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OUTCOME OF PROCEEDINGS

from : Asylum Working Party

on : 9-10 January 2003

No. prev. doc. : 15627/02 ASILE 82

No. Cion prop. : 13620/01 ASILE 52 - COM(2001) 510 final

Subject : Proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection

I

At its meeting on 9-10 January 2003, the Asylum Working Party continued its examination of the above proposal (Articles 20 to 39).

Delegations will find in section II below the text of Articles 18 and 20 to 39 with delegations comments in the footnotes.

Changes to 15627/02 ASILE 82 are in bold.

II

Draft

COUNCIL DIRECTIVE

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

CHAPTER VII

Content of international protection

Article 18

General rules

1. The rules laid down in this Chapter shall be without prejudice to the rights laid down in the Geneva Convention.
2. The rules laid down in this Chapter shall apply both to refugees and persons eligible for subsidiary protection unless otherwise indicated.
3. When implementing the provisions of this Chapter, Member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.
4. Paragraph 3 shall apply only to persons found to have special needs after an individual evaluation of their situation.
5. **The best interest of the child shall be a primary consideration for Member States when implementing the provisions of this Directive that involve minors.**

6. Within the limits set out by the Geneva Convention, Member States may reduce the benefits of Chapter VII, granted to a refugee, whose refugee status has been obtained on the basis of activities engaged in for the sole or main purpose of creating the necessary conditions for being recognised as a refugee.¹
7. Within the limits set out by international obligations of Member States, Member States may reduce the benefits of Chapter VII, granted to a person eligible for subsidiary protection, whose subsidiary protection status has been obtained on the basis of activities engaged in for the sole or main purpose of creating the necessary conditions for being recognised as a person eligible for subsidiary protection.²

Article 20

Information

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

Article 21

Residence permits³

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

¹ **DELETED**: scrutiny reservation.
² **DELETED**: scrutiny reservation.
³ **DELETED**: scrutiny reservation.

Article 21A
Maintaining family unity¹

1. Member States shall ensure that family members of the same nationality² as the beneficiary of refugee or subsidiary protection status and who do not individually qualify for such statuses, are entitled to a status which will enable them to stay with the beneficiary. This status cannot be less favourable than the one granted to family members who have been reunified with a beneficiary of refugee or subsidiary protection status in accordance with family reunification regulations.³

¹ **DELETED**: proposed the following text :

"Extension of refugee protection to family members

1. Member States shall ensure that family members are entitled to refugee status already
 - (a) if they lodged their application for international protection before or at the same time as the refugee or without any delay after entering the territory of the Member State and
 - (b) if pursuant to Article 2 (j) (i) the marriage or the stable relationship with his/her unmarried partner already existed in the country of origin of the refugee or of his/her spouse or unmarried partner.
2. In cases pursuant to Article 2 (j) (ii) where the child is born on the territory of the Member State after the recognition of the refugee the application for international protection has to be filed within a period of one year after birth.
3. The rule laid down in paragraph 1 is not applicable if the family member is excluded from refugee status pursuant to Article 14.
4. Member States may introduce regulations which establish that paragraphs 1 to 3 apply mutatis mutandis to family members of persons who are eligible for subsidiary protection status."

² **DELETED**: delete "of the same nationality".

³ **DELETED**: wanted the following text :

"Need for protection as a result of a family tie

Where a foreigner with a family obtains refugee status or subsidiary protection status, a member of his family as referred to in Article 2 who has entered the country and has no grounds of his own for obtaining protection shall be granted the same status, unless his need for protection is to be examined separately as a result of a different background or nationality."

DELETED: wanted the following text :

"Where a third country national or stateless person obtains Refugee Status or Subsidiary Protection Status, a member of his or her family who has entered the country and who has no grounds of her or her own for obtaining protection shall be granted the same status, unless his or her need for protection is to be examined separately."

2. Member States may decide that paragraph 1 also applies to other close relatives who lived together as part of the family at the time of leaving the country of origin, and who were wholly or mainly dependent on the beneficiary of refugee or subsidiary protection status at that time.
3. Family members who fall under the scope of paragraph 1 are entitled to the benefits referred to in Articles...
4. The rule laid down in paragraph 1 is not applicable where the family member is excluded from refugee or subsidiary protection status pursuant to Chapters III and IV.

