hungary, Ireland, Lithuania, Slovenia, Sweden, United Kingdom).

The residence permits are renewable in Belgium, Bulgaria, Lithuania, Slovenia, Sweden and United Kingdom. In Ireland, those entitled to refugee status receive indefinite residence permits (unless status is terminated). In Austria, the status of asylum is the permanent right to entry and residence which is accorded to an alien. While a specific document proving residence permit is not issued, refugees can prove their right to residence by the formal decision on asylum.

3.3.6.1.1 Article 24(1), second clause. Optional .Q. 34.A.III

This second clause of Article 24(1), introduces the possibility of lowering the standard as to the temporal validity and the renewal of residence permits when it comes to family members of persons having been granted refugee status.

Here, Austria, Bulgaria, Ireland, Lithuania, Slovenia, Sweden and United Kingdom are reported to provide permits that are valid for three or more than three years, thereby going beyond the Directive standards.

Austria does not provide for renewability due to the permanent nature of the "residence permit", see above under Article 24(1), first clause. Slovenia does not provide for

245 Regulation.

246 While classical paper permits issued in Belgium holds a validity of only one year, these are stated gradually to be replaced by electronic plastic cards, valid for a period of five years. In addition, persons granted refugee status in Belgium are allowed indeterminate stay.

renewability as the permits are permanent. Luxembourg has reportedly omitted family members from the right to obtain a residence permit altogether. According to the national report, this is due to an erroneous reference in the legislation, which, if corrected would provide for a right of residence permits for family members of refugees of three years validity and renewable. The situation in Belgium is similar to that of refugees, i.e. renewable and with a validity of less than three years gradually being replaced by (new electronic permits holding) a validity of five years, thereby going beyond the requirements of the optional Article 24(1), second clause.

Sweden have also applied the option of lowering the number of years (to less than three), while including at the same time the option of more than three years.

Article 24(1): Residence permits for refugees and family members	
NO TRANSPOSITION AT ALL	**Luxembourg**
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	**Greece**[247]
PRACTICAL PROBLEM	

3.3.6.2 Article 24(2). Mandatory.Q. 34.B

a) Meaning

This provision establishes a link between subsidiary protection status and a residence permit, stating that the latter shall be issues "as soon as possible" after the granting of the former. It is requirement to provide a validity of at least one year and the residence permit must be renewable unless compelling reasons of national security and public order otherwise require.

b) Conformity of domestic legislation with the QD

The following States have formally transposed this mandatory provision, which sets out the obligation to issue a residence permit for beneficiaries of subsidiary protection status with a validity of at least one year and renewable: Austria, Belgium, Czech Republic, Cyprus, Bulgaria, Estonia, Finland, Ireland, Greece, Hungary, Luxembourg, Portugal, Spain, Slovakia, Slovenia, Sweden and the United Kingdom. Pre-existing norms are applied as mean of transposition in Germany and Lithuania, and both means of transposition apply in Latvia.

Beneficiaries of subsidiary protection are granted renewable permits of a validity of three years (Ireland, Slovenia) or more (Bulgaria and Hungary), while in Austria[248], the validity is one year. Sweden provides for both one year and more than one year (permanent) renewable permits.

Beyond the scope of Article 24(2), but arguably in accordance with QD preambular paragraph 29, a number of States (Austria, Bulgaria, Finland, Ireland, Lithuania, Slovenia, Sweden, United Kingdom) reportedly allow for the issue of a residence permit to family

247 The draft qualification decree provides that if two years lapse after expiration of the residence permit without the refugee having taken measures to ensure renewal (effectively has not applied for renewal), the reasons for the granting of asylum must be reviewed. The same applies to beneficiaries of subsidiary protection, if they do not apply for renewal prior to the expiration of their residence permits, or within thirty days thereafter.

248 As opposed to the situation for refugees, the one year residence permit issued to beneficiaries of subsidiary protection Austria can be renewed.

members of person granted subsidiary protection status, thereby including more favourable standards for third country nationals in their domestic legislation.

Article 24(2): Residence permits for beneficiaries of subsidiary protection	
NO TRANSPOSITION AT ALL	
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	**Greece[249], United Kingdom[250]**
PRACTICAL PROBLEM	

3.3.6.3 Issues common to Article 24(1), first and second clause, and Article 24(2)

Residence permits are to be issued "as soon as possible" after the granting of status (Q.34.C) Some States (Austria, Belgium, Slovenia, Sweden) do so from the moment of the decision on granting status. In Bulgaria, permits are issued within 30 days after the submission of an application. According to the Aliens law in Lithuania, a decision to issue temporary residence permit is valid for 3 months from the date of its' adoption, while in case of a permanent residence permit – for 6 months. Once such decision is issued the foreigner shall approach the local migration service for formalisation of such decision, thus the period from adoption of the decision and actual issuance of the permit depends on the actions of the foreigner.

Permanent residence permits can be issued in Austria, Bulgaria, Finland, Ireland, Lithuania, Slovenia, and Sweden (Q.34.D.). In some Member States (Austria, Bulgaria, Finland, Sweden), this is the case with regard to both beneficiaries of refugee and subsidiary protection status. Moreover, permanent residence permits can be issued to *family members* of refugees and beneficiaries of subsidiary protection status in Austria, Bulgaria, Finland, Slovenia, and Sweden.

Compelling reasons of national security or public order (Q.34.E) are considered in connection with the issuance of residence permits in the following States: Austria, Bulgaria, Ireland, Lithuania, Slovenia, Sweden and United Kingdom.

Austria, Bulgaria, Ireland, Slovenia, and Sweden reportedly have in place an administrative or judicial remedy for complaints with regard to the issuance of non-issuance of residence permits.

249 The draft qualification decree provides that if two years lapse after expiration of the residence permit without the refugee having taken measures to ensure renewal (effectively has not applied for renewal), the reasons for the granting of asylum must be reviewed. The same applies to beneficiaries of subsidiary protection, if they do not apply for renewal prior to the expiration of their residence permits, or within thirty days thereafter.

250 The rules permit non-renewal on grounds of: a) national security and public order; b) the final conviction exception as worded in Article 33(2) of the Geneva Convention; and c) where there are reasonable grounds for considering that the person is a danger to the security of the UK. The Directive only provides for the first of these exceptions.

3.3.7 Travel document: Article 25 (Q. 35)

3.3.7.1 Article. 25(1). Mandatory. Q. 35.A

a) Meaning

According to this provision, Member States are obliged to issue travel documents to refugees as set out in the Schedule for the Geneva Convention unless compelling reasons of national security or public order prevents this.

b) Conformity of domestic legislation with the QD

Austria, Cyprus, Estonia, Finland, Greece, Hungary, Portugal and United Kingdom have transposed this provision formally, Bulgaria, Slovakia, Spain, and Sweden have done so by way of pre-existing norms, and Czech Republic, Ireland, Latvia, Lithuania, and Slovenia have transposed formally and in reference to pre-existing norms. Ireland are reported to issue such documents only on application.

c) Other issues

A number of States (Austria, Finland, Ireland, Slovenia, Spain, Sweden) are reported to issue travel documents also to refugees who are unable to obtain such documents from the country of their lawful residence (being another one than the Members States in question). If this is not allowed for by a Member State, it may be an impediment for onwards travel on part of the refugee. A Member State discretionarily issuing a travel document to the refugee in question, regardless of whether s/he is lawfully present in the table and whether his/her refugee status formally has been verified, would, on the other hand, facilitate onwards travel for the individual. This situation relates to Article 28(1), 2nd clause of the Geneva Convention, and Member States allowing for such an approach can be said to establish more favourable standards than set out in the Directive.

d) Conclusion on Article 25(1), travel documents for refugees.

No absence of or problematic transposition have been identified.

3.3.7.2 Article 25(2). Mandatory. Q. 35.B

a) Meaning

According to this provision, Member States are obliged to issue travel documents to beneficiaries of subsidiary protection status unless compelling reasons of national security or public order prevents this.

b) Conformity of domestic legislation with the QD

Austria, Cyprus, Czech Republic, Finland, Ireland, Greece, Hungary, Poland, Slovakia, Slovenia, Sweden and United Kingdom have formally transposed this provision. Bulgaria and Estonia have transposed by way of pre-existing norms. Latvia and Lithuania has done so formally as well as in reference to pre-existing norms.

c) Other issues

Beneficiaries of subsidiary protection status are issued travel documents by Austria, Lithuania, Slovenia, and Sweden if they are unable to obtain national passports. And they are issued identity papers by, for example, Austria and Slovenia if they do not hold a travel document and regardless of the legality of their stay in the Member State.

Article 25(2): travel document for beneficiaries of subsidiary protection	
NO TRANSPOSITION AT ALL	**Spain**
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	**Estonia**[251]
PRACTICAL PROBLEM	**Austria**[252]**,Bulgaria**[253]

3.3.7.3 Issues common to Article 25(1) and (2).

Compelling reasons of national security or public order (Q.35.C) have been connected legislatively with the issue of travel documents in the following States: Austria, Bulgaria, Ireland, Lithuania Slovenia, and Sweden. The opposite is the case in Finland, Hungary, and Spain.

3.3.8 Access to employment: Article 26 (Q 36)

a) Meaning

This important provision sets out an obligation of Member States to authorise access for refugees to the labour market (para.1) and to offer employment-related education for adults, including vocational training and practical workplace experience, under the same conditions as nationals (para. 2). This obligation extends also to beneficiaries of subsidiary protection status (para.3, first clause) with the option for Member States to take into account the situation of the labour market, including for possible prioritisation of access to employment for a limited period of time to be determined in accordance with national law (para. 3, second clause). Member States are further obliged to ensure that the beneficiary of subsidiary protection has access to a post for which s/he has received an offer in accordance with the national rules on prioritisation in the labour market (para.3, third clause). As for access of beneficiaries of subsidiary protection status to employment-related education for adults, including vocational training and practical workplace experience, Member States are to ensure this under conditions they can decide themselves (para.4). Applicable legislation in Member States on remuneration, access to social security systems relating to h employed of self-employed activities and other conditions of employment shall apply (para.5).

3.3.8.1 Article 26(1). Mandatory. Q. 36.A

a) Conformity of domestic legislation with the QD

Most States have been reported to authorise access to the labour market for refugees in the manner required in Article 26(1). Some States (Cyprus, Greece, Hungary, Italy, Finland, Luxembourg, Portugal, Romania, United Kingdom) have transposed the provisions formally,

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251 An alien may receive an alien's passport in case he or she has no travel document, if s/he resides in Estonia under a residence permit and proves that s/he is unable to obtain any other travel document. In case the alien is a national of another country, the alien has to submit the consent of his or her country of nationality or prove that he is unable to obtain such consent. This could make it difficult to obtain such a travel document. We have not researched the practise of the application of this clause.

252 According to the national report, travel documents are hardly ever issued to beneficiaries of subsidiary protection in practice.

253 There is a practical problem with the recognition in other Member States of travel documents issued for subsidiary protection holders by Bulgaria. The reason is that – unlike the model in the Geneva Convention – there is no such internationally valid model for the documents of subsidiary protection holders.

while others have done so through pre-existing norms (Bulgaria, Czech Republic, Ireland, Lithuania, Poland, Slovakia, Sweden). Austria, Latvia, Spain, and Slovenia have applied both these means of transposition.

A number of States (Austria, Bulgaria, Finland[254], Hungary, Ireland, Latvia[255], Lithuania[256], Poland, Spain, Sweden) include automatically an authorisation to work in the grant of refugee status. Slovenia grants authorisation upon application to the employment service.

Article 26(1): Authorisation of refugees to engage in employed or self-employed activities	
NO TRANSPOSITION AT ALL	**Estonia [257]**
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	
PRACTICAL PROBLEM	

3.3.8.2 Article 26(2). Mandatory. Q. 36.B

a) Conformity of domestic legislation with the QD

Cyprus, Hungary, Greece, and Portugal have transposed the provision formally. Czech Republic, Ireland, Lithuania, Slovakia, and Sweden have done so through pre-existing legal norms. Austria, Finland, Latvia, Slovenia, and Spain have undertaken transposition formally and by way of pre-existing norms.

Ireland is reported to ensure the same rights and services in this regard for refugees as for nationals.

Spain has not transposed "employment related education opportunities for adults", while **Spain**, and **Slovenia** have failed to transpose the option of "vocational training and practical workplace experience". The remainder of States have transposed both elements into the national legal sphere.

Generally, it is reported that these elements of the provision are covered through diverse and often very technical legal measures (in Federal States, occasionally both on the federal and regional levels). Some national rapporteurs do not provide any further specification of the underling norms although these are in sum perceived to have ensured adequate transposition. It lies beyond the scope of this report to decide on the appropriateness of this means of transposition, as mentioned above in the Introduction (Para V.1.2(2) in reference to para. V.1.1(2)).

In Belgium, for example, the provision is stated to have been transposed through a variety of norms depending on the subject matter.[258]

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254 In Finland, asylum seekers, in fact, gain the right to work three months after they have entered the country.

255 Under Latvian law, refugees do not need a work permit.

256 No work permit is required.

257 Practice exists.

258 In the Table of Correspondence for Belgium, "in order" has been indicated as regards Article 26(2). In the national report, it is stated more specifically, that Belgium provides access for persons granted refugee status to the elements delineated in Article 26(2) on the basis of their refugee status (with a waiver of possible limitations for access based on nationality) or upon the legal residence status in the country. No further specification of the underlying norms are presented.

Article 26(2): Access for refugees to employment-related education etc.	
NO TRANSPOSITION AT ALL	**Belgium, Bulgaria[259], Estonia, United Kingdom**
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	**Slovenia, Spain**
PRACTICAL PROBLEM	

3.3.8.3 Issues common to Article 26(1) and (2). Q. 36.C

In effective ensuring implementation of Article 26(1) and (2), the following measures are, *inter alia*, reported to have been applied by Member States: Issuance of identity/ residence cards, preferably longer periods of validity (Bulgaria, Finland, Ireland, Spain, Slovenia); adoption of strategies for dealing with a lack of documentary proof of educational and professional qualifications (Austria, Finland, Hungary, Spain, Slovenia); introduction of waivers concerning conditions (laid down in rules generally applicable to the profession and to the public service) which are unduly burdensome or impossible to meet for refugees (Austria); provision of language course, particularly to ensure functional literacy (Bulgaria, Austria, Finland, Hungary, Ireland, Slovenia, Spain, Sweden).

3.3.8.4 Article 26(3). Mandatory and optional. Q. 36.D

3.3.8.4.1 Article 26(3), first and third clause. Mandatory. Q. 33.D

a) Conformity of domestic legislation with the QD

Austria, Belgium, Czech Republic, Finland, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Poland, Portugal, Romania, Slovenia, Slovakia, Spain, Sweden and the United Kingdom are reported to authorise access to the labour market for beneficiaries of subsidiary protection in the manner required in Article 26(3), first and third clause. Some States (Poland, Italy, Finland, Luxembourg, Spain, Portugal, Romania, Slovenia and the United Kingdom) have done so through actual norms of transposition, while others (Bulgaria, Czech Republic, Ireland, Lithuania, Sweden) reportedly apply pre-existing norms. In Austria and Latvia, both means of transposition have been applied.

A number of States (Bulgaria, Finland[260], Hungary, Ireland, Lithuania, Latvia, Poland, Sweden) provide the authorisation to work automatically in the grant of subsidiary protection status. The States which do not (Austria, Slovenia), reportedly grant authorisation upon application to the employment service.

259 There are no specific provisions regulating this issue, but a general rule in the asylum law stipulating that refugees have the same rights and obligations as Bulgarian citizens.

260 In Finland, asylum seekers gain the right to work after three month's stay in Finland.

Article 26(3), first clause (authorisation of beneficiaries of subsidiary protection status to engage in employed or self-employed activities), and third clause (access to a post for which the beneficiary has received an offer in accordance with the national rules of prioritisation in the labour market)	
NO TRANSPOSITION AT ALL	**Cyprus, Estonia, Romania**
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	**Belgium[261], Greece[262], Czech Republic[263], Luxembourg[264], Slovakia[265] Spain**
PRACTICAL PROBLEM	

3.3.8.4.2 Article 26(3), second clause. Optional. Q.36.D. V-VI

a) Conformity of domestic legislation with the QD

According to the national reports, Austria, Greece and Finland have transposed this provision of the QD. None of the transposing Member States reportedly seem to apply the limitations laid down in Article 26(3), second clause, concurrently with restrictions on social welfare benefits under QD Article 28(2). This is a positive observation from the point of view of the third country national.