Article 22
(deleted)¹

Article 23
Travel document

1. Member States shall issue to persons to whom they have granted refugee status travel documents in the form set out in the Schedule to the Geneva Convention, for the purpose of travel outside their territory unless compelling reasons of national security or public order otherwise require.
2. Member States shall issue to beneficiaries of subsidiary protection status who are unable to obtain a national passport, documents which enable them to **travel, at least when serious humanitarian reasons arise that require their presence in another State, unless compelling reasons of national security or public order otherwise require.**²

¹ **DELETED**: scrutiny reservation on the deletion.

² **DELETED**: scrutiny reservations.

DELETED: pointed out that travel documents delivered to beneficiaries of refugee or subsidiary protection status should be recognized by the other Member States.

Article 24

Access to employment

1. Member States shall authorise beneficiaries of refugee status to engage in employed or self-employed activities under equivalent conditions as nationals, immediately after the refugee status has been granted.
2. Member States shall ensure that activities such as employment-related education opportunities for adults, vocational training and practical workplace experience are offered to beneficiaries of refugee status, under equivalent conditions as nationals.
3. Member States shall normally¹ authorise beneficiaries of subsidiary protection status to engage in employed or self-employed activities under equivalent conditions as nationals immediately after the subsidiary protection status has been granted.²
4. Member States shall ensure that beneficiaries of subsidiary protection status normally³ have access to activities such as employment-related education opportunities for adults, vocational training and practical workplace experience, under equivalent conditions as nationals.⁴
5. **The general law in force in the Member States applicable to remuneration, access to social security systems relating to employed or self-employed activities and other conditions of employment shall apply.**⁵

¹ **DELETED**: scrutiny reservations.

² **DELETED**: scrutiny reservations.

³ **DELETED**: wanted direct access to work for both status.

⁴ **DELETED**: scrutiny reservations.

⁵ Wording taken from Article 12, last sentence, of Directive 2001/55/EC on temporary protection of displaced persons.

Article 25
Access to education¹

1. Member States shall grant full access to the education system to all minors granted refugee or subsidiary protection status under the same conditions as nationals.
2. Member States shall allow adults granted refugee or subsidiary protection status access to the general education system, further training or retraining, under the same conditions as nationals.
3. Member States shall ensure equal treatment **as between** beneficiaries of refugee or subsidiary protection status **and nationals as regards recognition procedures for foreign academic and professional** diplomas, certificates and other evidence of formal qualifications.[...]²

¹ **DELETED**: scrutiny reservations.

DELETED: opposed granting the same treatment to both status.

² **The Chair** suggested to add the following Recital to the Preamble:

"The practical difficulties encountered by beneficiaries of refugee or subsidiary protection status concerning the authentication of their foreign diplomas, certificates or other evidence of formal qualification should be taken into account."

DELETED: scrutiny reservations.

DELETED: say "Member States shall grant to beneficiaries of refugee or subsidiary protection status treatment as favourable as possible with respect to the recognition of foreign school certificates, diplomas and degrees." (Wording based on Article 22(2) of the Geneva Convention).

Article 26
Social Welfare¹

Member States shall ensure that beneficiaries of refugee or subsidiary protection status **who do not have sufficient resources to enable their subsistence** receive, in the Member State that has granted such statuses, the necessary assistance in terms of social welfare and means of subsistence as nationals of that Member State.

Article 27
Health care²

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

2. Member States shall provide, **under the same conditions as nationals of the Member State that has granted the status**, necessary **health care** to beneficiaries of refugee or subsidiary protection status who have special needs, such as **pregnant women, disabled people,**³ persons who have undergone torture, rape or other serious forms of psychological, physical or sexual violence **or minors who have been victims of any form of abuse, neglect, exploitation, torture, cruel, inhuman and degrading treatment or who have suffered from armed conflict.**⁴

¹ **DELETED**: scrutiny reservations.

² Delegations entered scrutiny reservations on this new wording.
The following Recital will be added to Preamble:

"Access to health care, including both physical and mental health care, should be ensured to beneficiaries of refugee or subsidiary protection status."

³ **DELETED**: scrutiny reservation.

⁴ **DELETED**: different access should be granted to people enjoying different status.

Article 28
Unaccompanied minors

1. Member States shall take the necessary measures as soon as possible, to ensure the representation of unaccompanied minors granted refugee or subsidiary protection status by legal guardianship or, where necessary, representation by an organisation which is responsible for the care and well-being of minors, or by any other appropriate representation **including that based on legislation or Court order.**

2. Member States shall ensure that the minor's needs are duly met in the implementation of the provisions of this Directive by the appointed guardian or representative. The appropriate authorities shall make regular assessments. **In this context, the views of the child shall be taken into account in accordance with his or her age and degree of maturity.**¹

3. Member States shall ensure that unaccompanied minors are placed either:
 - (a) with adult family members; or
 - (b) with a foster family; or
 - (c) in centres specialised in accommodation for minors; or
 - (d) in other accommodation suitable for minors.²

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

¹ **DELETED**: reservations. Wanted to delete the last sentence.

DELETED: scrutiny reservations.

² **DELETED**: scrutiny reservation.

5. Member States, protecting the unaccompanied minor's best interests, shall endeavour to trace the members of his or her family as soon as possible. In cases where there may be a threat to the life or integrity of the minor or his or her close relatives, particularly if they have remained in the country of origin, care must be taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis, so as to avoid jeopardising their safety.¹
6. Those working with unaccompanied minors shall have had or receive appropriate training concerning their needs. [...]

Article 29

Access to accomodation²

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

Article 30

Freedom of movement within the Member State

Member States shall allow freedom of movement within their territory to beneficiaries of refugee or subsidiary protection status, **under the same conditions as those provided for other third country nationals legally resident in the territories of the Member States and subject to restrictions provided by law such as those necessary to protect national security or public order.**³

¹ **DELETED**: scrutiny reservation.

² **DELETED**: scrutiny reservations.

³ **DELETED**: scrutiny reservations.

Article 31

Access to integration facilities

1. In order to facilitate the integration of refugees into society, Member States shall make provision for [...] support programmes **which they consider to be appropriate.**¹
2. Member States shall² grant beneficiaries of subsidiary protection access to **similar**³ programmes, not later than one year after⁴ their status is granted.

Article 32

Repatriation

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

¹ **DELETED**: scrutiny reservation.

DELETED: say "individually tailored support programmes aimed to facilitate their integration".

² **DELETED**: scrutiny reservations. Preferred to say "may" instead of "shall".

³ **DELETED**: say "identical" instead of "similar".

⁴ **DELETED**: wanted no time-limit, as for refugees in paragraph 1.

CHAPTER VI
Administrative cooperation

Article 33
Cooperation

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

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

Article 34
Staff and resources

1. Member States shall ensure that authorities and other organisations implementing this Directive have received the necessary [...] ¹ training **and shall be bound by the confidentiality principle, as defined in the national law, in relation to any information they obtain in the course of their work.**

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

¹ **DELETED**: scrutiny reservation.

² **DELETED**: delete this paragraph, which does not belong in a harmonisation Directive.

CHAPTER VII

Final provisions

Article 35

Non-discrimination

(deleted)¹

Article 36

Reports

By² at the latest, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose any amendments that are necessary. These proposals for amendments shall be made by way of priority in relation to Article 15, taking into consideration the international obligations of Member States regarding non-refoulement, existing at the time these proposals are made. Member States shall send the Commission all the information that is appropriate for drawing up that report **by**³. After presenting the report the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States at least every five years.⁴

¹ The following Recital will be added to the Preamble :
"With respect to the treatment of persons falling within the scope of this Directive, Member States are bound by obligations under instruments of international law to which they are party and which prohibit discrimination."

² 18 months after the date provided for in Article 37(1).

³ 12 months after the date provided for in Article 37(1).

⁴ Recital 24 will be amended as follows :
"(24) The implementation of this Directive should be evaluated at regular intervals, taking into consideration in particularly the evolution of the international obligations of Member States regarding non-refoulement."

Article 37
Transposition

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive **by¹** at the latest. They shall forthwith inform the Commission thereof.

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

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

Article 38
Entry into force

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

Article 39
Addressees

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

Done at Brussels,

For the Council
The President

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