As regards Luxembourg, the absence of a regulation instituting a prioritisation regime of the labour market is reported, although anticipated in the relevant legislation. In Poland, recognised refugees hold the same rights on the labour market as Polish nationals and the situation of the labour market is reported to have no consequence in this regard.

3.3.8.5 Article 26(4). Mandatory. Q. 36.E

a) Conformity of domestic legislation with the QD

Estonia, Greece, Hungary, Hungary, Ireland[266], Latvia, and Portugal have transposed the provision formally (while it seems none have done so literally). Austria, Czech Republic, Spain, and Sweden have done so through pre-existing legal norms, and Finland, Lithuania, and Slovenia by way of both measures of transposition. Finland and Ireland are reported to ensure the same rights and services in this regard for beneficiaries of subsidiary protection status as for refugees and nationals.

Slovenia has failed to transpose the option of "vocational training and practical workplace experience". The remainder of Member States are reported to have transposed both elements

261 In Belgium, beneficiaries of subsidiary protection status are still subject to (discretional) authorisation of access to the labour market during their initial temporary stay in Belgium. According to the national report, this is additionally the case concerning their access to self-employed activities, also beyond the initial period of temporary stay.

262 According to draft transposing legislation, beneficiaries of subsidiary protection are permitted to work *temporarily to cover their immediate needs* (more restrictive wording than that of the Directive), which in turn provides that priority in access to the labour market is given to other categories (e.g. citizens of EU countries).

263 Ambiguous and incomplete transposition, in certain cases *de facto* depriving beneficiaries of subsidiary protection from access to employment activities.

264 Article 26(3), third clause is not transposed, while reportedly this does not, in practice, generally result in problems of accessing posts for which the beneficiary of subsidiary protection status has received an offer.

265 Access to self-employment for beneficiaries of subsidiary protection unclear.

266 Regulation.

(the other one being "employment related education opportunities for adults") into the domestic legal framework.

Similarly to the observations under Article 26(2), it is in connection with Article 26(4) reported by some national rapporteurs that these elements of the provision are covered through diverse and often very technical legal measures (in Federal States, occasionally both on the federal and regional levels). Some national rapporteurs do not provide any further specification of the underling norms although these are in sum perceived to have ensured adequate transposition. It lies beyond the scope of this report to decide on the appropriateness of this means of transposition, as mentioned above in the Introduction (Para V.1.2(2) in reference to para. V.1.1(2)).

b) Other issues

Some Member States have defined conditions for beneficiaries of subsidiary protection status relating to the accessing the above mentioned training and educational activities. In Austria, eligibility for employment related training is subject to a person's "availability" on the job-market, meaning that a specific course is only paid for by the authorities if there are prospects for this leading to a job. This could be the case if an employer had stated an interest in hiring the individual or if the person has already obtained a work permit for some time.

Article 26(4): Access for beneficiaries of subsidiary protection status to employment-related education etc.	
NO TRANSPOSITION AT ALL	**Belgium[267], Bulgaria[268], Cyprus, United Kingdom**
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	**Czech Republic[269], Estonia [270], Slovakia, Slovenia**
PRACTICAL PROBLEM	**Lithuania[271]**

3.3.8.6 Article 26(5). Mandatory. Q. 36.F

a) Conformity of domestic legislation with the QD

267 While not ruling out that under issue-specific legislation, access for beneficiaries of subsidiary protection status to employment-related education etc. may result, no general measures have reportedly been taken with a view to ensure this a right or benefit in itself.

268 There are no specific provisions regulating this issue. There is the general rule in the national asylum law providing for humanitarian status holders to enjoy the same rights and obligations as foreigners with long-term residence permit.

269 Transposition of these two provisions is ambiguous and incomplete and thus in certain cases *de facto* deprives beneficiaries of subsidiary protection status from access to employed activities.

270 Under national legisleation, the recipient of international protection has the right to receive state allowances, family benefits, employment benefits, employment services and state unemployment benefits, social benefits and other assistance on the same grounds as a permanent resident of Estonia as provided by law and pursuant to the conditions and procedures established by the Government of the Republic. This means that the unemployment benefits and employment services are still available only if you have a work permit otherwise a person is not eligible for employment services (other than for registering as a job seeker) and a person is eligible for an unemployment benefit only if he/she has a work permit and has worked had a job under work permit for at least 180 days during the last 12 months. These are not equivalent conditions with nationals as nationals are not required to have work permits.

271 In practice there are problems of implementation of provision after the end of social integration period, because many legislative provisions provide these rights to permanent residents only.

Czech Republic, Estonia, Greece, Hungary, Latvia, Portugal and Slovenia have undertaken formal transposition of this provision, while Austria, Bulgaria[272], Ireland[273], Lithuania, Slovakia, Spain, and Sweden have transposed by way of pre-existing norms. In Austria, Finland, Ireland, and Sweden, once an individual is entitled to work, they are protected on an equal footing with nationals of the Member State.

Article 26(5): Applicable legislation concerning the labour market.	
NO TRANSPOSITION AT ALL	**Belgium[274], United Kingdom**
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	**Cyprus[275]**
PRACTICAL PROBLEM	

3.3.9 Access to education: Article 27 (Q. 37)

a) Meaning

Under this important and mandatory provision, Member States are required to grant full access to the education system to all minors granted one or the other protection status on an equal footing with national (para.1). In addition, all adults granted one or the other protection status shall be allowed access by Member States to the general education system and further training and retraining on an equal footing with third country nationals legally resident in the Member State In question (para.2). Finally, Member States are required to ensure equal treatment between beneficiaries of refugee or subsidiary protection status and nationals in the context of the existing recognition procedures concerning foreign diplomas, certificates and other evidence of formal qualifications (para.3).

3.3.9.1 Article 27(1). Mandatory. Q. 37.A and D

a) Conformity of domestic legislation with the QD

Greece, Cyprus, Hungary, Italy, Luxembourg, Romania, Portugal, Slovenia, and Slovakia have formally transposed this provision, and Austria, Bulgaria, Czech Republic, Estonia, Finland, Lithuania, Slovakia, Slovenia and the United Kingdom have transposed Article 27(1) by way of pre-existing norms. Ireland, Latvia, Poland, and Spain have applied both formal transposing law and pre-existing law. The norms regulating this field are to be found in refugee specific legislation (Hungary, Latvia, Poland, Slovenia) and/or general social/education norms (Hungary, Lithuania, Latvia, Poland, Slovenia, Spain, Sweden), regulations (Hungary, Lithuania, Poland), internal administrative rules (Spain), and published circular or instruction (Lithuania).

Transposing states confirm that minors granted refugee or subsidiary protection status have full access to the education system under the same conditions as nationals. The exception is Bulgaria, where the asylum law provides refugees the same rights and obligations as nationals, but only explicitly guarantees minors (in fact foreigners in general) granted

272 According general principle of internal Constitutional law, foreigners in the Republic of Bulgaria enjoy the same rights as nationals unless otherwise provided by a special law.

273 General principle of internal law.

274 Existing general legislation does not, however, differentiate according to the type of migration status.

275 For subsidiary protection there are missing regulations

subsidiary protection status a right to vocational training under the same conditions as nationals.

b) Other issues

Some Member States (Belgium, Hungary, Ireland, Lithuania, Latvia, Portugal, Poland, Spain, Slovenia, Sweden) confirm that primary education is provided free of charge and compulsory for all minors in accordance with international human rights law.

Article 27(1): Access to the education system of minors granted one or the other protection status	
NO TRANSPOSITION AT ALL	
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	**Bulgaria, Czech Republic**[276]
PRACTICAL PROBLEM	

3.3.9.2 Article 27(2). Mandatory. Q. 37.B and D

a) Conformity of domestic legislation with the QD

Greece, Cyprus, Hungary, Italy, Luxembourg, Portugal and Romania have transposed this provision formally. Bulgaria, Estonia, Finland, Czech Republic, Spain, Slovakia and Sweden have transposed Article 27(2) by way of pre-existing norms. Austria, Latvia, Ireland Poland, Slovenia have applied formal transposing law and pre-existing law.

Access for adults granted refugee or subsidiary protection status to elementary (primary) education is provided if needed (Austria, Bulgaria, Slovenia, Sweden) as is the access to the general education system under the same conditions as third country nationals (Q.37.B.I and II). This accords with the Directive.

Bulgaria, Finland, Hungary, Ireland, Poland and Sweden are reported to provide access for adults granted refugee or subsidiary protection status to the general education system under the same conditions as nationals, thereby institutionalising a more favourable standard compared to the Directive, which compares with third country nationals.[277]

b) Other issues

With regard to language courses for adults furthering early integration, Latvia states that such access apply only to refugee adults, i.e not to beneficiaries of subsidiary protection. This cannot, however, strictly speaking be said to violate the Directive provision. Austria, Bulgaria, Hungary, Ireland, Spain, Sweden generally provide for such language courses. Hungary provides for the translation for diploma as well.

Article 27(2): Access to the education system of adults granted one or the other protection status	
NO TRANSPOSITION AT ALL	**Lithuania, United Kingdom**
NO TRANSPOSITION BUT	

276 Third country nationals do not receive same treatment as nationals with regard to access to pre-school activities, several secondary education facilities as well as other school services (e.g. meal plans accommodation, education counselling etc.).

277 In Bulgaria, more favourable standards apply to refugees, but not beneficiaries of subsidiary protection whose legal position follows that of the Directive.

JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	**Latvia[278], Slovenia[279], Spain[280]**
PRACTICAL PROBLEM	

3.3.9.3 Article 27(3). Mandatory. Q. 37.C and D

a) Conformity of domestic legislation with the QD

Cyprus, Czech Republic, Portugal and Slovenia have transposed this provision formally. Austria, Estonia, Finland, Ireland[281], Slovakia and Sweden have transposed Article 27(3) by way of pre-existing norms, indicated to be located in general social/education legislation ad well as regulations. Latvia applies both formal and pre-existing norms of transposition.

Article 27(3): Equal treatment with nationals concerning recognition procedures for foreign diplomas etc.	
NO TRANSPOSITION AT ALL	**Bulgaria, Lithuania, United Kingdom**
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	
PRACTICAL PROBLEM	

3.3.9.4 Issues common to Article 27(1), (2) and (3).

The norms regulating this field are to be found in refugee specific legislation (Latvia, Poland, Slovenia) and/or general social/education norms (Austria, Bulgaria, Finland, Hungary, Ireland, Latvia, Poland Slovenia, Sweden), as well as regulations (Austria, Bulgaria, Hungary, Ireland, Poland).

3.3.10 Social welfare: Article 28 (Q 38)

a) Meaning

This provision also constitutes an important feature of the rights catalogue in Chapter VII of the Directive. Member States are compelled to ensure the necessary social assistance, as provided to nationals of the given State to beneficiaries of refugee or subsidiary protection

278 The draft Education Law currently pending in parliamentary commissions, reportedly seeks to ensure access of all adults to education, including beneficiaries of refugee or subsidiary protection status. However, the wording in this regard is held in general terms ("…equal rights to acquire education (…) shall belong to (…) citizen of third countries, who has a valid residence permit"), and it could be argued that is does not adequately specify that both QD protection statuses are included; that the specific content of QD article 27(2) on education of adults is not adequately addressed in the law; and finally that – in principle – adult beneficiaries of refugee or subsidiary protection status who are stateless seem to be excluded. While in the national report on Latvia, article 27(2) is indicated to have been adequately transposed, the above considerations point to the conclusion that a legal problem exists in relation to the transposition. For the purposes of this report this is assumed to be the case, particularly due to the omission of stateless beneficiaries of refugee and subsidiary protection status, but also due to the fact that the issue of the legal certainty of the transposition remains unresolved.

279 Refugees, beneficiaries of subsidiary protection and other aliens are subject to quotas and requirements of paying small fees.

280 Adults do not have access to elementary education.

281 General principle of internal law on non-discrimination.

status (para. 1). As regards beneficiaries of subsidiary protection status, an exception may be applied by Member States with a view to limit the social assistance provided to core benefits to be provided, then, at the same levels and under the same eligibility conditions as nationals (para.2).

3.3.10.1 Article 28(1). Mandatory. Q. 38.A

a) Conformity of domestic legislation with the QD

According to the national reports, Article 28(1) is transposed in most Member States, while Belgium is reported to have transposed the provision only partially. Czech Republic, Greece, Cyprus, Hungary, Italy, Czech Republic, Luxembourg, Poland, Portugal, Romania, and Slovenia use formal norms of transposition. Belgium, Bulgaria, and Sweden have applied pre-existing norms as a means of transposition. In Austria, Finland, Ireland, Latvia, Lithuania, Slovakia, Spain and United Kingdom, the provision is reflected in the national legal framework through transposing law as well as pre-existing law.

Austria is reported to have transposed Article 28(1), but seemingly do not provide the same social assistance as provided to nationals of the Member State. As Austria has also transposed the optional para. 2 of Article 28 (allowing for a limitation of social assistance granted to beneficiaries of subsidiary protection) this issue is dealt with below.

The content of the term "necessary social assistance" (Q.38.A.III) is different in the respective Member States and is not necessarily specifically defined in legislative provisions. In Bulgaria, for example, a generally held definition is applied, stipulating that the right to social assistance is granted to persons who because of health, age, social and other reasons beyond their control are unable by themselves, through their labour or by the incomes from property that they have or through the persons on which they are dependant, to ensure the fulfilment of their basic needs of existence. Another example is Latvia, where "necessary" is taken to mean the "necessary living expenses, as well as expenses for learning the official language" with regard to refugees, but defined only as an "allowance" with regard to beneficiaries of subsidiary protection status. In other States, it can be more specifically identified which rights can be included under the term "necessary". The below table illustrates (in a non-exhaustive manner) the differences and can be said to provide some overview of the elements included under this term, which is otherwise very diverse in nature from Member State to Member State.

The meaning of "necessary social assistance"

Type of social welfare benefit or assistance	**Member State**
Financial allowances	Austria, Czech Republic, France, Germany, Hungary, Ireland, Latvia, Lithuania, Poland, Slovakia, Slovenia, Spain, Sweden, United Kingdom
Housing (possibly including rent allowances)	Austria, Czech Republic, Finland, Germany, Hungary, Ireland, Sweden, United Kingdom
Clothing	Germany, Sweden
Assistance in job-seeking (including allowances)	Hungary, Ireland, Lithuania, Poland, United Kingdom
Health insurance/ health care	Austria, Finland, France, Germany, Hungary, Poland, Sweden
Other insurances	Sweden
Language courses (or finances for this purpose)	Hungary, Ireland, Latvia, Poland

Access to social system (designated social workers)	Hungary, Poland, Sweden
Pre-retirement allowance	Hungary, Ireland
Old age pension	Hungary, Finland, Ireland
Blind pension	Hungary, Ireland
Parental benefit (including single parent)	Czech Republic, Hungary, Ireland, Lithuania, Sweden
Widow(er)'s pension	Hungary, Ireland
Disabled-benefits	Austria, Finland, Hungary, Ireland, Lithuania
Carer's allowance	Hungary, Ireland
Other allowances to cover basic needs	Austria, Czech Republic, Hungary, Ireland, Lithuania, Slovakia, United Kingdom
Other social services (e.g. home assistance)	France, Finland, Germany, Ireland, Slovakia, Sweden, United Kingdom

Legal problems identified in the respective Tables of Correspondence relate to differentiation between refugees and beneficiaries of subsidiary protection status in the access to social welfare benefits. While – in this regard - national rapporteurs of Belgium and Lithuania have not necessarily found this to indicate (or even merit) transposition of the optional provisions in Article 28(2) concerning limitations to "core benefits" for beneficiaries of subsidiary protection, this is different as regard Latvia, see below.

Article 28(1): Necessary social assistance to refugee or beneficiaries of subsidiary protection status	
NO TRANSPOSITION AT ALL	**Estonia**
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	**Belgium[282], Czech Republic[283], Latvia[284], Lithuania[285], Slovakia[286]**
PRACTICAL PROBLEM	

3.3.10.2 Article 28(2). Optional. Q. 38.B.

a) Conformity of domestic legislation with the QD

Austria and Portugal[287] has transposed this provision formally. Slovakia has done so by way of pre-existing norms, and Latvia by way of both means of transposition.

b) Other issues

In some States (Austria, Portugal and Slovakia) having applied the possibility of limiting social assistance granted to beneficiaries of subsidiary protection, "core benefits" include, *inter alia*, basic accommodation, adequate food, pocket money, medical examination, health care and health insurance, nursing care, provision of counselling and social support, certain transportation costs including related to schooling attendance, clothing (in kind or in cash). According to the national report on Latvia, core benefits (only) are provided to beneficiaries of subsidiary protection status in that they are not eligible to receive benefits for Latvian

282 Beneficiaries of subsidiary protection do not immediately have access to "social integration", a monthly financial allowance to guarantee the minimal means of subsistence (i.e. of a more permanent and financial character than the right to "social assistance" which is an allowance or material support to guarantee life in human dignity). The right to "social integration" is open (on an equal footing with nationals) to persons granted refugee status and to permanently settled beneficiaries of subsidiary protection. Beneficiaries of subsidiary protection who have not yet permanently settled in Belgium, can apply for "social assistance".

283 Access to "material hardship benefits" for beneficiaries of subsidiary protection status is *de facto* non existent due to ambiguous and incomplete transposition.

284 Similar to the situation in Lithuania, social assistance for beneficiaries of subsidiary protection- who are granted temporary residence permits only- is not guaranteed in Latvia after the end of an initial period of 9 month, due to the fact that a number of general social provisions relate further social assistance to permanent residence. This raises the question as to whether beneficiaries of subsidiary protection status have been secured access to the mainstream social welfare system as required by article 28. Moreover, due to the 9 months limitation on social assistance to beneficiaries of subsidiary protection status, the assistance could be considered as an integration measure covered by article 33 QD rather than "necessary social assistance as provided to nationals of that Member State". The national report maintains that beneficiaries of (refugee and) subsidiary protection status enjoy the same level of social assistance as nationals in terms of the amount provided during the (12 and) 9 months period of time. The report further states that this measure does not constitute an integration measure. However, it is acknowledged in the report that the limited period of time during which assistance is afforded to beneficiaries of subsidiary protection status does constitute a legal problem with regard to the transposition. The authors of the present report agree with this conclusion.

285 Social assistance for beneficiaries of subsidiary protection not guaranteed after the end of the social integration period, as a number of general social provisions relate social assistance to permanent residence.

286 Differential treatment between beneficiaries of refugee and subsidiary protection status on the one hand and nationals on the other.

language courses, and may only receive social assistance for the duration of nine month following the grant of subsidiary protection status, as opposed to 12 months applicable to refugees. It may be disputed whether this represents access to core benefits as set out under Art. 28(2) QD.

It is interesting to note, that a number of the benefits mentioned as "core" benefits are equally mentioned by national rapporteurs when outlining the "necessary social assistance" as mentioned in the mandatory Article 28(1), see above.

Austria is reported to deviate from the requirement that such core benefits be provided on the same levels and under the same eligibility conditions as nationals. This can be seen as incorrect transposition of the provision.

Austria applies the limitation in Article 28(2) concurrently with restriction on access to the labour market under Article 26(3) for beneficiaries of subsidiary protection status.

3.3.11 Health care: Article 29 (Q 39)

a) Meaning

A Member State having granted refugee or subsidiary protection status to an individual is required to ensure that the individual has access to health care under the same eligibility conditions as nationals of the particular Member State (para.1). Similar to the system applied under Article 28 on social welfare, an exception may be applied by Member States with regard to beneficiaries of subsidiary protection status. If Member States opt for such an exception, they can limit the health care granted to core benefits which are to be provided, then, at the same levels and under the same eligibility conditions as for nationals (para.2). Member States shall provide adequate health care to beneficiaries of refugee or subsidiary protection status with special needs under the same eligibility conditions as nationals of the Member State having granted the status (para. 3).

3.3.11.1 Article 29(1). Mandatory. Q. 39.A.

a) Conformity of domestic legislation with the QD

This important provision has been formally transposed by the majority of Member States (Austria, Cyprus, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Poland, Portugal, Romania). Bulgaria, Czech Republic, Sweden and the United Kingdom have done so through pre-existing legislation, while Finland, Ireland, Spain, Slovakia and Slovenia apply both formal norms of transposition and refer also to pre-existing norms.

It is explicitly confirmed with regard to Austria, Bulgaria, Ireland, Slovenia and Sweden that beneficiaries of both refugee and subsidiary protection status are ensured access to health care on an equal footing with nationals. In Belgium, there is no general provision for these persons as such. Under general health care regulation they have access to medical aid and health care under a wide variety of assistance schemes depending on the community, irrespective of refugee or subsidiary protection status.

Article 29(1): Access to health care for beneficiaries of refugee or subsidiary protection status	
NO TRANSPOSITION AT ALL	**Estonia**
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	**Austria[288], Latvia[289], Czech Republic[290], Spain, Lithuania[291], United Kingdom[292]**
PRACTICAL PROBLEM	

3.3.11.2 Article 29(2). Optional. Q. 39.B.

a) Conformity of domestic legislation with the QD

Latvia applies both formal and pre-existing means of transposition.

In Spain, for example, "core benefits" are defined as an adequate standard of living covering the basic needs of the beneficiaries. More specifically this means, that beneficiaries of subsidiary protection status are reported to have the same access to health care as asylum seekers who do not have any means for treatment. This includes free access to the public health care system in case of emergency for women during pregnancy and childbirth, and for all minors. Reportedly, this applies also to nationals of this Member State.

3.3.11.3 Article 29(3). Mandatory. Q. 39.C.

a) Conformity of domestic legislation with the QD

The following countries have reportedly transposed this provision by way of formal norms of transposition: Cyprus, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Spain, Portugal, Romania, Slovenia. Austria and Sweden applies pre-existing legislation, while in Finland, Ireland, Poland, and Slovakia reference is made to formal, transposing norms as well as through pre-existing norms.

In the table immediately below, it is illustrated which of the groups with special needs specifically mentioned in Article 29(3) are included under the national legal framework of the respective Member States. This does not mean that other groups - not specifically mentioned would not be covered by general legislation in Member States.

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288 Hospital acts in Austrian Federation and most Länder is reportedly not brought in line with transposing law, meaning that refugees and beneficiaries of subsidiary protection status may be asked to refund costs related to hospitalisation.

289 Family members of refugees and beneficiaries of subsidiary protection cannot receive medical treatment free of charge.

290 Access to health care for beneficiaries of subsidiary protection status is significantly impeded and in certain cases even *de facto* non-existent. This qualifies as a legal problem, as the transposition via cross-reference to general law reportedly does not work.

291 A problem is indicated here, as health care insurance is applied within social integration period, but after the end of this period, beneficiaries of subsidiary protection face problems, they are only entitled to state paid indispensable medical assistance or receive services only if they work and are thus insured. However, vulnerable groups are covered by the Law on Health Insurance securing access to health care of all levels free of charge. See also below on Art. 29(3).

292 The regulations only treat refugees, and not persons with subsidiary protection, on an equal footing with nationals.

Groups with specials needs to be ensured adequate health care on equal footing with nationals

1. Pregnant women	Austria, Finland, France, Germany, Greece, Hungary, Ireland, Lithuania, Luxembourg, Slovakia, Slovenia, Spain
2. Disabled people	Austria, Finland, France, Germany, Hungary, Ireland, Lithuania Luxembourg, Romania, Slovakia, Slovenia,
3. Elderly people	Finland, France, Germany Ireland,, Romania, Slovenia, Spain
4. Persons having undergone torture, rape or other serious forms of psychological, physical or sexual violence	Greece, Hungary, Ireland, Luxembourg, Slovenia, Spain
5. Persons having been subjected other cruel, inhuman, or degrading treatment or punishment	Greece, Hungary, Luxembourg, Slovenia,
6. Persons having been subjected to gender related persecution or serious harm	France, Slovenia, Romania
7. Minors having been victims of any from of abuse, neglect, exploitation, torture, cruel, inhuman or degrading treatment or punishment	Finland, France, Greece, Lithuania, Luxembourg, Slovenia,
8. Minors who have suffered from armed conflict	Greece, Luxembourg, Slovenia,
9. Other	Hungary, Ireland, Lithuania, Spain, Romania

"Adequate health care" is defined in some of the Member States having transposed this provision: Austria, define this term as medical treatment being satisfactory and appropriate but not exceeding what is necessary. It must re-establish, strengthen and improve health, ability to work and the ability to care for one's vital personal needs as far as possible. Sweden defines this as being of high standard and satisfy the patient's need for security, be easily accessible, based on respects for the patient's right to self-determination and integrity, and promote good communication between the patient and the health and medical care personal. Slovenia adopts a definition in the vein of urgent medical assistance, basic health insurance, additional health insurance and extra health insurance, enabling a person to ensure him/herself different scopes of medical services, medicines and instruments.

Article 29(3): Adequate health care to beneficiaries of one or the other protection status with special needs	
NO TRANSPOSITION AT ALL	**Bulgaria, Estonia, Czech Republic[293], United Kingdom**
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	**Latvia[294], Lithuania[295], Romania[296], Ireland[297], Spain**
PRACTICAL PROBLEM	

3.3.11.4 Issues common to Article 29(1),(2) and (3), health care.

Concerning Austria, Belgium, Bulgaria, Ireland, Latvia, Lithuania, Sweden and the united Kingdom the norms regulating health care issues (and transposing Article 29) can be found in general legislation pertaining to health and medical service, and on part of some States in regulations within this field.

3.3.12 Unaccompanied minors[298]: Article 30 (Q 40)

3.3.12.1 Definition of "unaccompanied minors" as laid down in Article 2(i). Q. 40.A.

Austria, Bulgaria, Hungary, Latvia, Lithuania[299] and Sweden are reported to apply this definition. Conversely, Belgium, Estonia, Finland, Germany, Ireland, Poland[300], Slovakia, Slovenia and United Kingdom reportedly have not transposed the Directive definition in this area. However, Finland and Slovenia reportedly apply the definition in practice. The remainder of States can possibly be said to violate the Directive in this regard, unless a more inclusive definition is applied, thereby arguably constituting a more favourable standards for the third country national or stateless person of minority age. Austria distinguishes between unaccompanied refugee minors and minors granted subsidiary protection status.

3.3.12.2 Article 30(1). Mandatory. Q.40. B

a) Meaning[301]

Article 30 concerns the specific needs of unaccompanied minors. According to Article 30(1), Member States are required to provide as soon as possible after the granting of status for the necessary representation of the unaccompanied minor to ensure that the minor's needs are duly met in the enforcement of the provisions of the Directive.

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293 Simple practice only.

294 No specific reference in legislation. Practice limited.

295 Vulnerable groups are covered by the Law on Health Insurance securing access to health care of all levels free of charge. However, after the period of social integration, a few groups such as persons with disabilities and torture victims may face problems in accessing adequate health care if they hold only temporary residence.

296 All categories of persons with special needs are not included in national law.

297 Special needs groups not mentioned for refugees but only beneficiaries of subsidiary protection.

298 Occasionally, the acronym "UAM" is applied.

299 Lithuania does not recognise guardianship by custom.

300 The definition applied in Poland, however is very similar, omitting only the phrase "for as long as they are not effectively taken into the care of such a person".

301 See largely the explanatory comment (Commentary on Articles) to the Commission proposal on (then) Article 28; COM (2001) 510 final, 2001/0207 (CNS).

b) Conformity of domestic legislation with the QD

Estonia, Cyprus, Greece, Italy, Luxembourg, Portugal, Romania, and Slovenia are reported to have adopted formal transposing norms, while Austria, Belgium, Bulgaria, Czech Republic, Ireland, and Slovakia rely on pre-existing norms. Finland, Hungary, Latvia, Lithuania, Poland, Spain, and Sweden have transposed the provision by adopting a transposing law and relying also on pre-existing norms.

The measures to ensure representation of UAMs are multiple: For example, in Austria, representation from the asylum procedure onwards by the youth welfare authority, alternatively a foster family or NGOs accommodating the UAM. In Ireland, the Health Service Executive constitutes the representative responsible for the safety and well-being of the UAM, and appoints in this regard a responsible social worker. In Sweden, a custodian is appointed upon entry into Sweden of the UAM, and upon the granting of status, a (legal) guardian is appointed by the Social Board.

Representation of the UAM is specifically ensured by way of national (refugee specific and/or general social) legislation in Austria, Bulgaria, Ireland, Lithuania, Poland[302], Slovenia, and Sweden, and by regulations (Ireland), or by publicised circular or instruction (Lithuania).

The term "as soon as possible" is not included in the transposing norms in Bulgaria, Ireland and Slovenia.

c) Other issues

In Austria, Ireland and Sweden, the appointment of guardian or other representative is coordinated with measures taken before the granting of refugee or subsidiary protection status.

Article 30(1): Guardianship or other representation of unaccompanied minors	
NO TRANSPOSITION AT ALL	**United Kingdom**
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	**Bulgaria[303], Latvia[304],Lithuania[305]**
PRACTICAL PROBLEM	**Ireland[306]**

3.3.12.3 Article 30(2). Mandatory. Q. 40.C.

302 UAM refugees are treated as Polish nationals with regard to the appointment of a guardian and legal representative.

303 General social legislation applies, which does not take into account the specific situation of unaccompanied minors in need of international protection. The national asylum law states an obligation to appoint a legal guardian where the minor has no legal guardian, and hence s/he is to be represented in the RSD procedure. There is, however, no regulation for representation outside the RSD procedure. The Law on Child Protection stipulates that the Social Assistance Directorates *can* (not "shall") represent minors in cases prescribed by a legislative act.

304 Relevant national legislation stipulates as a mandatory component of the procedure relating to unaccompanied minors (including minor refugees or beneficiaries of subsidiary protection status) that information concerning the child be communicated to the authorities of his or her country of origin. However, national legislation does not specify any guarantees (including on confidentiality) surrounding such procedures. Therefore the transposition may be seen as legally problematic.

305 Partial transposition as permanent guardianship not being assigned.

306 The general State social services in Ireland take care of the refugee /subsidiary protection status UAM, but there are some concerns fro refugee NGOs about this system.

a) Meaning[307]

This provision obliges Member States to ensure that the minor's needs are duly met in the implementation of the Directive by the appointed guardian or representative. Moreover, 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 – importantly - provided for in this paragraph.

b) Conformity of domestic legislation with the QD

In Greece, Hungary, Italy, Latvia, Lithuania[308], Luxembourg, Portugal, and Romania, formal transposing norms have been adopted. In Austria, Belgium, Czech Republic, Ireland, Poland, Slovenia, Slovakia, Sweden and the United Kingdom the transposition is stated to have been undertaken through pre-existing norms on the issue of unaccompanied minors. Finland and Spain apply both formal means of transposition and pre-existing norms.

In Austria, regular assessments as regards accommodation with foster families have to be carried out, children's homes need authorisation and are under the supervision of the your welfare body, which also have to look into any complaint of neglect etc. In Poland, reporting procedures are in place to ensure the minor's needs are met by the appointed guardian or representative, complete with assessments by independent bodies. In Ireland, the responsible body would hold regular meetings regarding the UAM, but NGOS have reportedly expressed concern about the adequacy of the system. In Slovenia, the legal representative of the UAM are to send an annual report to the Centre for Social Work, which can ultimately relieve a representative from his/her duties, should there be reasons therefore.

Article 30(2): Meeting the minor's needs by the appointed guardian or representative	
NO TRANSPOSITION AT ALL	**Bulgaria, Cyprus, Estonia**
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	**Greece[309], Latvia[310], Luxembourg[311]**
PRACTICAL PROBLEM	**Czech Republic[312], Lithuania[313], Ireland[314]**

3.3.12.4 Article 30(3). Mandatory. Q. 40.D.

a) Meaning

307 See largely the explanatory comment (Commentary on Articles) to the Commission proposal on (then) Article 28; COM (2001) 510 final, 2001/0207 (CNS),

308 Circular.

309 Last sentence of Article 30(2) has not been transposed.

310 See above, under Art. 30(1) QD.

311 Last sentence of Article 30(2) not transposed. ("The appropriate authorities shall make regular assessments").

312 The practice of appointment of guardians is problematic *in general* in the Czech Republic.

313 In practice, it is not clear how regular assessments are made.

314 Practical problem relate to the implementation of the Child Care Act, 1991. It is the function of the Health Services Executive to promote the welfare of children in its area who are not receiving adequate care and protection. In practice, each child would be given a social worker who would, in theory, see to his/her needs. The HSE also has a duty to reunite a child with his/her family if it is in the best interests of the child. Section 36 of the 1991 Act states that the HSE is under a duty to provide for and to maintain the minor through the provision of accommodation be it with a foster family or within residential care.

This provision delineates four different options for placement of unaccompanied children having been granted one or the other protection status. States shall place UAMs in one of these placement opportunities taking into account – on a mandatory basis – the views of the child relative to the age and degree of maturity of the child in question.

b) Conformity of domestic legislation with the QD

In Bulgaria, Cyprus, Estonia, Finland, Greece, Hungary, Italy, Luxembourg, Latvia, Portugal, Romania, and Slovenia formal transposing norms have been adopted. Austria and Lithuania, [315] apply both formal norms and pre-existing norms as a means of transposition. In Belgium, Poland, Czech Republic Slovakia, Spain and Sweden, the transposition is stated to have been undertaken through pre-existing norms on the issue of unaccompanied minors. As a result of the transposition, Ireland, Latvia, and Poland have reportedly taken adequate steps to ensure appropriate placements of UAMs granted refugee or subsidiary protection status. In this regard, the below table provides an overview of where UAMs are generally placed in the respective Members States:

Placement of UAMs

Type of placement	**Member State**
1. With adult relatives	Austria, Bulgaria, Czech Republic, Estonia, Finland, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Poland, Slovakia, Slovenia, Sweden
2. With a foster family	Bulgaria, Czech Republic, Estonia, Greece, Italy, Ireland, Latvia, Lithuania, Luxembourg, Poland , Slovakia, Slovenia, Sweden
3. In centres specialised in accommodation for minors	Austria, Bulgaria, Czech Republic, Estonia, Finland, France, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Poland, Slovakia, Slovenia, Sweden
4. In other accommodation suitable for minors	Bulgaria, Czech Republic, Greece, Italy, Luxembourg, Slovenia

With regard to the modalities and criteria applied in the context of placing unaccompanied minors, Ireland is reported to operate, *inter alia* with specialised hostels for UAMs. Austria generally accommodates UAMs with their relatives, even if they are not close relatives, but also in specialised accommodations centres of different types, which the minor cannot him/herself choose. In Bulgaria, the asylum law states that unaccompanied minors who have received status shall be placed either with adult relatives or with a foster family or in specialized centres or in other places with the adequate conditions.

As to whether the view of the child is taken into account in accordance with his/her age and degree of maturity, it is reported that the views of the minor in placing him/her in a foster family be taken into account only when the minor is older than 10 years of age (Austria) or in accordance with his or her age and degree of maturity (Bulgaria).

315 Circular.

Article 30(3): Placement of unaccompanied minors	
NO TRANSPOSITION AT ALL	**United Kingdom**
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	
PRACTICAL PROBLEM	**Ireland**[316]

3.3.12.5 Article 30(4). Mandatory. Q. 40.E.

a) Meaning

This paragraph provides for siblings to as far as possible be kept together, taking into account the best interest of the minor concerned and in particular his/her age and degree of maturity. It further stipulates that changes of residence of UAMs shall be kept to a minimum.

b) Conformity of domestic legislation with the QD

In Estonia, Cyprus, Greece, Hungary, Italy, Lithuania, Latvia, Luxembourg, Portugal, Romania, and Slovenia, formal transposing norms have been adopted.[317] In Ireland, Poland, Slovakia and Sweden, pre-existing law is the transposing mechanism, and in Finland both means of transposition are applied.

c) Other issues

With regard to the circumstances in which the place of residence of the UAM can be changed (Q. 40.E.I), it is reported – by way of example - that in Poland, such change is generally not allowed for, one exception being the realisation of family unity. In Hungary UAM's place of accommodation can only be altered exceptionally and the unity of the family shall be ensured by the joint, identical placement of brothers and sisters. In Ireland, siblings are kept together as long as it is in their interest. Here, no published procedures reportedly are in place under which the residence of an UAM may be changed. While no specific regulation on this is found in Sweden, it is that the change of residence is to be avoided and that unity among siblings is implied in the obligations of the Swedish authorities to ensure a secure and good environment for UAMs.

The criteria for placing the UAM in a residence different from that of their siblings (Q.40.E.II) include according to the information available principally the best interest of the child (Ireland, Poland, Sweden), meaning that siblings cannot be separated unless the best interest of the child otherwise dictates.

Article 30(4): Change or residence, placement of siblings	
NO TRANSPOSITION AT ALL	**Austria, Belgium, Bulgaria, Czech Republic**[318]**, United Kingdom**
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	**Slovenia**[319]

316 NGO refugee groups have expressed concerns about the care of UAMs suggesting that care is of much lesser standard than that provided to Irish children in need of assistance.

317 Limited practice is provided as the reason for lack of information on the circumstances under which the residence of an UAM cab be changed, including information on the procedures in this regard.

318 Simple practice.

319 Second clause of Article 30(4) is not transposed.

PRACTICAL PROBLEM	

3.3.12.6 Article 30(5). Mandatory. Q.40.F.

a) Meaning[320]

This paragraph concerns the obligation of Member States to trace – as soon as possible - relatives of the unaccompanied minor having been granted one or the other protection status. The principle of confidentiality applicable to such efforts, as far as they are in the best interest of the child, is also mentioned as an obligation on the Member State.

b) Conformity of domestic legislation with the QD

Bulgaria, Cyprus, Greece, Hungary, Spain, and Romania have transposed formally by way of regulation, while Austria, Italy, Czech Republic, Luxembourg, Portugal, and Slovenia have done so by way of law. Ireland, Latvia, and Slovakia have transposed this provision by way of pre-existing legislation. Finland, Lithuania, and Sweden reportedly use both formal transposing law and reference to pre-existing norms.

Concerning the nature of the efforts to trace family members of UAMs, it is reported on Latvia, and Slovenia that such efforts do not take place prior to the granting of either of the protection statuses. In Poland, on the other hand, tracing is only referred to – both in the current and the draft law - as a matter concerning asylum seekers, but not as a measure applicable to the situation of UAMs having been granted refugee or subsidiary protection status (which leads to the conclusion for the national rapporteur that transposition is not met). In Lithuania, tracing of family members of unaccompanied minor should start before granting of refugee or subsidiary protection status, as soon as the Migration Department receives information about such a minor. This is an obligation of the Department, which pursuant to legislation has to be started without delay. Furthermore, the Order on Examination of Asylum Applications envisages that public officials examining asylum applications of unaccompanied minors, shall contact different Lithuanian and foreign institutions (except institutions of the country of origin) with a view of tracing the place of residence of the parents or other close family members of the minor, if this is not in conflict with the best interests of the child. Austria, Ireland and Sweden initiate tracing during the status determination procedure. Cooperation with NGOs, such as the Red Cross societies are generally reported to take place albeit to a varying degree. Slovenia may also contact UNHCR.

320 See largely the explanatory comment (Commentary on Articles) to the Commission proposal on (then) Article 28; COM (2001) 510 final, 2001/0207 (CNS).

Article 30(5): tracing of family members of unaccompanied minors	
NO TRANSPOSITION AT ALL	**Belgium, Poland, Estonia, United Kingdom**
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	**Austria[321], Bulgaria[322], Latvia[323], Slovakia[324], Slovenia[325]**
PRACTICAL PROBLEM	**Ireland[326]**

3.3.12.7 Article 30(6). Mandatory. Q. 40.G

a) Meaning[327]

To properly meet the needs of unaccompanied minors having been granted refugee or subsidiary protection status, Member States are required to ensure that staff working with UAMs receive appropriate training concerning their needs. This provision must be transposed.

b) Conformity of domestic legislation with the QD

Cyprus, Greece[328], Luxembourg Lithuania[329], Portugal, Romania, and Slovenia have transposed this provision formally. Austria, Czech Republic, Finland, Ireland and Poland have transposed by way of pre-existing norms. Slovakia has reportedly transposed by way of a pre-existing general principle of internal law. In Sweden, the training obligation is regulated by way of a decision taken by the Government directed to the Migration Board.

321 The Vienna Basic Welfare Support Act does not refer to tracing of family members at all, and the acts of the other eight Länder do not specifically mention tracing of the family members of beneficiaries of refugees and subsidiary protection.

322 The national asylum law provides for tracing in the context of the family reunification procedure initiated by the foreigner. There is no specific provision concerning the cases in Article 30 (5).

323 As mentioned above under Art. 30(1) QD, relevant Latvian legislation stipulates as a mandatory component of the procedure relating to unaccompanied minors (including minor refugees or beneficiaries of subsidiary protection status) that information concerning the child be communicated to the authorities of his or her country of origin. However, national legislation does not specify any guarantees (including on confidentiality) surrounding such procedures. Therefore the transposition may be seen as legally problematic

324 As regards confidentiality, there is an obligation for employees to preserve confidentiality on issues, the employee learned while executing work, but there is a cumulative condition for preserving confidentiality as employees are obliged to preserve confidentiality about facts, which cannot be communicated to other persons because it is in the interest of employer, not the beneficiary.

325 Second clause of Article 30(5) is not transposed.

326 The Irish Red Cross handles family tracing. However it has limited resources, it has no interpreter facilities and no 'detailed child-centred tracing methodology in place'. The HSE/social worker will make the application on behalf of the child and according to the UNHCR the child has no contact with the Red Cross. Tracing, with the help of an outside agency, like the Red Cross, is needed and should be kept totally separate from the status determination procedures. Tracing is to be avoided if it would be contrary to the best interests of the child or jeopardise the fundamental rights of those being traced. UNHCR.

327 See largely the explanatory comment (Commentary on Articles) to the Commission proposal on (then) Article 28; COM (2001) 510 final, 2001/0207 (CNS).

328 Regulation.

329 Circular.

Article 30(6): Training of staff	
NO TRANSPOSITION AT ALL	**Belgium, Bulgaria, Latvia, Hungary, Italy, Estonia, United Kingdom**
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	**Finland**[330]
PRACTICAL PROBLEM	**Ireland**[331]

3.3.13 Access to accommodation: Article 31. Mandatory. (Q 41)

a) Meaning

Housing is considered a key right of refugees and beneficiaries of subsidiary protection status. Member States are obliged to provide access to accommodation for both groups under equivalent conditions as other third country nationals legally resident in the territory of a Member State.

b) Conformity of domestic legislation with the QD

Austria, Cyprus, Estonia, Hungary, Luxembourg, Portugal, Romania, and Slovenia have transposed formally by way of law, Greece has transposed formally by way of regulation, and Lithuania through a circular. In Belgium, Bulgaria and Spain, the transposition is stated to have been undertaken through pre-existing norms. The Czech Republic, Finland, Ireland, Poland, Slovakia, Sweden and United Kingdom have transposed this provision by adopting transposing legislation and referring also to pre-existing law.

The transposing norms are to be found in refugee-specific law (Austria, Czech Republic, Finland, Ireland, Poland, Slovakia, Slovenia, Spain and Sweden) and/or in legislation within the field of housing (Austria, Belgium, Czech Republic, Finland, Ireland, Lithuania, Poland, Slovakia, Spain, Sweden). Slovenia also applies regulations, and Lithuania applies publicised circular and instruction.

c) Other issues

Austria, Ireland, Latvia, Poland, and Slovenia are reported to include more favourable standards, in reference to Article 21 of the Geneva Convention and with a view to accord with standards contained in international human rights instruments on accommodation and housing. In Ireland, this is the case, as access to accommodation is provided on the same basis as for nationals and not only other third country nationals legally resident in the territory.

330 Only general training for the staff of social institutions is provided for under Finish legislation, while no transposition of a specific training requirement for those working with unaccompanied minors has been transposed.

331 There is no formal training system of staff working with unaccompanied minors. The Irish Refugee Council have noted that practice and staff competence in this area varies from exceptionally good to less than desirable.

Article 31: Access to accommodation for beneficiaries of one or the other protection status	
NO TRANSPOSITION AT ALL	**Latvia**[332]
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	**Bulgaria**[333]**,Slovenia**
PRACTICAL PROBLEM	**Czech Republic**[334]

3.3.14 Freedom of movement within the Member State: Article 32. Mandatory. (Q 42)

a) Meaning

This provision stipulates that freedom of movement to beneficiaries of refugee or subsidiary protection status must be allowed by Member States within the territory. However, this right is subject to the same conditions and restrictions as may be applicable to other third country nationals legally resident in the territories of the Member States.

b) Conformity of domestic legislation with the QD

Austria, Cyprus, Estonia, Greece, Hungary and Portugal have transposed this provision formally. Finland, Ireland, Lithuania, and Slovakia have transposed this provision formally and also in reference to pre-existing norms, while Bulgaria, Czech Republic, Slovenia, Spain and Sweden have applied pre-existing norms only.

Greece retains a reservation to the Geneva Convention concerning freedom of movement of refugees, whihc may be considered a violation of the Directive. In practice, however, no restrictions have been reported to apply. More favourable standards have been transposed in some Member States, for example as regards freedom of movement equal to that of nationals (Austria, Bulgaria[335], Finland, Ireland, Slovenia, Spain).

c) Other issues

According to domestic legislation in Austria, Bulgaria, Ireland, Lithuania[336], Slovenia, Spain and Sweden, beneficiaries of refugee and subsidiary protection status have the right to choose their own place of residence, while this is not the case in Austria concerning subsidiary protection beneficiaries.

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332 Under general housing legislation and practice, however, no distinction is made as regards beneficiaries of both protection statuses and nationals. Therefore, while it is reported that the provision is not transposed, in practice, this may not constitute a violation of the content of Article 31

333 There is no mandatory refugee-specific regulation. One shall apply the principles of the national refugee law that refugees have the rights and obligations of Bulgarian citizens and humanitarian status holders have the rights and obligations of foreigners with long-term residence permits.

334 In practice, the access to housing for beneficiaries of subsidiary protection status has been seriously impeded

335 General principle of internal law: What is not forbidden is considered to be allowed: There are no limitations stipulated in law.

336 There is in principle the right to choose residence for refugees and beneficiaries of subsidiary protection if they are responsible for their own accommodation. However, while in the integration programme, they do not have real chance to choose given that accommodation is found and paid by the authorities. There is usually a preference by the authorities to accommodate foreigners in the regions rather than in bigger cities, where employment and integration possibilities are more viable.

Article 32:	
NO TRANSPOSITION AT ALL	**Latvia, United Kingdom[337]**
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	
PRACTICAL PROBLEM	

3.3.15 Access to integration facilities: Article 33 (Q 43)

3.3.15.1 Article 33(1). Mandatory. Q. 43.A

a) Meaning

With regard to refugees, Article 33(1) of the Directive sets out an obligation on Member States to make provision for appropriate integration programmes or create pre-conditions which guarantee access to such programmes, all with a view to facilitate integration of refugees into society.

b) Conformity of domestic legislation with the QD

Austria, Cyprus, Czech Republic, Hungary and Portugal have transposed this provision formally. Bulgaria, Finaland, Greece, Lithuania and Sweden have transposed this provision by way of pre-existing norms[338], and Slovakia, Slovenia, Spain and the United Kingdom by way of both means of transposition.

Examples of integration efforts in various Member States include:

- In Ireland, the Reception and integration Agency is the government body responsible for the integration of beneficiaries of refugee and subsidiary protection status, and assist in accessing health educational, housing and employment rights. The body, however, is a non-statutory body (no legal instrument establishing its competencies), and the integrating programmes are regulated by practice only.
- In Austria and Slovenia, the integration programme for refugees would include elements such as language courses, basic and advanced training courses, introduction to culture and history of the Member State and other elements.
- In Bulgaria, The asylum law contains provisions with regard to integration of refugee and humanitarian status holders stipulating education in Bulgarian language, professional qualification and other activities necessary for the integration of foreigners seeking asylum or who have received protection in Bulgaria; that integration centres are founded and closed by the Council of Ministers after a proposal made by the head of the State Agency for Refugees; that the State Agency for Refugees, in cooperation with municipal organs, the Bulgarian Red Cross and other NGOs, assists the integration of persons who have been recognized to be in need of international protection; and that the State Agency for Refugees elaborates or participates in the elaboration of integration programmes. Practical assistance for the

337 Freedom of movement as such is not in fact regulated by national law for any category of person. Therefore, in practice, individuals are entitled to freedom of movement in the absence of any legislation restricting it.

338 Regulation.

basic needs of newly-recognized refugees and humanitarian status holders is provided by the Integration Programme carried out by the Bulgarian Red Cross and funded by UNHCR.

- In Lithuania, integration programmes for foreigners are generally lacking, but there is a specially developed integration system for refugees, beneficiaries of subsidiary protection and temporarily protected persons. This system is regulated by the Social Integration Order and is financed mostly by the state or municipalities. Some funding through separate projects also comes from the European Refugee Fund. Social integration may last for the maximum of 18 months, while for vulnerable persons – up to 60 months. Social integration support covers: Language courses, education, employment, accommodation, social security, health care, public awareness about integration of foreigners.

Article 33(1):	
NO TRANSPOSITION AT ALL	**Estonia, Latvia**
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	**Bulgaria[339], Ireland[340], United Kingdom[341]**
PRACTICAL PROBLEM	

3.3.15.2 Article 33(2). Optional. Q.43.A.

a) Meaning

With regard to beneficiaries of subsidiary protection status, Article 33(2) of the Directive sets out an obligation on Member States to provide access for these individuals to such programmes, to the degree that the Member States find it appropriate. Due to the "appropriateness-clause" included in the provision, it is determined to be optional.

b) Conformity of domestic legislation with the QD

Czech Republic, Hungary, Slovakia, Slovenia, and Portugal have implemented this optional provision formally. Bulgaria, Estonia, Lithuania and Sweden have implemented it by way of pre-existing norms. United Kingdom has applied both means of transposition.[342]

Estonia does not provide for integration programmes for refugees. Austria and Ireland do not provide for integration programmes for beneficiaries of subsidiary protection. In Ireland, however, this may be the case formally (there is no legislative right for (refugees and) beneficiaries of subsidiary protection to access integration programmes) but in practice, both protection groups would be able to access integration facilities. In Austria, benefits from the Austrian Integration Fund may also, however, be granted to beneficiaries of subsidiary protection status. As regards Bulgaria, a problem reportedly exists as legal regulation is scarce and does not guarantee sustainability of integration programmes.

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339 The problem consists in the fact that legal regulation is scarce and does not guarantee sustainability of integration programmes. Their existence depends on ad hoc initiatives and funding.

340 See body text above.

341 The law provides only for integration loans to be made to refugees and persons with subsidiary protection, but not for other integration measures. Dependants are not defined consistently with the Directive

342 See footnote 338.

3.3.16 Repatriation: Article 34. Optional. (Q. 44).

a) Meaning

This optional provision of the Directive, allows for Member States to provide assistance to beneficiaries of refugee or subsidiary protection status who wish voluntarily to repatriate to their country or origin or former habitual residence.

b) Conformity of domestic legislation with the QD

Austria[343], Estonia, Hungary, Slovenia, and Poland have transposed this provision formally, while others (Finland, Slovakia, Sweden) have done so through pre-existing norms.

Sweden, provides an allowance in this regard to the principal person, spouse, unmarried partner or other close relative, all on the condition that s/he lacks the means for repatriating and can document s/he be received in the country of repatriation. Slovenia covers costs as necessary and provides necessary information and organisational assistance. In Ireland, while no legislative right exists as of yet within this area, in practice beneficiaries of both refugee and subsidiary protection status would receive assistance from the government in repatriating.

3.3.17 Rights granted to refugees whose status has been revoked, ended or not renewed for the reasons mentioned in Article 14(4) or (5): Article 14(6). Conditionally mandatory. (Q 27)

a) Meaning

This provision obliges Member States having opted for transposition of Article 14(4) and (5) to provide refugees whose status has been terminated or not granted for the reasons mentioned in the provisions themselves with certain basic rights as included under the Geneva Convention. Such persons include those who for one or the other reason cannot be returned to their country of origin or former habitual residence. Article 14(6) can be said, therefore, to establish a regime of so-called "tolerated status".

b) Conformity of national legislation with the provision

Czech Republic, Cyprus, Estonia, Germany, Hungary, Ireland[344], Luxembourg, Romania, Poland, Portugal, Slovakia, Slovenia, Spain, and Sweden are indicated to have transposed Article 14(6) with regard to persons to whom Article 14(4) or (5) apply. In some States (Czech Republic, Hungary, Ireland, Slovakia, Slovenia) all of the Geneva Convention rights mentioned in Article 14(6) apply, while in Spain partial application is ensured only. The Member States belonging to the latter category may be said to be in contravention of the Directive.

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343 Not applicable to beneficiaries of subsidiary protection.

344 By way of general principle of internal law. These rights guarantee general principles of constitutional rights and justice which would apply to all persons on the territory of the State. The prohibition of refoulement is protected by section 5 of the Refugee Act 1996.

Geneva Convention rights applicable under Article 14(6)

1. Article 3 GC: Non-discrimination	Czech Republic, Estonia, Germany, Hungary, Ireland, Luxembourg, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden
2. Article 4 GC: Religion	Czech Republic, Estonia, Germany, Hungary, Ireland, Luxembourg, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden
3. Article 16 GC: Access to courts	Czech Republic, Estonia, Germany, Hungary, Ireland, Luxembourg, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden
4. Article 22 GC: Public education	Czech Republic, Estonia, Germany, Hungary, Ireland, Luxembourg, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden
5. Article 31 GC: Non-penalisation of refugees for unlawful entry/presence in country of refuge	Czech Republic, Estonia, Germany, Hungary, Ireland, Luxembourg, Portugal, Romania, Slovakia, Slovenia, Sweden
6. Article 32 GC: Expulsion	Czech Republic, Estonia, Germany, Hungary, Ireland, Luxembourg, Portugal, Romania, Slovakia, Slovenia, Sweden
7. Article 33 GC: Prohibition of expulsion or return ("*refoulement*")	Czech Republic, Estonia, Hungary, Ireland, Luxembourg, Portugal, Romania, Slovakia, Slovenia, Sweden
8. Other	Hungary, Romania[345], Slovenia

A number of States (Finland, France, Greece, Italy, Poland) have not transposed the optional Articles 14(4) and 14(5), thereby rendering transposition of Article 14(6) superfluous. Sweden, has, however, transposed Article 14(6) in pre-existing law without transposing Article 14(4) or Article 14(5).

Some States, which have not transposed Article 14(6), have indeed transposed either Article 14(4) and/or 14(5). They are Austria, Belgium, Bulgaria, Czech Republic, Latvia, Lithuania and the United Kingdom. This can be said to constitute a violation of the Directive do to the fact that 14(6) sets out mandatory conditions for the treatment of persons to whom Article 14(4) or 14(5) apply.

Notwithstanding their non-transposition, some States are reported to afford the Geneva Convention rights enumerated in Article 14(6) for the persons in question as a result of the "direct effect of the Geneva Convention" (Belgium) or for other non-specified reasons (Austria). The question here is whether this constitutes sufficient transposition of the Directive provision. Only where it is possible for the beneficiaries to effectively claim such rights before the courts or administrative bodies in a given Member State, this can be said to not to contravene the Directive.

c) Other issues

In the Czech Republic, Germany, Hungary, Ireland, Luxembourg, Portugal, Slovakia, Slovenia, and Spain, the provision of rights delineated in the provision, forms part of a legal regime of so-called "tolerated status". Slovakia applies a system of granting such a status for 180 days and renewable, during which time the "tolerated" person is bared from access to the

345 Notably, Romania provides all the rights of citizens of the country with the exception of political rights, to persons to whom Article 14(6) apply.

labour marked with some exceptions, including where "tolerated status" was granted in order to respect private and family life, and for those who are victims trafficking provided they are older than 18 years. The exceptions apply only if their tolerated stay permit has been prolonged. Ireland reportedly provide for "tolerated status" (including the rights enumerated under Article 14(6) of the Directive) for person deemed to be a danger to the security of the State and/or convicted of a serious crime by final judgement, based on general legal rules within the constitutional and legislative framework and State practice. In Slovenia, rights to emergency health care and other additional rights follow from a "permission to stay "and a "permission to remain", which in essence constitute a "tolerated status". The rights under these regimes reportedly go beyond those listed in Article 14(6). As this can regarded as more favourable norms than included in the Directive Slovenia is not considered to violate the Directive, see Introduction. A similar set-up can be observed with regard to Hungary. In Luxembourg, a "tolerated status" permit is issued on a discretionary basis predominantly for rejected asylum seekers who cannot be returned to their country of origin or former habitual residence, and includes also certain social benefits.

Article 14(6):	
WITHOUT OBJECT	**Austria, Belgium, Bulgaria, Czech Republic, Latvia, France, Poland, Greece, Italy, Finland, , Lithuania, United Kingdom**
NO TRANSPOSITION BUT JURISPRUDENCE IN CONFORMITY	
LEGAL PROBLEM	**Spain**[346]
PRACTICAL PROBLEM	**Estonia**[347]

4. IMPACT OF THE DIRECTIVE

4.1 Evolution of internal law due to the transposition (Q. 48, 49)

The assessment of the evolution of internal law by the transposition has two aspects. First, the issue what impact the transposition has had on the legal position of third country nationals under domestic law – did it improve, deteriorate, or remain the same? And second, a comparison of the domestic standard of treatment since transposition with the standard before transposition. Obviously, the answer to the second question does not follow from the answer to the first one: if the Directive has led to a deterioration of domestic standards, they may (still) be more favourable than those set out in the Directive.

Assessment of improvement or deterioration for third country national has been made by the respective national rapporteurs who may have applied differing standards; it may furthermore very much depend on the position of the norm in the domestic system. Thus, as to one Directive provision, one rapporteur assessed transposition as positive because it brought more legal certainty, whereas another rapporteur assessed it as negative because it reduced flexibility (see par. 4.1.4). Both assessment can doubtless be correct, depending on domestic circumstances. For proper assessment, a quite detailed discussion of domestic circumstances

346 Only those rights recognised to every alien under Aliens Law.

347 Persons without legal basis for staying in Estonia are generally kept in detention pending expulsion. Therefore, it is not physically possible for them to take part in the public schooling system while special schooling programmes may be organised.

would be required – which, however, is beyond the scope and objectives of this report. The assessment of the legal impact below is here rather succinct and sketchy; for more detailed information, the reader is referred to the national reports.

The assessment encompasses all Member States (except Denmark) and it should be borne in mind though that Spain did not (yet) transpose the Directive.

4.1.1 General (Q. 48, issue 1)

As to the existence of subsidiary protection status, for many Member States improvement of the legal position of third country nationals has been reported: either because no subsidiary protection status existed before (or only in the form of a mere prohibition on expulsion: Belgium, Cyprus, Czech Republic, Hungary, Ireland, Lithuania, Luxembourg, Poland, Slovakia, United Kingdom[348]), or because the status was before issued on a discretionary basis (France, Italy), or because the transposition has clarified existing practice on a number of points (Austria, Portugal, Sweden). For Estonia and Germany it is stressed that the Directive has meant a broadening of scope of subsidiary protection, such as in regard of the actors of persecution or serious harm (Article 6). For other Member States, it is reported that the transposition did not bring principal change (Bulgaria, Greece, Latvia, the Netherlands, Romania, Spain).

For two Member States, the deterioration of the legal position of third country nationals appears to be the most important legacy: for Finland, the scope of subsidiary protection has been reduced due to the transposition (see par. 4.1.17 below); in Slovenia, the level of secondary rights has furthermore been reduced.

4.1.2 Article 4 (Q. 48, issue 2)

Article 4 does not mean substantial change for Austria, Belgium, Czech Republic, Finland, France, the Netherlands, Poland, Sweden, United Kingdom. Domestic standards in Austria, France, the Netherlands, Poland, Sweden were and are in line with the provision; that is, the introduction of the principle that the application submits all elements of the application as soon as possible means a deterioration in the third country national's position in Austria. Finish domestic law was and is more favourable than the Article 4. Belgium, the Czech Republic, Estonia ands Spain did not transpose (parts of) the provision although their domestic standards fall short of it.

Article 4 brought at least partly improvement for the third country national in Cyprus, Germany, Greece, Hungary, Ireland, Italy, Latvia, Luxembourg, Portugal, Romania, Slovakia – mostly, because rules on assessment and in particular Article 4(4) (previous persecution or harm yields an assumption of well-founded fear or real risk of it) have now been made (more) explicit in domestic law. This clarification has also been reported for Bulgaria, Lithuania and the United Kingdom, but the negative impact of transposition of the provision nevertheless has pre-eminence.

4.1.3 Article 5(Q. 48, issue 3)

Article 5 (on refugees sur place) has not brought change for Austria, France, Germany, Ireland, the Netherlands, Slovakia, Sweden where domestic rules were already in line with the Directive, nor in Belgium and the Czech Republic whose domestic standards however fall short of the provision.

The transposition brought a deterioration in Greece, Portugal, Slovenia and in Bulgaria (Article 5(3). In the other states, transposition entailed improvement as compared to the

348 This issue was regulated by concessions outside the immigration rules.

previous situation (Bulgaria – as to Article 5(1) and (2), Cyprus, Estonia, Finland, Hungary, Italy, Lithuania, Latvia, Luxembourg, Poland, Romania, United Kingdom), either because rules on the issue were absent or if present, were clarified as a consequence of the transposition; for Estonia it is reported that its standards still fall short of those set by the Directive.

4.1.4 Article 6(Q. 48, issue 4)

The impact of this provision, in particular the codification that non-state parties can in absence of state protection be actors of persecution or serious harm, has generally been assessed as positive (as to Belgium, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, the Netherlands, Poland, Portugal, Romania, Slovakia, where domestic law is now in line with the provision, but partly also for Bulgaria, where domestic law is not completely in line with it due to partial transposition). Transposition meant little difference with the previous situation in Cyprus, Ireland, Italy, Latvia, Lithuania, Sweden, United Kingdom. The provision was not transposed in Austria (where domestic law is reported as being in practice in line with it), nor in Spain (where domestic standards fall short of Article 6). Deterioration of the position of the third country national due to transposition has been reported only for Slovenia, which is due to heightened burden of proof.

4.1.5 Article 7(1)(Q. 48, issue 5)

The transposition of this provision (on actors of protection) has led to a deterioration in many Member States, mostly because it entails that non-state parties, including international organisation can offer protection (in Bulgaria, Poland, Slovenia, Ireland, Greece, Slovakia, where domestic law is in line with the provision, and also in France where domestic law is more favourable due to partial transposition). A positive assessment has been given for Belgium, Estonia and Italy (because of the clarity the provision brings), Finland (due to partial transposition: under Finish law, internal organisations can *not* offer relevant protection)[349] and Germany and Portugal (where the positive assessment is rather due to the circumstance that codification partly entailed that non-state actors can commit persecution acts or cause serious harm). In the remaining states, the situation remained unchanged – because domestic law was already in line with the provision (Austria, Cyprus, Latvia, Hungary, Luxembourg, the Netherlands, Sweden, United Kingdom), or because the provision was not (Spain, Romania) or only de jure (Lithuania) transposed. In Lithuania, current domestic law is less favourable than the provision. For the Czech Republic, a rule on the issue is new so that comparison with the previous situation is not possible.

4.1.6 Article 7(2) and (3) (Q. 48, issue 6)

These rules on assessment whether or not protection is provided for has not led to change in about half of the Member States. It was not transposed in Austria, Sweden, Finland (where legislation is up to the standards of the provision), the Czech Republic and Estonia (whose standards fall short of it), Spain and France (whose standards are more favourable than those in Article 7) and Romania (where no rules on the matter existed or exists). It was transposed, but without effect on the legal position of the third country national in Hungary, Lithuania, the Netherlands, Slovakia, United Kingdom.

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349 It is reported that there was a mistake: the DP proposes that international organisations could offer sufficient protection but national parties and organisations would not.

Transposition (in accordance with the provision) brought improvement in Italy, Belgium, Latvia, Bulgaria, Germany, but deterioration in Luxembourg, Poland, Slovenia, Ireland, Greece.

4.1.7 Article 8 (Q. 48, issue 7)

This provision addresses the internal protection alternative; according to Article 8(3), it may be applied notwithstanding technical obstacles to return. In a third of the Member States, it did not have much impact on the position of the third country national as compared to previous legislation, either because the provision was not transposed (Spain, Italy, Sweden, where domestic standards are more favourable than Article 8, and Estonia that has less favourable standards, and the United Kingdom where domestic law is in line with the Directive), or because transposition did not affect the already set standards (Austria and Poland, whose rules are fully in line with the provision, Bulgaria, Hungary, Lithuania, Romania, Ireland, whose domestic law remained more favourable due to non-transposition of Article 8(3)).

In a third of the Member States, transposition meant a deterioration (France, Latvia, the Netherlands, Slovakia, Slovenia, Portugal)– often, because of transposition of Article 8(3). In another third, transposition meant amelioration because of the greater clarity it brought (Belgium, Germany, Luxembourg, where domestic law is in line with the provision, Finland and Greece, where domestic law remained more favourable and even in the Czech Republic, where domestic law remains less favourable than Article 8).

4.1.8 Article 9(1) and (2) (Q.48, issue 8)

This definition of persecution has brought amelioration for the third country national in most Member States, often because accumulation of acts can now constitute persecution (Belgium, Estonia, Germany, Greece, Hungary, Ireland, Latvia, Luxembourg, Poland, Portugal, Romania, where domestic law is in line with Article 9, Italy, whose standards remained more favourable (due to special provisions on gays and lesbians) and even in Bulgaria whose domestic standards fall short of those in the provision. Less favourable than before did domestic law become in Slovakia and Slovenia (because of the reduced flexibility; in Slovenia domestic standards furthermore define the examples of persecution in Article 9(2) as an exhaustive list). No change in domestic law was reported for Austria, Czech Republic, Finland, France, the Netherlands, Spain, Sweden, United Kingdom (although domestic standards in Czech Republic, Lithuania, Spain fall short of those set out in Article 9).

4.1.9 Article 9(3) (Q.48, issue 9)

This provision states that in order to qualify as a refugee, a link must be established between the act of persecution and a Convention ground. For almost all states, the provision did not bring change to the position of the applicant under domestic law. In Austria, Bulgaria, Finland, France, Germany, Hungary, Ireland, Italy, the Netherlands, Portugal, Latvia, Lithuania, Slovakia, Slovenia, Sweden, United Kingdom was and remains in line with the directive, in Luxembourg it remained more favourable than the Directive, and for the Czech Republic, Greece and Poland it was impossible to draw a comparison. Only for Belgium, Estonia and Romania it is reported that the transposition benefited the position of the third country national.

4.1.10 Article 10 (Q.48, issue 10)

This provision, on the Convention grounds, meant improvement for the legal position of applicants in half of the Member States: Greece, Ireland, Italy, Latvia, Luxembourg, Poland, Portugal, Romania, Slovakia (where domestic law since transposition is in line with the

Directive), Belgium, Czech Republic, Germany (where domestic law is more favourable than the Directive) and even in Spain (where domestic law remained less favourable than Article 10). The situation remained unchanged in Austria, Bulgaria, Hungary, the Netherlands, Slovenia, Sweden, United Kingdom (where domestic law is in line with the Directive) and Lithuania (where domestic law falls short of Directive standards). Domestic law became less favourable in Estonia, Slovenia (because Article 10(2) was not transposed) and Finland (see issue 11).

4.1.11 Article 10(1)(d) (Q.48, issue 11)

This provision provides for guidance in quite some detail on the Convention ground "particular social group". Like Article 10, its transposition brought amelioration of the legal position of applicant in many Member States, often because the greater clarity (Greece , Italy, Latvia, Luxembourg, Poland, Portugal, Romania, Slovakia, Sweden, where domestic law since transposition is in line with the Directive; Belgium, Czech Republic, Germany, where domestic law is more favourable than the Directive; and even in Spain, where domestic law remained less favourable than the provision. Domestic law became less favourable in Bulgaria, Estonia and Slovenia (because codification meant a loss of flexibility) and Finland (because the requirements for constituting a social group are considered to apply cumulatively). No change is reported for the United Kingdom.

4.1.12 Articles 11 and 16 (Q.48, issue 12)

These provisions state the grounds for cessation of refugee and of subsidiary protection status; the second clause states that if cessation takes place because of change of circumstances, this change has to be significant and non-temporary. Transposition made domestic law more favourable in a third of the Member States, usually because of the second clause of the provisions (Belgium, Czech Republic, Italy, the Netherlands, Slovakia, and France and United Kingdom as to subsidiary protection). In another third, it meant deterioration (usually because it enlarged the list of grounds for cessation and/or refusal; this applies Hungary, Latvia, Poland where domestic law since transposition is in line with the Directive and for Estonia, Lithuania, Portugal, Slovenia, United Kingdom, where domestic law remained less favourable than the provision). Domestic law did not significantly change in Austria, Finland, France, Germany, Greece, Ireland, Luxembourg, Romania, Spain, Sweden (where it is in line with the Directive), (where its is more favourable) and Bulgaria (where it is less favourable).

4.1.13 Articles 12 and 17 (Q.48, issue 13)

This provision states the grounds for exclusion from refugee and from subsidiary protection status. For the biggest part of the Member States, no significant change in domestic law is reported: Austria, Ireland, Luxembourg, Poland, Sweden, and France as to refugee protection only, where domestic law was in line with the Directive, Finland and Spain where it remained more favourable and Slovenia (as regards refugee status) where it remained less favourable. Transposition entailed deterioration for Czech Republic, Greece, Latvia, the Netherlands, Lithuania, Slovakia, Slovenia, either because transposition introduced Article 1D or 1E Refugee Convention or because it rendered exclusion obligatory (instead of discretionary). For a number of Member States, it is reported that transposition entailed amelioration, in particular because it clarified grounds for exclusion from subsidiary protection (Estonia, Germany, Italy, Romania, where it is in line with the Directive, Belgium, Bulgaria, France (as to subsidiary protection), Hungary, where it is more favourable, and Portugal, United Kingdom, where it is less favourable).

4.1.14 Articles 14 and 19 (the grounds) (Q.48, issue 14)

Articles 14 and 19 require or allow for denial or termination of status on a number of grounds. In many Member States, rules on denial of termination remained unchanged by these provisions (Austria, Finland, Germany, Greece, Romania, Spain, and France and Sweden as to refugee status only). Transposition rendered domestic law less favourable in Bulgaria, Lithuania, Latvia, Luxembourg, the Netherlands, Poland, Slovakia, Slovenia, but more favourable in Belgium, Hungary, Italy, Portugal, and France and the United Kingdom as to subsidiary protection. In Bulgaria and Estonia transposition brought neither deterioration nor amelioration. For the Czech Republic such a comparison was not possible.

4.1.15 Articles 14 and 19 (obligatory nature)(Q.48, issue 15)

Articles 14 and 19 state for a number of grounds that the status "shall" end or be denied. This obligatory nature was transposed in a number of states where it meant a deterioration for the third country national (Greece, Hungary, Ireland, Luxembourg, the Netherlands, Slovakia, Slovenia, United Kingdom). For most Member States, it implied no change (Austria, Belgium, Bulgaria, Czech Republic, Finland, France, Germany, Latvia, Lithuania, Portugal, Romania, Spain, Sweden). For a few Member States, amelioration is reported (France, Italy).

4.1.16 Articles 13 and 18 (obligatory nature) (Q.48, issue 16)

Articles 13 and 16 require issue of status to persons who qualify for refugee or for subsidiary protection status. The rule meant deterioration in no Member State, and made domestic law more favourable in Czech Republic, Hungary, Italy, Luxembourg, the Netherlands, and Belgium, France, Poland, Sweden and the United Kingdom as to subsidiary protection. In the remaining states, domestic remained unchanged. In Austria, Bulgaria, Finland, France (as to refugees), Germany, Ireland, Poland(ref)Portugal, Romania, Slovakia, Slovenia did already require the issue of status; in Estonia, Latvia, Spain, domestic law remains less favourable.

4.1.17 Article 15 (scope) (Q.48, issue 17)

Article 15 defines serious harm for the purposes of the definition of subsidiary protection. Its transposition rendered domestic law more favourable as to the scope of subsidiary in many Member States - in France, Germany, Ireland, Italy, Luxembourg, the Netherlands, Poland, Portugal, Slovakia, United Kingdom, where domestic law is in line with the provision, and in Belgium, Czech Republic, Hungary and the United Kingdom, where domestic law became even more favourable (in particular because the term "individual" in Article 15(c) was not transposed). In most other states, the standard set by domestic law remained unchanged (Austria, Bulgaria, Lithuania, Latvia, the Netherlands, Romania, Slovenia, Spain, Sweden). But in Finland, Greece and Slovenia, due to transposition the scope of subsidiary protection was reduced (although a new, alternative status may make up for this effect in Finland). For ES, this assessment appeared to be impossible.

4.1.18 Article 15(c) (scope) (Q.48, issue 18)

The definition of serious harm in Article 15(c) has no direct counterpart in international law.

The standard set by domestic law remained unchanged in Bulgaria, France, Lithuania, Romania, Slovenia, where it is in line with the provision, the Netherlands, where it is less favourable, in Austria and Spain where it is more favourable, and in the Czech Republic as to which Member State no assessment is possible yet.

Its transposition widened the scope of subsidiary protection in domestic law (and hence made it more favourable) in Germany, Ireland, Italy, Luxembourg, the Netherlands, Poland, Slovakia, Sweden (where domestic law is in line with the Directive), and in Belgium and

Hungary (where domestic law is more favourable than Article 15(c), as the term "individual" was not transposed) and the United Kingdom.

The transposition meant a deterioration for the remaining Member States: due to the term "individual", a higher degree of individualisation is now required than before in Estonia, Finland, Greece, Latvia, Portugal, Slovenia.

4.1.19 Other interesting changes as regards qualification (Q.49)

For Lithuania, it is reported that the transposition of the Directive mainly inspired the domestic legislator to introduce additional exclusion grounds.

4.1.20 Generally on the existence of refugee rights and/or rights of beneficiaries of subsidiary protection (Q.48, issue 19)

The transposition of the Directive has resulted in a situation more favourable for third country nationals in Austria[350], Czech Republic, Greece[351], Lithuania[352], Luxembourg[353], Latvia[354], Poland[355], Portugal[356], Slovakia[357], Sweden[358] and United Kingdom[359].

Status quo has been maintained in Bulgaria, Estonia, Finland and Germany, leading to standards claimed to be less favourable (Estonia), in line with (Bulgaria, Germany) or more favourable (Finland) than the Directive.

4.1.21 Family unity, Article 23 (Q.48, issue 22)

The transposition of the Directive has reportedly resulted in a situation more favourable for third country nationals in Bulgaria[360], Estonia, Greece[361], Luxembourg[362], Portugal, Sweden and the United Kingdom[363]. This is explicitly said to be due to the non-transposition of Article 23 (2), second and third clause on family members of beneficiaries of subsidiary protection in Luxembourg and Sweden[364].

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350 Standards generally more favourable than the Directive.

351 After the adoption of the qualification decree it is expected that at least some refugee rights will be spelled out in the law, such as in particular, those relating to social assistance and integration. Also, the rights of beneficiaries of subsidiary protection will be legally enhanced. The situation is assessed to be in line with the Directive.

352 The impact of the directive can be summarised in this respect by mentioning that social integration of refugees was extended also to persons granted subsidiary protection, amendments to a few general legal acts regulating health care and social welfare were adopted, which ensured access of persons with subsidiary protection to enjoyment of certain rights. Standards are reportedly lower than the Directive.

353 Almost literal transposition.

354 Assessed to be in line with the Directive.

355 Assessed to be in line with the Directive.

356 Assessed to be in line with the Directive.

357 Status quo for refugees, more favourable for beneficiaries of subsidiary protection. Overall considered less favourable than the Directive.

358 This related mostly to the right to information and family unity. It is assessed that on other issues, the national norms provide for more favourable standards than the Directive. On some issues/rights, status quo is reportedly maintained.

359 Although it is stated that hat certain rights in the Directive are not expressly set out in national legislation, the immigration rules or statutory instruments

360 The scope of the right was enlarged to include also humanitarian status holders. The conditions for the enjoyment of this right however are still ambiguous, leading to the cautious conclusion (only) that the situation under national legislation may be in line with the Directive.

361 In line with the Directive.

362 More favourable standards than the previous national rules as well as compared to the Directive.

363 Assessed to be in line with the Directive.

364 A draft provision on family unity explicitly states the rights of family members (spouse, unmarried partner, unmarried minor children) to obtain a residence permit. The provision applies both to

Status qua has reportedly been maintained in Austria, Czech Republic, Finland, Germany, Latvia, Poland and Slovakia, constituting a situation in line with the Directive (Czech Republic[365], Germany, Latvia, Poland, Slovakia), or more favourable than the Directive (Austria, Finland).

Deterioration in the legal position of third country nationals has been indicated on behalf of Lithuania[366].

4.1.22 Residence permit, Article 24 (Q.48, issue 23)

The transposition of the Directive has reportedly resulted in a situation more favourable for third country nationals in Estonia[367], Finland[368], Portugal[369], Sweden[370] and the United Kingdom.

Status quo has reportedly been maintained in Austria, Bulgaria, Czech Republic[371], Germany, Greece, Lithuania, Luxembourg[372], Latvia, Poland, and Slovakia in line with the Directive (Bulgaria, Germany, Germany, Latvia, Poland, and Slovakia) or more favourable than the standards set out by the Directive (Austria, Greece,[373] and Latvia).

4.1.23 Access to employment, Article 26 (Q.48, issue 24)

The transposition of the Directive has resulted in a situation more favourable for third country nationals in Luxembourg[374], Latvia[375], Lithuania[376], Poland[377], Portugal[378], Slovakia[379] and the United Kingdom[380].

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beneficiaries of refugee status and subsidiary protection status. In this way art 23(2) is fully transposed. No rules on particular conditions for benefits are introduced, the family member enjoy the same rights and benefits as the protected person.

365 Although beneficiaries of subsidiary protection status are now also included under national legislation. The situation is reported to be in line with the Directive, while problematic due to the discretionary nature of the legal regime pertaining to the issue of maintaining family unity.

366 More favourable than the directive concerning the special social integration system. Less favourable, however, if family member's benefits are withdrawn under social integration system, as there are no other benefits provided.

367 In line with the Directive, deviating from 2 years of permit previously.

368 National legislation is proposed to be amended so that the first residence permit issued to a refugee would be valid for four years. This would provide for more favourable standards compared to previous national legislation and compared to the Directive.

369 National legislation ensures a better position for beneficiaries of subsidiary protection status compared to the Directive.

370 In line with Directive.

371 Although beneficiaries of protection status are now also included under national legislation in this regard. The national standards are reported to exceed the standards of the Directive.

372 Due to the non-transposition of Article 24(1), second clause, which reportedly constitutes more favourable standards than the Directive.

373 Less favourable as regards the absolute deadline within which the beneficiary of subsidiary protection needs to apply for renewal of the residence permit, otherwise s/he forgoes this right

374 More favourable standards than the Directive concerning beneficiaries of subsidiary protection with regard to access to employment; less favourable standards than the Directive as regards access to work related education for beneficiaries of subsidiary protection; and in line with the Directive as regards beneficiaries of refugee status.

375 In line with Directive.

376 Due to inclusion of beneficiaries in the access to employment inline with the Directive

377 By way of including beneficiaries of subsidiary protection in the access to the labour market. This is considered to be in line with the Directive.

378 Considered to be more favourable than the standards of the Directive as there are no limitations for beneficiaries of subsidiary protection status.

Status quo has reportedly been maintained in Austria, Bulgaria, Czech Republic, Estonia, Finland, Germany, Greece[381] and Slovenia, providing for a situation in line with (Austria, Germany, Greece[382]), less (Estonia, Czech Republic [383]) or more (Bulgaria, Finland, Sweden) favourable standards than the Directive.

4.1.24 Access to education, Article 27 (Q.48, issue 25)

The transposition of the Directive has resulted in a situation more favourable for third country nationals in Greece[384], Latvia, Lithuania[385], Poland[386], Portugal and United Kingdom[387] due to the inclusion of beneficiaries of subsidiary protection status in the access to education (Latvia, Lithuania) or due to the fact that beneficiaries of either protection status are provided access to education on a equal footing with nationals[388](Portugal).

Status quo has reportedly been maintained in Austria, Bulgaria, Czech Republic, Estonia, Finland, Germany, Luxembourg, Slovakia and Slovenia, providing for a situation in line with the Directive (Austria, Estonia, Germany, Luxembourg, Slovakia), less favourable standards than the Directive (Bulgaria[389], Czech Republic[390]), or more favourable standards than the Directive (Finland, Sweden).

4.1.25 Social assistance, Article 28 (Q.48, issue 26)

The transposition of the Directive has reportedly resulted in a situation more favourable for third country nationals in Austria[391], Greece, Lithuania[392], Poland, Portugal, Slovakia[393], and United Kingdom[394] also leading to a situation of more favourable standards than the Directive (Greece, Poland, Portugal[395]).

Status quo has reportedly been maintained in Bulgaria, Czech Republic, Estonia, Finland, Germany, Luxembourg, Latvia and Sweden, providing for standards in line (Germany,

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379 Leading to a situation less favourable than the standards included in the Directive due to the fact that access to self-employment of beneficiaries of subsidiary protection is questionable.

380 Less favourable than the Directive (no express reference to rights of family members, or to rules relating to training. But more favourable in that the national law exceeds the minimum standard set for beneficiaries of subsidiary protection.

381 Less favourable as regards the conditions under which beneficiaries of subsidiary protection may have access to employment

382 Less favourable as regards the conditions under which beneficiaries of subsidiary protection may have access to employment (reference to immediate survival needs)

383 Only for beneficiaries of subsidiary protection status.

384 Reportedly resulting in a situation generally in line with, but less favourable than the Directive concerning Article 27(3) of the Directive du to non-transposition of this provision.

385 In line with the Directive.

386 Reportedly also introducing more favourable standards than the Directive.

387 Less favourable than the Directive in that there are no express rules on qualifications or access to adult education, and no express coverage of family members other than minors.

388 Which exceeds the standards of the Directive.

389 Less favourable than the directive with regard to minors with subsidiary protection status

390 With regard to the recognition procedures for foreign diplomas, despite of significant improvement following the transposition of the Directive.

391 Assessed to be less favourable than the Directive.

392 Reportedly leading to a situation, however, which is less favourable than the one set out by the Directive.

393 Leading to a situation less favourable than the Directive due to the fact that beneficiaries of subsidiary protection were included into the system of social assistance, but they are not entitled to all benefits.

394 Less favourable than the Directive (to the extent that family members are not expressly referred to

395 As the level of social assistance guaranteed to beneficiaries of subsidiary protection status is lower than the standard of the Directive, the situation is, nonetheless, assessed not to meet the standards of the Directive.

Latvia), less favourable (Estonia, Czech Republic[396]), or more favourable than the Directive (Bulgaria, Finland, Luxembourg, Sweden).

4.1.26 Access to health care, Article 29 (Q.48, issue 27)

The transposition of the Directive has reportedly resulted in a situation more favourable for third country nationals in Austria, Greece[397], Lithuania[398], Poland, Portugal, and Slovakia[399], leading to a situation of more favourable standards than the Directive (Austria, Greece, Poland, Portugal[400]).

Status quo has been maintained in Bulgaria, Czech Republic, Estonia, Finland, Germany, Latvia, Luxembourg, Sweden and United Kingdom, providing for standards in line (Germany), more favourable (Finland, Luxembourg, Sweden) or less favourable than the Directive (Bulgaria[401], Czech Republic[402], Estonia, Latvia[403], United Kingdom [404]).

4.1.27 Access to integration facilities, Article 33 (Q.48, issue 28)

The transposition of the Directive has reportedly resulted in a situation more favourable for third country nationals in Greece[405], Poland[406], Portugal, Slovakia[407].

Status quo has reportedly been maintained in Austria, Bulgaria, Czech Republic, Estonia, Finland, Germany, Lithuania, Luxembourg, Latvia, and Sweden, providing for standards in line with the Directive (Austria, Germany), more favourable (Finland, Lithuania, Luxembourg[408],Sweden) or less favourable than the Directive (Bulgaria, Czech Republic[409], Estonia, Latvia[410]).

4.1.28 Protection from non-refoulement, Article 21 (Q.48, issue 30)[411]

The transposition of the Directive has reportedly resulted in a situation more favourable for third country nationals in Austria[412] and Lithuania[413].

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396 Relating to the beneficiaries of subsidiary protection.
397 Positive reference to the standard enjoyed by nationals, and the special categories of vulnerable persons
398 Reportedly leading to a situation, however, which is less favourable than the one set out by the Directive.
399 In line with Directive.
400 There is no distinction between refugees and beneficiaries of subsidiary protection status, leading to the assessment that more favourable standards than the Directive are in place.
401 There are no special provisions for people with special needs.
402 As regards beneficiaries of subsidiary protection.
403 This reportedly constitutes a situation less favourable than the Directive as the needs of groups with special needs are not covered by the national asylum legislation (except one category – minors). Under the current legislation, the family members of the refugees and persons, granted subsidiary protection status, cannot receive medical treatment free of charge.
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405 The draft qualification decree contains a provision to the effect that both refugees and beneficiaries of subsidiary protection have access to integration programmes.
406 Stated to be more favourable than standards included in the Directive.
407 In line with Directive.
408 As regards beneficiaries of subsidiary protection.
409 Relating to access to accommodation for beneficiaries of subsidiary protection status.
410 National legislation does not provide for an integration programme for refugees and/or beneficiaries of subsidiary protection status.
411 In the questionnaire, this issue was erroneously labelled ”issue 33.”
412 Also more favourable than the Directive.
413 Full respect of the principle of non-refoulement under international law (in particular under the ECHR, UN Convention against Torture and others) was previously not guaranteed. The previous refugee legislation included protection from refoulement according to the 1951 Geneva Convention only. This changed with the transposition of the Directive.

Status quo has been maintained in Bulgaria, Finland, Germany, Greece, Slovakia, Slovenia, Poland, Portugal leading to standards in line with the Directive (Bulgaria, Germany) or more favourable standards than the Directive (relates to the remainder of States except for Greece[414]), the latter due to no exceptions being made to the principle of *non-refoulement.*

Deterioration in the legal position of third country nationals has been indicated on behalf of Czech Republic, Estonia, Latvia and Luxembourg as the transposing norms have introduced the possibility of *refoulement* in line with the Directive.

4.2 Tendency to copy the provisions of the Directive (Q 50)

National rapporteurs were asked whether there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adapting them to national circumstances. For twelve Member States, no such tendency is reported (Cyprus, Czech Republic, Finland, France, Germany, Hungary, Latvia, the Netherlands, Poland, Portugal, Slovakia, Sweden). In half of the Member States where this tendency did exist, no problems are signalled (Austria[415], Belgium, Estonia, Greece, Ireland, Italy, United Kingdom). In Romania[416] and Slovenia[417], the tendency to copy led to problems in isolated instances. Fir three Member States, it is reported that the copying of Directive provisions leads to problematic results. In Bulgaria, it leads to unclear legislation;[418] in Lithuania, to legislation at variance with the Directive,[419] and in Luxembourg to problems as regards the transposition of Articles 21 and 30.

4.3 Problems with the Translation (Q. 52)

Translation problems have been reported as to the language versions operative in Belgium, Bulgaria, Czech Republic, Finland, Greece, Lithuania, the Netherlands, Poland, Romania,

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414 The draft decree does not transpose the reference to the relevant international obligations of the country (see first part of first sentence of 21(2) of the qualification directive).

415 For Austria it is reported that this tendency to copy or refer to the Directive concerned only Articles 1-19, and no huge problems are expected because the Directive in general is in line with the Refugee Convention, as interpreted and applied by Austria hitherto.

416 An inappropriate translation of Article 9 par. 2 letter d) of the directive in Article 9 par. 3 letter d) of the Government Decision no. 1251, 2006.

417 1. Definition of family members is copied provision of Article 2(h) of the QD: it is critical that the family constitute only couple and the minor child. First obstacle can arise in case of single parent with minor, because it could be understood that they do not constitute family. This provision raises question on predomination on the IPA with respect to the national legislation on wedlock and family relations, according to which family constitutes also single parent with child. Although, according to the present legislation and practice, also single parent with child(ren) were deemed to be family.
2. Another problem will arise with regard to those provisions of the IPA, which are copy pasted, but is already the QD in contravention with the Geneva Convention, as it is assimilation the exceptions to the non-refoulement principle permitted under Article 33 (2) into the exclusion clauses of Article 1 F. In this respect it has to be again reiterated that according to the Slovene Constitution Geneva Convention applies directly, which means that de lege directly overrides those provisions of the IPA which are not in line with it, but in practice this will be disregarded and the IPA will be applied.

418 Article 9, Para.1, Subpara.3 LAR transposing Article 15 (c) QD; the lack of clarity in the term "as long as it is compatible with their individual status" with regard to family members of protection status holders.

419 Possibility to exclude from refugee status or subsidiary protection on the basis of Article 14(5) of the Directive on even broader grounds than mentioned in Article 33(2) of the 1951 Convention. While the 1951 Convention mentions two grounds when the principle of non-refoulement may be not applied, paragraphs 5-6 of Article 88 of the Aliens Law contains three possible exceptions:
- threat to national security;
- threat to public order;
- judgement of the court for commission of serious or particularly serious crime.
This represents, according to the author of this Report, a misinterpretation of the Directive's provisions.

Slovakia, Hungary. The Czech language version of the title of the Directive, as well as the translation of the term "subsidiary" appears to be problematic.[420] Translation problems as regards individual provisions have been signalled in the text of par. 3 above as regards the qualification part of the Directive.

With regard to Chapter VII of the Directive, the following has been observed: For Bulgaria, it is stated that Article 9, Para.1, Subpara.3 of the Law on Asylum and Refugees transposing Article15 (c) contains lack of clarity as regards the term "as long as it is compatible with their individual status" with regard to family members of subsidiary protection status holders. This leads to ambiguity on the level of transposition concerning certain rights and benefits included under Chapter VII. Concerning Lithuania, it is reported that imprecise translation of the term "unaccompanied minors" has been identified, but that this is of minor importance, as is the inaccurate translation of certain other terms (which have not been expressly mentioned in the national report).

4.4 Jurisprudence (Q. 51)

For only a number of Member States case-law regarding the Directive has been reported. A number of reported cases concern the possibility to invoke Directive provisions that have not been literally transposed (e.g. the Austrian Questionnaire, Q. 51). Other case-law concerns issues covered by the Directive, but does not seem to relate directly to Directive provisions (if only because cases date from before the expiry of the implementation term or even from before adoption of the Directive). Below, only case-law that sheds light on the interpretation of the Directive is addressed.

4.4.1 Article 2(k)

The Austrian supreme court in asylum matters ruled that an application for international protection has to be rejected if the applicant holds the nationality of two countries and is not persecuted in both of them. The Court in this regard relied on Article 2 (k) of the Directive that speaks of "country or countries of nationality" (Administrative Court 9 November 2004, 2003, 01, 0534*).

4.4.2 Article 4

The supreme court on asylum in the Netherlands, the Council of State, ruled on the duty to cooperate in Article 4(1) of the Directive that this provision does, even if it is directly effective, not entail a claim that the authorities must upon request perform a language test in order to assess the applicant's identity; the present asylum procedure, allowing the applicant to react on the proposed decision on his application, provides for sufficient cooperation (ABRvS 20 July 2007, number 200703043, 1, Administratiefrechtelijke beslissingen 2007, 267).

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420 The very title of the QD is misleading and in fact runs contrary to the preambular paragraph 14 of the QD ("The recognition of refugee status is a declaratory act."). The translation (in fact re-translation to English) of the title of the QD reads as follows: "Council Directive on minimum standards that the third country nationals or stateless persons must fulfil in order to be allowed to apply for the status of the refugee or a person who otherwise need international protection, and on the content of the protection granted" („Směrnice Rady o minimálních normách, které musí splňovat státní příslušníci třetích zemí nebo osoby bez státní příslušnosti, aby mohli žádat o postavení uprchlíka nebo osoby, která z jiných důvodů potřebuje mezinárodní ochranu, a o obsahu poskytované ochrany") (emphasis added).

4.4.3 Articles 6 and 7

The French appeal court Commission des recours des réfugiés issued a number of interesting rulings on the connected issues of actors of persecution, serious harm and actors of protection. CRR 29 juillet 2005, 487336, Mlle A., Jurisprudence du Conseil d'État et de la Commission des recours des réfugiés Année 2005, p. 65 is summarised as follows : « SOMALIE : motif des persécutions et des craintes de persécution – appartenance ethnique – minorité Reer hamar – auteurs des persécutions – clans et factions luttant pour étendre des zones d'influence à l'intérieur du territoire national – clan Darod – autorité légale n'étant pas, dans les conditions actuelles, en mesure d'exercer un pouvoir organisé en Somalie (gouvernement fédéral de transition) – offre de protection (absence) – autres autorités susceptibles d'offrir une protection au sens de l'article L.713-2 du code de l'entrée et du séjour des étrangers et du droit d'asile (absence) - craintes de persécution au sens des stipulations de l'article 1er A 2 de la convention de Genève (existence).

CRR, 23 novembre 2005, 489167, M. M., Jurisprudence du Conseil d'État et de la Commission des recours des réfugiés Année 2005, p. 66 : « AFGHANISTAN : menaces et agressions émanant de compatriotes d'origine hazara – assassinat de membres de la famille - requérant ayant établi être personnellement exposé à des traitements inhumains et dégradants - climat politique actuel, principalement caractérisé par une insécurité généralisée ne permettant pas aux autorités d'offrir une protection au requérant. »

CRR, 15 février 2005, 513570, Mlle D., Jurisprudence du Conseil d'État et de la Commission des recours des réfugiés Année 2005, p. 67 : « HAÏTI : auteurs de persécutions – menaces et agressions émanant de particuliers ou de groupes de particuliers – autorités n'étant pas en mesure d'offrir leur protection à la requérante – craintes fondées de persécutions (oui). »

CRR, 26 avril 2005, 502080, Mlle M., Jurisprudence du Conseil d'État et de la Commission des recours des réfugiés Année 2005, p. 69 « COLOMBIE : enlèvements et exactions commises par les FARC dans la région de Cali au mépris des mesures prises par les autorités colombiennes – requérante n'étant pas en mesure d'obtenir la protection desdites autorités – craintes fondées de persécutions.»

4.4.4 Article 8

The French appeal court Commission des recours des réfugiés addressed the internal protection alternative as follows (CRR, 22 avril 2005, 490261, M. B., Jurisprudence du Conseil d'État et de la Commission des recours des réfugiés Année 2005, p. 71) : « FEDERATION DE RUSSIE : arrestations, détentions et mauvais traitements en raison de l'appartenance à la communauté tchétchène – requérant ayant tenté de s'installer de manière régulière et durable dans une partie de la Fédération de Russie – tentative vouée à l'échec en raison de son origine – craintes fondées de persécutions (oui).

The Luxembourg appeal court Cour Administrative ruled as follows (20 march 2007. n° 22400, non publié): "… en présence d'un demandeur d'asile qui ne fait état que de problèmes émanant non pas des autorités étatiques mais respectivement de membres d'une secte secrète qu'il n'entend pas rejoindre et de certains membres de l'armée qui essaient de cacher un crime de droit commun par eux commis, soit de membres de deux groupes qui n'ont qu'un rayon d'action territorialement restreint, il peut raisonnablement être conclu que l'intéressé aurait facilement et effectivement pu chercher et trouver refuge à l'intérieur de son pays d'origine, étant précisé qu'il n'appert pas des circonstances de la cause que les forces chargées de maintenir l'ordre et la sécurité publics au Nigéria ne soient pas disposées ou ne peuvent pas le protéger de façon appropriée contre des méfaits émanant de l'un ou l'autre groupe allégué de persécuteurs. »

4.4.5 Article 10(1)

The German appeal court Higher Administrative Court of Hessen (March 23, 2005, 3 UE 3457, 04.A) ruled that the domestic norm transposing Article 10(1), Sec. 60 para. 1 sentence 3 Residence Act is applicable in case of female genital mutilation.
The first resort court Verwaltungsgericht Hamburg (Administrative Court Hamburg), 4 A 1970, 03) has ruled that the same provision is applicable in situations of forced marriage because of the violation of the right of sexual self-determination.

4.4.6 Article 10(1)(d)

The Czech Supreme Administrative Court ((SAC), No. 5 Azs 63, 2004, May 19, 2004, Collection of decisions of the SAC, 11, 2004, Case No. 364, pp. 947-950) seems to have adopted the UNHCR definition of MPSG ground and thus recognized a merger of "protected characteristics" and "social perception" approach. Applying the UNHCR definition to the facts of the case, the SAC held that the "unemployed" can form a particular social group. However, under the circumstances of this case, criteria for establishing individual persecution were not met.

4.4.7 Article 15(c)

In a ruling dating 26 February 2007 (UM 23-06), the Swedish supreme court ruled in a case on an seeking protection as "a person otherwise in need of protection" because of serious and individual threat to his life by reason of an internal armed conflict in Iraq. The Court did not recognize the situation in Iraq as an internal armed conflict and denies protection.

The French appeal court (Commission des recours des réfugiés) ruled as follows on the nature of the "threat":

(CRR, 2 mai 2005, 502323, Jurisprudence du Conseil d'État et de la Commission des recours des réfugiés Année 2005, p. 44) : "mesure de déchéance de nationalité encourue en raison de l'insoumission du requérant – mesure résultant de dispositions à caractère général et non discriminatoire - mesure constitutive de l'une des menaces graves énoncées par la loi (non). »

CRR, 8 février 2005, 493983, Mlle Z., Jurisprudence du Conseil d'État et de la Commission des recours des réfugiés Année 2005, p. 51 : « Notion de menace grave - REPUBLIQUE POPULAIRE DE CHINE : requérante mineure isolée - renseignements fournis par l'intéressée dans le cadre d'une enquête visant une filière chinoise d'émigration clandestine – implication d'un groupe mafieux et d'autorités administratives de sa région d'origine – crainte de représailles en Chine à la suite du démantèlement de ce réseau– menaces de traitements inhumains ou dégradants (existence) – impossibilité de se prévaloir utilement de la protection des autorités (oui) – accord de la protection subsidiaire. »

CRR, 538807, 22 novembre 2005, M. A., Jurisprudence du Conseil d'État et de la Commission des recours des réfugiés Année 2005, p. 56: « Menace résultant d'une situation de conflit armé SOUDAN : agissements des milices Janjawids dans la région du Darfour – menaces, agressions et exactions à l'encontre des proches et des employés du requérant – soutien de l'aviation gouvernementale à l'action de ces milices –menaces graves, directes et individuelles (existence) – conflit au Darfour répondant aux critères de conflit armé interne énoncés à l'article 3 de la convention de Genève du 12 août 1949 (oui) – accord de la protection subsidiaire sur le fondement du c) de l'article L. 712-1 du code de l'entrée et du séjour des étrangers et du droit d'asile. »

The Dutch supreme court in asylum law, the Council of state ruled (ABRvS 20 July 2007, nr. 200608939, 1,Administratiefrechtelijke Beslissingen 2007, 271) that "on the basis of Common Article 3 of the 1949 Geneva Conventions and Article 1 of the Second Protocol, it must be concluded that there is an internal armed conflict as meant in Article 15(c) if an

organised armed group under responsible commanding order is capable of executing, on the territory of a country or a part thereof, military operations against the armed forces of the authorities of that country. These operations should, then, be continuous and interconnected, if there is to be an armed conflict. Perturbances or tensions, such as riots, do not lead to the conclusion that there is such a conflict. [Hence], it must be concluded that in Kosovo there was no internal armed conflict at the time of the decision (i.e. November 2006)." Hence involvement of "authorities" is required.

The Dutch Council of State (12 October 2007, 200702174, 1) addressed the meaning of Article 15(c). A reading according to which the provision partly codifies the Strasbourg case-law under Article 3 ECHR very well possible. It further observed that the text of the provision does not reflect that case-law and that the Directive does not refer to Article 3 ECHR at all. Hence, the meaning of the provision is unclear. The Council hence decided to refer two questions to the European Court of Justice for preliminary ruling:

1) "Is Article 15(c) of Directive 2004, 83 […] to be interpreted as meaning that this provision offers protection exclusively in a situation wherein Article 3 ECHR, as interpreted by the European Court of Human Rights, applies, or does the first mentioned provision offer additional or different protection as compared to Article 3 ECHR?
2) If Article 15(c) of Directive 2004, 83 offers additional or different protection as compared to Article 3 ECHR, which are the criteria for assessing whether a person who states that he, she qualifies for subsidiary protection, runs a real risk of being subjected to a serious and individual threat by reason of indiscriminate violence as meant in Article 15(c) read in conjunction with Article 2(e) of the Directive?"

4.4.8 Article 20(2) and preambular paragraph 11.

In an Austrian 2003 Supreme Court decision, it was held that even when benefits are being granted under private law and when a legal entitlement to benefits is not provided for by legislation (and therefore the administrative rules and procedures are not applicable) – the authorities are bound by the equality principle laid down by Art 7 Federal Constitutional Act. This related to the Federal Care Provision Act (issued at a time when obligations to provide basic welfare support were not yet distributed between the Federation and the Länder). Therefore, benefits have to be granted to all persons protected by the respective acts providing for benefits, if they meet the legal requirements (remark: the regulation in question ruled that benefits be not granted to persons form a certain number of countries of origin).

4.4.9 Article 23

In Bulgaria, the principle of maintaining family unity was applied in a 2005 Supreme Administrative Court decision. This case concerned a decision of the State Agency for Refugees not to grant protection status to a woman and her three minor children whose husband/father had been granted refugee status. The State Agency for Refugees had refused to grant them protection status with the argument that at the time of submitting the asylum application the man and the woman had not concluded a marriage. However, the Supreme Court stated that the man and the woman had entered into Bulgaria as a couple and the fact that they had three minor children was evidential that the decision of the State Agency for Refugees was infringing the unity of a family.

In Sweden, the principle of maintaining family unity was applied in a 2001 Appeal Court decision case where the family members of an applicant who was excluded from refugee status under Article 1 of the Geneva Convention were, nonetheless, granted refugee status on grounds of family unity. Information on further implications as to the level of rights enjoyed by the family members has not been provided.

4.4.10 Article 28

In a 2007 Constitutional Court decision, it was ruled that the legislator may exclude persons from access to family allowances if they are being granted benefits under basic welfare support. The legislator has a wide margin of discretion when laying down the preconditions for access to family allowance which may be subject to a close relation of the applicant to the Republic of Austria. Therefore the court refused to examine the application for lack of adequate chances of success.

4.4.11 Article 30

In Austria, a 2005 Supreme Court decision concerning an unaccompanied minor asylum seeker held that the minor has a right to be placed under the guardianship of the youth welfare authority, even when his or her accommodation, food, clothing, schooling and medical care are being covered by reception conditions according to the Basic Welfare Support Acts. The decision on guardianship has to be taken with respect to the welfare of the child, irrespective of the fact that the minor is over 14 years old and may therefore take care of minor affairs himself. In the case the applicant who had lost both father and mother claimed that he did not peak German well and needed somebody to support and assist him and take care of his affairs by way of an overall responsibility such as provided for by the legal system.

In a 2005 Constitutional Court decision pertaining to the old Asylum Act (1997), the Constitutional Court held that the youth welfare authority is responsible for the legal representation from the moment of his or her assignment to a place of residence. Since the new Act contains a similar provision on assignment, this decision will also be relevant for the Asylum Act 2005.

4.5 Other interesting elements (Q.53, 54)

The Lithuanian respondent signals low recognition rates for refugee status, and high recognition rates for subsidiary protection, which may indicate an overly narrow application of refugee status, The Finish and Irish rapporteurs point to the single status-system as regards benefits in their domestic systems (which exists in other Member States as well, e.g. the Netherlands, and which would lessen the adverse consequences of granting subsidiary protection instead of refugee status).

The Estonian rapporteur signals problems in the application of asylum law – such as fiendish behaviour by asylum authorities, and unwillingness to issue benefits to Russian speaking applicants.

Interesting issues as regards the domestic transposition acts are reported for three Member States. In Belgium, appeals for annulment against the transposition act are pending before the judiciary.[421] The respondent for Spain explains that the existing Spanish legislation is in a number of respects far more favourable towards third country nationals in need of international protection, but a number of issues does need regulation which Spain hitherto has

421 Appeals against the legislative amendments of 15 September 2006 to the Aliens Act are pending before the Constitutional Court (cases 4187, 4188, 4190, 4191 and 4192, see Belgian State Gazette 8 June 2007 and 14 June 2007). Some of the complaints pertain to the transposition of the Qualification Directive. (1) The provision that a non accompanied minor who has been given refugee status must demonstrate that he has sufficient housing and health insurance for his parents to join him later than one year after his recognition, is discriminatory and violates the right to family life in article 8 ECHR. (2) The impossibility of family reunion for children of a recognized refugee born out of a polygamous relationship, if the other spouse is already in Belgium, is discriminatory and violates the right to family life in article 8 ECHR. (3) The introduction of the exceptional leave for medical reasons (procedure for the minister) excludes asylum claimants from obtaining subsidiary protection status for medical reasons in cases like D. v. United Kingdom in the ordinary asylum procedure. This is challenged for reason of discrimination.

been deficient to do. As regards the legislation proposal on which the Swedish answers to the questionnaire (and hence the report) are partly based, the respondent Sweden, the respondent addresses some critique issued by consulting bodies

5. SITUATION OF MEMBER STATES NOT BOUND BY THE DIRECTIVE

5.1 Introduction

As both the United Kingdom and Ireland do apply the Directive,[422] only one Member State, Denmark, is not bound by the Directive.[423] Denmark did not adopt national instruments to render its domestic law in line with the Directive.

5.2 Rules on qualification (Articles 1-19)

Danish domestic law has established both refugee protection and a subsidiary form of international protection. The latter is based on prohibitions of refoulement such as Article 3 ECHR. It is reported that in the Danish government's view amendment as regards rules on qualification would not be required in case Denmark were to participate in the Directive.[424] Nevertheless, Danish law and practice appear to be *not* in conformity with the Directive in the following respects.

(1) The Danish Aliens Act does not explicitly state the definition, but makes an indirect reference to the Refugee Convention definition in section 7(1) of the Danish Aliens Act, which stipulates that "[u]pon application, a residence permit will be issued to an alien if the alien falls within the provisions of the Convention relating to the Status of Refugees (28 July 1951)." The grant of residence permit according to this provision thus implies the recognition of refugee status.

(2) Similarly, Danish legislation does not contain specific provisions on the issues of cessation of and exclusion from status as such in Danish legislation. Section 7(1) of the AA, which stipulates the grant of residence permit to aliens in need of protection has a general reference to the 1951 Convention and therefore, it could be argued, also to Article 1C, 1D, 1E and 1F of the Convention. Also in those respects, status determination is thus indirectly linked to the granting, lapse, revoking or denial of renewal of residence permit. Criteria for the lapse, revoking or denial of renewal of residence permit are contained in separate and specific provisions of the AA, which to an extent are at variance with those of the directive.

(3) As to a number of issues, Danish law deviates from Directive provisions by indirectly setting more favourable provisions. It concerns rules on cessation and, to a lesser extent, exclusion, in so far as Danish law states less grounds for cessation (as compared to Articles 11 and Article 14(1) QD), and where denial or termination of residence permit (and thus implicitly of status) is facultative rather than obligatory (in contrast to Articles

422 Preamble (38) and (39) QD.
423 Preamble (40) QD.
424 Questionnaire Denmark, Q. 4B.

14(1) and 19(3) QD). In accordance with the approach set out in par. V.1.1, such more favourable domestic norms may be qualified as in conformity with the Directive.

(4) With the exception of the assessment of facts and circumstances covered by Article 4(2), where Danish legislation might be considered partly in accordance with the directive, Danish law lacks explicit written norms as regards a number of Directive provisions concerning interpretation and application of the definition of a refugee and of a person who is eligible for subsidiary protection. For a number of the concerned issues, it appears that the practice of the highest domestic review authority (the Refugee Appeals Board) is largely in line with Directive provisions (Articles 4(1) (partly), 4(3) (partly), 4(4), 4(5), 5, 6,[425] 7(1), 8(2)[426] and 17(2) QD). As case law of the Refugee Appeals Board can however not be characterised as fully consistent and binding on future rulings of the Refugee Appeals Board, Danish legislation cannot be considered as being in conformity with those provisions.

(5) As to a number of issues, Danish legislation or (in absence of explicit rules) its practice is not in conformity with the Directive to the detriment of the third country national.
   (a) The definition of persons eligible for subsidiary protection deviates substantially from the one set out in Article 2(e) read in conjunction with 15 QD. The domestic definition (according to which subsidiary protection extends to any alien who "risks the death penalty or being subjected to torture or inhuman or degrading treatment or punishment in case of return to his country of origin" unless national provisions on exclusion or cessation apply) lacks a reference to a "serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict"[427] (article 15(c)) which renders the domestic definition possibly considerably less extensive than the one in the Directive. A reference to risk of execution is also lacking, but it is reported that preparatory works of the domestic norm (that steer its interpretation) suggest that this risk is covered by it.[428]
   (b) Furthermore, the domestic rule does not state that subsidiary protection applies only if the alien does not qualify for refugee status (cf. Article 2(e) QD), and it is reported that primacy of the Refugee Convention is in practice not always respected.[429]
   (c) Issue of status (or residence permit) to refugees and persons eligible for subsidiary protection is not obligatory under Danish law (cf. Article 13 and 18).
   (d) The Danish reading and application of international law deviate from the interpretation norms of Article 7(2) and 10(1)(d).
   (e) Danish grounds for exclusion from international protection are wider than those laid down in Articles 12, 17(1) and 19(1) QD.

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425 ToC Denmark: Without any legal basis, case law of the Refugee Appeals Board recognises theoretically the principle of agents of persecution as this is stated in UNHCR Handbook paragraph 65, although in practice, the burden of proof requirement on the applicant seems higher.

426 ToC Denmark: According to the brief wording of most of Board's decisions, general and personal circumstances are, at least theoretically, taken into consideration in line with the stipulation of article 8(2). When analysing the decisions, it may, however, be questioned whether the Board in fact does take personal and individual circumstances sufficiently into account when assessing an internal protection alternative.

427 Article 7(2) of the Aliens Act.

428 ToC Denmark, ad Article 2(e); by means of references to Protocols 6 and 13 ECHR, Questionnaire Denmark, Q.28A.

429 ToC Denmark, ad Article 2(e).

(f) Danish law does not state the procedural guarantees of Article 4(3), 14(2) and 19(4).

5.3 Rules on the content of the statuses (Articles 20-34)

Similar to what is the case on Directive provisions relating to qualification, it is reported that in the opinion of the Danish government, amendments as regards rules on the content of the status (rights and benefits) would not be required if Denmark was to participate in the Directive.[430] It should be noted, however, that a number of Directive provisions have been considered as not having been transposed in the course of preparing this report. While it still may be stated that a high number of provisions in Chapter VII of the Directive find similar (albeit not identical) provisions in existing Danish legislation, domestic law of this Member State can be said to be at variance with the following important provisions of the Directive:

(1) Danish domestic law does not transpose Article 14(6), which sets out the rights of those considered as "tolerated". Refugees in this situation remain on tolerated stay without all the rights and entitlements of the Geneva Convention. Only Articles 4, 31 and 33 of the Geneva Convention can be said to be ensured.
In Denmark, the relevant legislation incorporates Arts. 1 and 33 of the Geneva Convention, but remains silent on the issue of refugee rights in general as set out in Arts. 3-34 of the Geneva Convention. Regulation of these issues can – partially – be found in issue-specific legislation and related legal norms as indicated above. Based on the information available on the situation in this Member State, transposition of Article 20(1) seems, however, not to be adequate.

(2) It may be argued that necessary social assistance (Article 28) as provided to nationals is not fully ensured for beneficiaries of refugee or subsidiary protection status, as a specific allowance has been introduced for refugee and subsidiary protection status beneficiaries which is lower than the "normal" allowance (the "cash allowance"). However, some Danish nationals (those who have not resided for 7 out of the past 8 consecutive years in Denmark) are also provided with the lower allowance, thereby possibly ensuring non-discrimination.

(3) Finally, Article 30 on unaccompanied minors, paragraphs (4) and (6) do not find equivalents in domestic legislation. Article 30(4) ensures that siblings as far as possible are kept together and that changes of the residence of the unaccompanied minor be kept to a minimum. In relation to the obligation to train staff working with unaccompanied minors stated in Article 30(6), there is no such requirement in Danish legislation. In practice, personal working in the designated centres for unaccompanied minors seeking asylum would have been trained accordingly. Following the grant of refugee or subsidiary protection status of the unaccompanied minor, s/he is placed in a municipality identified by the Immigration Service were trained personal, however, is not necessarily available.

430 Questionnaire Denmark, Q. 4B.